

**CITY OF BELFAST PLANNING BOARD  
ADOPTED FINDINGS OF FACT  
ZONING USE PERMIT APPLICATION  
APPLICANT: NORDIC AQUAFARMS, INC.  
PROJECT: LAND BASED SALMON FARM  
LOCATION: ROUTE ONE SOUTH  
(BELFAST WATER DISTRICT & ADJACENT PROPERTIES)**

**1. APPLICANT:**

Owner: Nordic Aquafarms, Inc.  
Attn: Ed Cotter  
Belfast, ME 04915

Engineer: Ransom Consulting (lead engineer)  
Attn: Elizabeth Ransom  
New Gloucester, ME 04260

Legal Counsel: Joanna Tourangeau  
Drummond Woodson  
84 Marginal Way Suite 600  
Portland, ME 04011

**2. OVERALL DESCRIPTION OF NORDIC PROJECT AND PROJECT LOCATION.**

Nordic Aquafarms, Inc. (hereinafter Nordic) submitted an application to develop a land-based salmon aquaculture facility on a 56 acre site located on the northwesterly side of Route One near the lower reservoir of the Little River. The applicant proposes to develop the project in two phases over 5 or more years. Total production capacity at build-out is estimated to be 72,732,000 pounds (33,000 metric tons) of salmon per year. Phase 1 involves the construction of about 414,450 square feet of buildings, and Phase 2 involves the construction of about 392,804 square feet of buildings; each phase involves rearing and processing a similar amount of salmon.

The facility would use a Recirculating Aquaculture System (RAS) to process water used in rearing the salmon in land-based tanks. At full build-out, the facility is projected to use up to 1,205 gallons of freshwater per minute (gpm) and about 3,925 gallons of saltwater per minute. The freshwater is proposed to be obtained from three sources: the Belfast Water District (up to 500 gpm), on-site groundwater wells (up to 455 gpm) and the extraction of surficial water from Reservoir 1 on the Little River (up to 250 gpm). Saltwater will be obtained from Belfast Bay via two new off-shore water intake pipes that extend about 6,300 feet from the High Annual Tide into the Bay. The RAS system also involves Nordic Aquafarms treating and regularly discharging the freshwater and saltwater

(wastewater/effluent) used to rear salmon back into Belfast Bay via a discharge pipe that extends offshore about 3,700 feet from the High Annual Tide.

The 56 acre site that Nordic proposes to develop includes parts of all of the following properties, as such are identified on the City of Belfast Tax Assessor maps:

- Map 29, Lot 39, located at 285 Northport Avenue that is owned by the Belfast Water District (about 29 acres):
- Map 4, Lot 104, located off of Northport Avenue that is owned by Sam Cassida (about 12.5 acres):
- Map 4, Lot 12A, located at 22 Perkins Road that is owned by Goldenrod Properties, LLC; [dba Mathews Brothers] (about 14.5 acres): and
- Map 29, Lot 36, located at 282 Northport Ave, that is owned by Richard Ekrote (easement for construction of water intake/wastewater discharge pipes).

### **3. OVERVIEW OF 2018 AMENDMENTS TO CHAPTER 102, ZONING, REQUIREMENTS.**

The City, in April 2018, and again in October 2018, adopted certain amendments to Chapter 102, Zoning, City Code of Ordinances, to change the zoning district designation for property owned by the Belfast Water District (Residential II) near the Lower Reservoir of the Little River, and two adjacent properties, one owned by Samuel Cassida (Residential II) and the other by Mathews Brothers (Industrial IV), from the Residential II or Industrial IV zoning districts to the Route One South Business Park zoning district; a newly established zoning district. The above amendments were in direct response to a proposal from Nordic Aquafarms to establish a land-based salmon aquaculture facility in this area. The new Route One South Business Park zoning district, similar to the Industrial IV zone, was designed to allow industrial and manufacturing uses and professional offices, as well as a new use, land-based aquaculture facilities. The City, in considering the above Ordinance changes, also made corresponding changes to the adopted City Comprehensive Plan (and accompanying Land Use Plan).

The City enacted a number of amendments to Chapter 102, Zoning, as well as Chapter 82, Shoreland, and Chapter 66, General Provisions (Definitions) to create an opportunity for the City to consider the establishment of a land based salmon aquaculture farm in this area. The amendments to Chapter 102, Zoning, included the following:

- a) Establishment of the Route One South Business Park zoning district. The Ordinance identified the range of uses permitted, dimensional standards for properties and structures, and the performance standards that would apply to nonresidential uses.
- b) Prior to April 2018, Chapter 102, Zoning, was silent on the issue of an applicant installing a significant groundwater well on a property located in any zoning district. The 2018 amendments (April and October) established a definition for a significant groundwater well, identified that a Significant Groundwater Well would be a permitted use in the Route One South Business Park zoning district, and established specific standards for the regulation of such a well; reference Article VIII, Supplementary District Regulations, Division 7, Significant Groundwater Wells.

- c) Prior to April 2018, Chapter 102, Zoning, was silent on the issue of an applicant installing a significant water intake/discharge pipe on a property located in any zoning district. The 2018 amendments (April and October) established a definition for a significant water intake/discharge pipe, identified that such pipes could be a permitted use in the Route One South Business Park zoning district and the Residential II zoning district, and established specific performance standards for the regulation of an discharge/intake pipe; reference Article IX, Performance Standards, Division 2, Environmental Standards, Section 102-1138, Significant Water Intake or Significant Discharge/Outfall Pipes.

The City Council, in adopting the above amendments, recognized that any proposal to develop a land-based salmon farm aquaculture farm in this area would need to comply with Ordinance requirements identified in Chapter 102, Zoning (performance standards), Chapter 90, Site Plan and the Chapter 98 Technical Standards, and that Chapter 82, Shoreland, and Chapter 78, Floods, may also apply. The Planning Board considered the 2018 amendments to Chapter 102, Zoning in its review of the Nordic application.

#### **4. OVERALL DESCRIPTION OF PLANNING BOARD REVIEW PROCESS FOR NORDIC ZONING USE PERMIT.**

Chapter 102, Zoning, Article V, District Regulations, Division 19, Route One South Business Park district, identifies a land-based aquaculture use as a permitted activity subject to review by the Belfast Planning Board. Following is a synopsis of the process associated with the Planning Board's review of Nordic's application for a Zoning Use Permit.

Nordic submitted its Site Plan Permit application to the Code and Planning Department and Belfast Planning Board on June 11, 2019. This application was found complete for purposes of Board review by Wayne Marshall, who was then serving as an appointed Code Enforcement Officer for the City. This application also included information required for a City Zoning Use Permit, reference Attachment 4, Chapter 102, Zoning Standards.

The Planning Board, at its meeting of June 26, 2019, initiated its review of the Nordic Site Plan Permit and other City Permit applications. Board review of a Site Plan application involves a two-step process, Preliminary Plan and Final Plan, thus the Board's review first involved Preliminary Plan requirements. The initial meetings of the Board focused on the Board gaining a better understanding of the project and addressing certain procedural requirements identified in City Ordinances. In June – August 2019 the Board did the following:

- Conducted a site visit on July 10;
- Established the process the Board would use to review Nordic's applications and conduct accompanying public hearings (July 11);
- Determined which Board members would vote on the Nordic applications (August 5);
- Determined the persons/organizations that qualified as 'Parties-in-Interest (August 5 and 19);

- Determined that Nordic had provided sufficient evidence of Right, Title and Interest to allow the Board to consider the Nordic applications (August 5);
- After conducting a specific public hearing on the issue, determined that Nordic's proposed activities in both the Route One South Business Park zoning district and the Residential II zoning district were permitted uses (the October 2018 amendments to Chapter 102); and
- approved certain third-party reviewers for the City on the Nordic application, including William Kelly, City Attorney, Mandy Olver, Olver Associates (City Engineer), and Matt Reynolds, Drumlin Environmental, who specifically was engaged to review Nordic's groundwater and water use proposals.

Beginning in August 2019 and continuing through January 2020, the Planning Board conducted the following activities: heard presentations from Nordic representatives on individual elements of its Site Plan application, including information relevant to other Permits, including this Zoning Use Permit, that the Board had to consider; heard testimony from Parties-in-Interest and the general public at the numerous public hearings that the Board conducted on the specific issues presented by Nordic; and heard testimony and comments from third-party experts engaged by the City and City Code and Planning Department staff. The Board also conducted initial deliberations on many of the issues considered at the respective meetings, and provided direction to Nordic and City representatives regarding additional information needed on the Nordic application.

The Planning Board, at its meetings of January 8, January 15 and January 22, 2020, conducted public hearings to accept public testimony from both Parties-in-Interest and the general public on all elements of the Nordic application, including the Zoning Use Permit application. The public comment that was presented addressed concerns that the Board must consider in its decision on a Zoning Use Permit application. The Board, post these hearings, conducted meetings to deliberate on the information it received, however, no further public hearings were conducted as part of the Board's review of Nordic's Preliminary Plan.

The Planning Board conducted its review of draft Findings of Fact for Nordic's Preliminary Site Plan Permit application, including issues and standards related to the Chapter 102, Zoning Use Permit, at its meetings of June 17, July 8 and July 15, 2020. The Board conducted the above meetings via a ZOOM webinar, as it did all Board meetings post the beginning of May 2020. The Board used ZOOM so it could best comply with State standards regarding the size of public gatherings due to the COVID 19 pandemic. The Board, at its meeting of July 15, approved Nordic's Preliminary Site Plan application and adopted Findings of Fact that describe its decision. This action allowed Nordic to submit a Final Site Plan application to the Board, and also led to the process whereby the Board would review the specific requirements of the other 4 Permits the Nordic project requires from the Planning Board, including this Zoning Use Permit, and two other Permits identified in Chapter 102, Zoning, a Significant Groundwater Well Permit, and a Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit.

Nordic submitted its Final Site Plan application in late August. The Board initiated its review of this application on September 30, 2020, including conducting a public hearing for Parties-in-Interest on October 7, 2020, and a public hearing for the general public on October 8. The public hearing notice for the above hearings specifically referenced the Board's interest in receiving public comment on the Nordic Zoning Use Permit application. These were the final overall public hearings conducted by the Board on the Nordic applications.

The Board, between September 30 and December 22, 2020, conducted a total of 14 public meetings on Nordic's Final Plan application. The issues the Board addressed at these meetings included standards the Board must consider in its decision on a Zoning Use Permit. The Board, at its meeting of November 12, specifically reviewed the Article IX, Environmental Standards, Article VIII, Supplementary District Regulations, and the Use and Dimensional requirements for the Route One South Business Park and Residential II zoning districts and provided verbal direction to Code and Planning Department staff regarding its Findings on these provisions. The Board, at nearly all of the above referenced 14 meetings, considered the parameters and draft language for potential Conditions of Approval it would establish for the Zoning Use Permit and other City Permits.

The Planning Board, as part of its deliberations on Nordic's Final Plan application, reviewed the draft and final Orders from the Board/Department of Environmental Protection on the Nordic project, including the Natural Resources Protection/Site Location of Development Act (NRPA/SLODA) Permits, the Maine Pollution Discharge Elimination System (MPDES) Permit, and the Minor Air Emissions License/Permit. The Board, in its deliberations, also considered the technical review of these permits that were performed by either Mandy Olver, Olver Associates, or Matt Reynolds, Drumlin Environmental.

The Planning Board, through-out all stages of its review of the Nordic applications, considered issues associated with standards identified in Chapter 102, Zoning, related to the issuance of a Zoning Use Permit. The Board also noted that requirements for a Chapter 90, Site Plan Permit, and a Chapter 102, Zoning Use Permit address nearly all of the same issues.

The Board, in conducting its deliberations, considered the following:

- information in the Nordic application, particularly Attachment 4;
- additional information provided at Planning Board meetings by Nordic and its consultants;
- public testimony offered by all Parties-in-Interest and by the general public (oral and written comment);
- information in the DEP NRPA/SLODA Permit and Findings, the DEP MPDES Permit and Findings, and the DEP Air Emissions License and Findings;
- the assessment of the Nordic application provided by Mandy Olver, Olver Associates, Matt Reynolds, Drumlin Environmental, William Kelly, City Attorney, and Wayne Marshall, Project Planner, Code and Planning Department (Note: Mr. Marshall served as the Director of the Department until mid-September 2020, and served as the Project Planner post this time); and

- comments offered by individual Board members during the public review process.

5. **SPECIFIC FINDINGS OF THE BELFAST PLANNING BOARD ON OVERALL ZONING USE PERMIT REQUIREMENTS.**

The Planning Board made the following findings regarding the applicability of certain Chapter 102, Zoning requirements regarding the Nordic application for a Zoning Use Permit.

- a) The Board accepted the June 2019 determination by Wayne Marshall, alternate Code Enforcement Officer, that the Nordic Site Plan application, and by extension, the Zoning Use Permit (reference Attachment 4 of the Site Plan application), were complete for purposes of the Board's initial review. Submission requirements for a Site Plan for a Zoning Use Permit are identified in Section 102-101, Authority of Planning Board, Site Plan Required, and Section 102-102, Submission Requirements.
- b) The Planning Board, at its meeting of August 5, 2019, determined that Nordic submitted sufficient evidence that it had Right, Title, and Interest to all properties for the purposes of the Board considering the Nordic applications. The Board also conducted a public hearing at its August 5 meeting on this issue (written testimony only).
- c) The Planning Board, at its meeting of August 19, 2019, found that a land-based aquaculture facility, including related accessory uses such as a significant water intake/discharge pipe, fish processing and a visitors centers, is a permitted use in the Route One South Business Park Zoning District; reference Chapter 102, Zoning, Article V, District Regulations, Division 19, Route One South Business Park zoning district, Section 102-682, Subsection 3) in making its decision. Subsection 3) identifies the following as a permitted use subject to Planning Board review: *'Aquaculture, land based, including uses that are accessory to the aquaculture operation, such as but not limited to: fish processing, byproducts, research laboratory, office, on-site child care, storage, accessory retail sales and a visitor's center. A land based aquaculture operation may discharge wastewater to and use water from a marine or fresh waterbody.'* The Board also conducted a public hearing at its meeting of August 19, 2019 regarding this issue.
- d) The Planning Board, at its meeting of August 19, 2019, found that the significant groundwater wells that Nordic proposes to install at its main site, and the significant water intake/discharge pipes that Nordic proposes to install on the main site are permitted uses in the Route One South Business Park zoning district. The Board specifically referenced Chapter 102, Zoning, Article V, District Regulations, Division 19, Route One South Business Park, Section 102-682, *Subsection 9), Significant Groundwater Well, and Subsection 10), Significant Water Intake or Significant Water Discharge/Outfall Pipes*, in making its decision. The Board also conducted a public hearing at its meeting of August 19, 2019 regarding these determinations.

- e) The Board, at its meeting of August 19, 2019, determined that the Ekrote easement area that Nordic proposes to use to install significant water intake/discharge pipes is located in the Residential II zoning district. The Board determined that Chapter 102, Zoning, Article V, District Regulations, Division 7, Residential II District, Section 102-422, *Subsection 12*), *Significant Water Intake or Significant Water Discharge/Outfall Pipes*, allows this activity. The Board also found that an Intake/Discharge Pipe qualifies as a principal use in the Residential II zone. The Board also conducted a public hearing at its meeting of August 19, 2019 regarding this issue.
- f) The Board acknowledged that an application for a Zoning Use permit would need to comply with procedures identified in both Chapter 102, Zoning and Chapter 90, Site Plan for Board review of a permit. Thus, the Board determined that it would use the process for its review of the Nordic Site Plan Permit to address concerns related to the issuance of a Zoning Use Permit. Further, the Board determined that Nordic would need to obtain separate permits pursuant to requirements identified in Chapter 102, Zoning, for its proposed Significant Groundwater Wells and Significant Water Intake/Discharge Pipes.

The Board, in its review of Nordic's request for a Zoning Use Permit would need to consider Nordic's compliance with Use, Dimensional and Performance Standard requirements for activities that Nordic proposes in both the Route One South Business Park zoning district and the Residential II zoning district. The Board's review of Use and Dimensional Standards is addressed in Section 6 of these Finding, below, and the Board's review of compliance with applicable performance standards is described in Section 7 and Section 8 of these Findings.

6. **SPECIFIC FINDINGS OF THE BELFAST PLANNING BOARD, NORDIC COMPLIANCE WITH USE AND DIMENSIONAL STANDARD REQUIREMENTS.**

**6.1 Nordic Activities in the Route One South Business Park zoning district.**

- a) Nordic proposes to develop and operate a land-based salmon aquaculture facility and accompanying uses on the 56 acre site it will acquire that is located in the Route One South Business Park zoning district. The Board, at its meeting of August 19, 2019, determined that a land-based aquaculture facility is a permitted use (see the above discussion in Section 5c of these Finding).
- b) The Board found that the site on which Nordic will develop the aquaculture facility satisfies the dimensional requirements identified for a lot in the Route One South Business Park zoning district. The Nordic site is about 56 acres in size (2 acre minimum required), and the property has about 860 feet of frontage on U.S. Route One (minimum of 250 feet required); reference Section 102-684.

- c) The Board found that the Nordic project can satisfy the minimum structure setbacks for all nonresidential structures identified in Section 102-684, Dimensional Standards, Subsection (b)(1).
- The front setback requirement is 75 feet. Nordic wastewater treatment facility is setback more than 75 feet.
  - The side setback requirement is 50 feet. All new Nordic structures are setback 50 feet or more from a side property line. A potential exception is the existing Belfast Water District offices that Nordic intends to use for a Visitors Center. The Board determined that this is an existing structure that may be nonconforming to certain setback requirements, and that any expansion of this structure must comply with applicable provisions regarding the expansion of a nonconforming structure.
  - The rear setback requirement is 50 feet. All new Nordic structures are setback 50 feet or more from all property lines.
- d) Section 102-684, Dimensional Standards, Subsection c) establishes minimum standards for the size of required bufferyards on the main Nordic site. The Board found that the Nordic project satisfies the required bufferyard standards, including the following specific provisions of this Section:
- (1) All bufferyards on the Nordic site will be a minimum of 80% of the width of the required structure setback described above.
  - (2) The amount of new plantings and existing vegetation/trees in the bufferyard areas comply with requirements established in this subsection.
  - (3) Nordic is not proposing and will not establish any new parking areas or locate any dumpsters or similar structures in a bufferyard area. The Board did not that the existing Belfast Water District offices and some of the existing associated parking does not fully meet this standard, however, Nordic does not propose any new parking in this area. Also, the Board recognizes that certain infrastructure that Nordic will construct, such as the significant water intake/discharge pipes and the piping that conveys surface water from the Little River to the wastewater/water treatment facility will cross through bufferyard areas, as is allowed by in Section 102-684.
  - (4) The Board recognized that exemption that applies to existing structures with respect to bufferyard requirements. This mostly applies to the existing Belfast Water District offices.
- e) The Board found that the Nordic project complies with the Maximum Lot Coverage standard identified in Section 102-684(d). The standard allows a maximum coverage of 70% (impervious surface). The Nordic project, at full build-out, results in a lot coverage of about 51%..
- f) The maximum structure height established in Section 102-684(e) is 45 feet, as measured by the City definition of height. The Board determined that Nordic presented evidence to the City that none of its new buildings will be greater than 45

feet in height, and that the existing Belfast Water District offices are considerably less than 45 feet in height.

The Board, consistent with direction provided by Wayne Marshall, Project Planner, found that the chimneys (exhaust stacks) that Nordic intends to construct to manage emissions for its on-site generators are exempt from City height standards because the chimneys, per the City definition of height in Chapter 66, qualify as 'other appurtenances that do not have a habitable floor area, and as such, are not considered a structure. The Board noted that public comment was made during the Planning Board's review of issues related to air emissions regarding the 66' height for these chimneys, and how such height was prohibited by City Ordinances.

- g) The Board determined that the Nordic project, per Section 102-685, would comply with requirements of Chapter 82, Shoreland, and Chapter 78, Floods. The Board noted that it issued a Shoreland Permit for the Nordic project at its meeting of December 17, 2020. Also, no new structures are proposed to be developed in an area identified as a flood zone pursuant to Chapter 78. The existing Water District offices are located directly on the edge of Flood Zone A, and the Board established a Condition of Approval regarding any potential expansion or renovation of this structure and the need for Nordic to comply with applicable Flood Zone requirements.

## **6.2 Nordic Activities in the Residential II zoning district.**

Nordic has an option to acquire certain easement rights to the Ekrote property (282 Northport Ave) that is located easterly of Route One. The purpose of the Nordic easement on the Ekrote property is to allow the construction of 2 significant water intake pipes and 1 significant water discharge pipe. The easement area is 40 feet in width, and spans the depth of the Ekrote property; from Route One to Belfast Bay. The construction of significant water intake pipes and a significant water discharge pipe is the only activity that Nordic proposes on the Ekrote property. The Board made the following findings with respect to this easement and Nordic's proposed use.

- a) The Board found that the development of significant water intake and significant water discharge pipes in the Residential II zoning district is a permitted use pursuant to Chapter 102, Zoning, Article V, District Regulations, Division 7 (reference discussion in Section 5 of these Findings above).
- b) The Board found that the Ekrote property conforms to the minimum lot size (1/3rd acre) and frontage requirements (60 feet) for a property in the Residential II zoning district. The Ekrote property is 2.73 acres in size and has about 485 feet of road frontage. The Board also found that an easement does not need to satisfy lot size or frontage requirements.
- c) The Board determined that a submerged intake and discharge pipe, while it is a structure, does not need to comply with a front or rear structure setback when the

sole purpose of the pipe is to convey water and wastewater across the property from Route One to Belfast Bay. The imposition of front and rear structure setback requirements would nullify the main intent of the Ordinance amendment which was to allow the transport of water to serve a facility such as the Nordic Aquafarms project. Further, the City has never imposed a similar requirement on any other service line, such as a water, sewer, or electrical line, because such a requirement would result in few, if any, properties in Belfast being connected to any public service. The Board, however, decided that the Nordic intake/discharge pipes must comply with the side setback requirement of 15 feet that applies to a structure in the Residential II zone, and established a Condition of Approval in the Significant Water Intake/Discharge Pipe Permit that it issued to Nordic to require this amount of setback.

- d) The Board determined that the construction of submerged pipes does not require the establishment of a minimum bufferyard area and accompanying planting (Board noted that Nordic is required to revegetate all of the easement area that is disturbed by construction of the pipes), that said pipes do not result in any lot coverage (all of the restored area will be a pervious surface), and that a submerged pipe does not involve any structure height.
- e) The Board found that Nordic has obtained a Shoreland Permit from the Planning Board, reference the Board Permit issued on December 17, 2020, to allow the construction of the Intake and Discharge Pipes in Shoreland regulated areas located on the Ekrote property. Board issuance of this Zoning Use Permit is conditioned on Nordic's compliance with terms of both the Shoreland Permit that the Board issued to Nordic on December 17, and the Significant Water Intake and Significant Water Discharge/Outfall Pipes Permit that the Board issued on December 22, 2020.

**7. SPECIFIC FINDINGS OF PLANNING BOARD, NORDIC COMPLIANCE WITH ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS.**

The Board determined that the Nordic project must comply with certain standards identified in the Chapter 102, Article VIII, Supplementary District Regulations. The Board made the following specific Findings regarding Nordic's compliance with applicable standards.

*Division 2. Sec. 102-940, Supplementary District Regulations – Screening of Outside Storage Areas – Dumpsters. All dumpsters or containers used for the disposal of solid waste (trash) or recycling shall be screened by the construction of a four-sided solid fence or wall that is a minimum of six feet in height, or an alternative enclosure or screening that similarly screens the dumpster from public view. Notwithstanding this requirement, if such dumpsters or containers are located in an area that is not frequented by the public and which is not visible from abutting properties or a public or private road, the Planning Board has the authority to allow the placement of said facilities and to not require the construction of a fence or similar screening.*

The Board determined that the dumpsters proposed by Nordic do not require the construction of a 4 sided enclosure for screening, and that the location of the on-site dumpsters proposed by Nordic are located in areas in which they will not be visible from abutting properties or a public or private road. The Board established Condition of Approval 14 regarding the regulation of on-site dumpsters.

***Division 3. Sec. 102-961, Supplementary District Regulations – Off-Street Parking Facilities – Required Facilities. Off-street parking facilities shall be as provided in Chapter 98.***

The Board found that the Nordic project meets all off-street parking requirements. The Board reviewed the Nordic Site Plan and found that Nordic is providing an adequate number of parking spaces, including handicapped accessible spaces, that the parking areas it is proposing are well distributed and avoid the construction of one large on-site parking areas, and that Nordic is providing the required parking for the Visitors Center and Little River Trail. The Board also noted that the parking that Nordic is providing satisfies standards related to construction identified in the Chapter 98, Technical Standards. The Board established Condition of Approval 24 in the Site Plan Permit and this Zoning Use Permit to identify parking standards that Nordic must satisfy.

***Division 4, Mobile Homes and Manufactured Housing, Division 5, Telecommunication Facilities, and Division 6, Bed and Breakfast Facilities.***

The Board determined that none of the above Article VIII, Supplementary District Regulations, apply to the Nordic project.

***Division 7. Significant Groundwater Wells.***

The Planning Board acknowledged that these standards apply to the Nordic project. The Board referenced its approval to issue a Significant Groundwater Well Permit to Nordic at its meeting of December 22, 2020. The Board's Findings and Conditions for this Permit is a separate document and are incorporated by reference in the Board's consideration of this Zoning Use Permit.

**8. SPECIFIC FINDINGS OF THE PLANNING BOARD REGARDING NORDIC COMPLIANCE WITH CHAPTER 102, ZONING, ARTICLE IX, ENVIRONMENTAL PERFORMANCE STANDARDS.**

Chapter 102, Zoning, Article IX, Performance Standards, Division 2, Environmental Performance Standards, identifies overall performance standards that any development in both the Route One South Business Park zoning district and the Residential II zoning district must satisfy. The Board, in making its Findings on these standards, specifically noted that the concerns addressed in these standards frequently are similar to requirements identified in Chapter 90, Site Plan. As such, the Board often relied upon its Findings on the Nordic Site Plan Permit to address concerns identified in the Division 2, Environmental Standards.

Further, the Board chose to adopt the same Conditions of Approval that it adopted for the Site Plan Permit is issued to Nordic on December 22, 2020, as requirements (Conditions of Approval) for this Zoning Use Permit.

**Sec. 102-1122 Subsurface wastewater disposal.**

The Planning Board found that these standards do not apply to the Nordic project. Nordic does not propose to develop any subsurface wastewater disposal systems on its property.

**Sec. 102-1123 Erosion control.**

The Planning Board found that Nordic, in its Site Plan applications, has identified that they will use appropriate and effective approaches to manage soil erosion and control sediments during project construction. The Board, in this Zoning Use Permit, as well as in its Site Plan Permit, Shoreland Permit and Significant Water Intake/Discharge Pipe Permit, established Conditions of Approval that require Nordic to implement the soil and erosion control measures identified in their Site Plan application. In this Zoning Use Permit, Board Condition 21 specifically addresses Soil and Erosion Control requirements. The Board found that the measures and approaches identified in the Nordic applications recognize and use the best management practices identified in Section 102-1123.

The Board based its findings on its review of the Site Plan application submitted by Nordic, its consideration of information presented to the Board by Nordic representatives at the Board meeting of September 4, 2019, the review of the Nordic application by Mandy Olver, Olver Associates (City Engineer), and its consideration of comment offered by Parties-in-Interest and the general public at the Board's September 4, 2019 public hearing. A particular concern raised at the public hearing were impacts associated with the depth of construction activities and the removal of a significant amount of soils. The Board acknowledged this concern, but found that Nordic's approach to managing construction was an effective way to control erosion and sedimentation.

The Board also noted its consideration of issues related to the potential dispersal of mercury located in the bottom sediments of Belfast Bay during construction of the intake/discharge pipes, and the measures that Nordic must implement to manage sedimentation and the potential dispersal of mercury.

**Sec. 102-1124 Control of stormwater run-off.**

The Board found that the Nordic project will provide for adequate stormwater management. The Board considered the requirements of the Chapter 98, Technical Standards, in its review of this criteria; the Technical Standards identify the regulatory standards for how an applicant must address stormwater concerns. The Board found that Nordic's proposal satisfies the City requirement to have no greater off-site post development increase in stormwater compared to pre-development levels, and that their approach addresses DEP standards regarding maintaining water quality; reference the NRPA/SLODA Permit issued by the DEP. The stormwater

calculations in the Nordic application also address the 50 year storm event identified in Section 102-1124.

The Board, in Condition of Approval 20, Stormwater Management, for this Zoning Use Permit, established a requirement for third-party inspection during construction of all stormwater improvements, and to require regular monitoring of all stormwater improvements post construction, with all monitoring reports provided to the City.

The Board based its findings on the following: information in the Nordic application (Attachments 15 and 16); presentations by Ransom Consulting (Nordic consultant) to the Board at its meeting of September 4, 2019; and a review of the Nordic application by the City consultant, Mandy Olver, Olver Associates. Ms. Olver also reviewed all stormwater information submitted to the DEP. The Board specifically noted that no public comment was made at the public hearing on stormwater that the Board conducted at its meeting of September 4, 2019, and that no comment was offered at subsequent overall project hearings conducted by the Board.

**Sec. 102-1125 Wastewater pollution.**

- (a) Wastewater to be discharged into City sewers, should they be available, shall be in such quantities and/or of such quality as to be compatible with federal and state standards and in compliance with Chapter 62, Article II (of the City Code of Ordinances).***
- (b) To meet those standards, the City may require that such wastes shall undergo pretreatment or full treatment at the site in order to render them acceptable for the treatment processes.***

The Planning Board found that Nordic, per requirements of the Belfast Wastewater Treatment Facility, will only send its sanitary wastes to the City Wastewater Treatment facility through the connection it is constructing to the City sewer system. The Nordic private sewer line will cross through the Matthews Brothers property to Perkins Road, will then be located within the bounds of the Perkins Road right-of-way, and will connect to the main City sewer line in Northport Avenue (Route One). The Board established Condition of Approval 10, Public Sewer, to establish standards regarding the construction of the sewer connection and the type of wastes that can be delivered to the City Treatment Plant.

- (c) The disposal of wastewater by means other than a public system must comply with the laws of the state.***

The majority of the wastewater generated by Nordic's operations will be processed through Nordic's on-site Water Treatment/Wastewater Treatment facility and will be discharged to Belfast Bay. The Board determined that the Maine DEP, as well as the ACOE, and not the City, has the jurisdictional authority to regulate Nordic's discharge of wastewater to the Bay. The Board found that the DEP, at the Board of Environmental Protection meeting of November 19, 2020, has issued the required MPDES Permit and Waste Discharge License to Nordic to allow the discharge of its effluent to the Bay, subject to conditions identified in the MPDES Permit. Nordic's permits to the ACOE are pending. The City established

Conditions of Approval in this Zoning Use Permit, and in its Site Plan Permit, Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit, and in the Shoreland Permit that it issued to Nordic in December 2020 (issuance concurrent with this Zoning Use Permit) that require Nordic to comply with all requirements of the DEP and ACOE Permits regarding the location, construction, and operation of the intake/discharge pipes, and the discharge of effluent, including the regular monitoring of such discharges. The Board specifically references Condition of Approval 8, Compliance with State and Federal Permits, included in this Zoning Use Permit.

Thus, the Board found that Nordic is required to comply with the standard identified in Subsection c).

**Sec. 102-1126 Air pollution.**

*Uses which would cause emission of dust, fly ash, fumes, vapors or gases which will have an adverse impact on human health, animals, vegetation, or property, or strain persons or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission shall be prohibited. All such activities shall also comply with applicable federal and state regulations. Construction is not a use for the purposes of this section.*

The Board specifically noted that Nordic has obtained a Minor Air Emissions License from the DEP (November 19, 2020) regarding air emissions associated with its operation of on-site generators. Thus, the Board found that the Nordic project is in compliance with the requirement that the operation (applicant) obtain required federal and state permits and that it be in compliance with applicable state and federal regulations. The Board, in Condition of Approval 12, Electrical Service, in this Zoning Use Permit, established a requirement that Nordic must obtain the review and approval of the Belfast Planning Board if Nordic proposes to exceed limitations regarding the use of its generators that are established in the DEP Minor Air Emissions Permit.

While this standard identifies that air pollution concerns associated with project construction are essentially exempt from this standard, the Board notes that it established provisions in Condition of Approval 39, Site Maintenance During Project Construction, that should assist in managing dust generated during project construction.

The Board found that Nordic's overall operations, with the exception of the operation of its on-site generators, should not result in the emission of dust, fly ash, fumes, vapors or gases, that would have an adverse effect on human health, animals, vegetation, or property.

**Sec. 102-1127 Odors.**

*No land use or establishment shall be permitted to produce noxious or harmful odors perceptible beyond the lot lines, either at ground or habitable elevation.*

The Planning Board mostly discussed odors in relation to Nordic's management of solid wastes and other wastes, including those associated with a catastrophic event such as a fish die-off. The

Board established specific Conditions of Approval in this Zoning Use Permit and in its Site Plan Permit that address measures Nordic must implement to help manage wastes. The Board makes note of the following Conditions:

- a) Condition 14. On-Site Dumpsters. Regulates the location of on-site dumpsters, how such must be screened, and the type of wastes that can be collected in such dumpsters.
- b) Condition 15. Fish Waste and Wastes Associated with Operation of a Wastewater Treatment Plant. Identifies standards for the collection and disposal of these wastes.
- c) Condition 16. Odor Management. Establishes standards regarding the regulation/management of odors, some of which may be associated with the management of waste materials.
- d) Condition 17. Hazardous Wastes and Management of Hazardous of Special Materials. Identifies standards for the handling of Special Wastes.
- e) Condition 18. Emergency Response Plan. Identifies the requirement for Nordic to prepare an emergency response plan for catastrophic events such as fish die-offs, a requirement to implement the plan if an event occurs, and to report to the Code and Planning Department regarding how Nordic managed the event.

The Board, based on the waste management conditions it has established, found that Nordic's operations are required to implement good quality measures to manage odors that may be generated on-site, and that if odors issues do arise, measures that Nordic must implement to abate such odors.

**Sec. 102-1128 Glare.**

*No land use or establishment shall be permitted to produce a light or reflection of that light beyond its lot lines onto neighboring properties which would interfere with the permitted use of that property or be inconsistent with the character of lighting in the area, or onto any City way so as to impair the vision of the driver of any vehicle upon that City way.*

The Belfast Planning Board found that the exterior lighting that will be installed on the Nordic site is adequate for their use of the site and that said lighting will not cause undue glare and adverse impact on neighboring properties or any rights-of-way. The Board based its finding on its review of information in the Nordic application (Attachment 18). The Board noted that all light poles will be in the range of 16 feet to 20 feet in height, and that Nordic will use a system to manage (dim) the amount of light output at appropriate hours of the day. The Board also noted that there are only 7 residential houses located within 300 feet (and only 1 that is within 150 feet) of any building that will be constructed on the Nordic property, and that only one building on the Nordic property, the Wastewater Treatment facility, will be located within 150 feet of any public right-of-way.

The Planning Board, in this Zoning Use Permit, established Condition of Approval 25 that requires Nordic to comply with the site lighting plan identified in its application, and measures that Nordic should implement to manage the amount of light on adjacent properties, roads, and the surrounding night sky. There was no public comment offered to the Board regarding site lighting issues.

**Sec. 102-1129 Noise.**

***Noise may be equal to but not exceed, during any consecutive eight-hour period, an average of 75 dB(A) (re 20 microneutons/m<sup>2</sup>) measured at any boundary line. During the peak activity of 60 minutes in a twenty-four-hour period a noise may not exceed 115 dB(A) when measured at the source.***

The Board found that Nordic has demonstrated the ability to successfully manage noise levels associated with the operation of the Nordic facility. The Board specifically noted that no regular operations are projected to exceed noise levels identified in the Chapter 102, Zoning, Article IX, Division 2, Environmental Standards that govern noise levels associated with any activities in the Route One South Business Park zoning district. The Board also noted that noise is an activity that is subject to DEP regulation, and that DEP noise regulations generally are stricter than the City noise standards.

The Planning Board conducted a public hearing on this issue at its meeting of October 9, 20129. An issue that was raised at the hearing was the amount of noise associated with project construction. The City typically applies its Noise standard to operational concerns for a project, and not to construction activities. The Board also made note that the City Code of Ordinances, Chapter 34, Noise and Public Conduct Ordinance, identifies that construction activities are generally exempt from the amount of noise generated between the hours of 5:00 am and 10:00 pm. Further, the Noise and Public Conduct Ordinance identifies City 'police powers', and is not a standard that is enforced through the Zoning Ordinance.

The Planning Board, based on issues identified during its review of the Nordic Preliminary Site Plan application, decided to impose Condition of Approval 19, Noise, in the Zoning Use Permit and Final Site Plan Permit. This Condition generally establishes stricter requirements to manage the amount of noise associated with project construction activities than are allowed pursuant to Chapter 34, City Noise and Public Conduct Ordinance. The Planning Board opted to implement standard DEP noise requirements regarding project construction and project operations. Condition 19 also identifies some exemptions to this standard. The Board Condition also allows certain construction activities that occur wholly within an enclosed building to occur outside these construction windows.

**Sec. 102-1130 Gravel extraction.**

***Regardless of acreage involved, all gravel extraction operations in the City shall be subject to the rules and guidelines of the state department of environmental protection referenced under the Site Location Law, 38 M.R.S.A. §§ 481-490, and department of environmental protection regulations pursuant to the Site Location Development Law, 38 M.R.S.A. chapters 371-377, and the provisions of chapter 90, pertaining to site plan review, no matter what the size of the non-vegetated area.***

The Planning Board determined that Nordic's construction activities are not a gravel extraction operation, as such are regulated by the DEP. The City, however, has determined that extensive earth removal activities, as such are proposed by Nordic in the excavation and removal of

existing soils and the replacement of such that are associated with the construction of new on-site buildings, is the functional equivalent of a mineral extraction operation. The Board found that Nordic can comply with City requirements, provided it satisfies Condition of Approval 21 in this Zoning Use Permit and Site Plan Permit for Soil and Erosion Control measures, particularly the maximum amount of the site that can be open at any one time.

**Sec. 102-1131 Heating systems and oil storage tanks.**

***Home heating oil systems, including oil storage tanks, shall be installed in compliance with 32 M.R.S.A. ch. 33, the current edition of National Fire Protection Standard No. 31, and any other standards and regulations adopted by the state oil and solid fuel board.***

The Board determined that this standard is intended to regulate home heating oil systems, and thus does not apply to the Nordic project. The Board, however, noted that it established Condition of Approval 31, On-Site Storage of Fuel and Oxygen, in this Zoning Use Permit and the Site Plan Permit that addresses requirements that apply to Nordic's on-site storage of fuel.

**Sec. 102-1132 Burning of household trash, brush and stumps.**

The Board determined that this standard does not apply to the Nordic project.

**Sec. 102-1133 Timber harvesting.**

The Board found that Nordic is not conducting a timber harvesting activity as such is defined by the State, thus, this standard does not apply.

**Sec. 102-1134 Uses in wetlands.**

***Any proposed land use located in wetlands must demonstrate compliance with the provisions of the National Resource Protection Act.***

The Board found that the DEP issued Nordic a NRPA and SLODA Permit on November 19, 2020, that identifies the amount of wetland fill and alteration that Nordic can perform, and on-site wetland restoration measures that Nordic must implement as compensation, as well as the amount of Payment-in-Lieu fee that Nordic must make (about \$760,000) to the State based on the amount of wetland disturbance. The Board finds that Nordic's receipt of these DEP Permits address the standards in Section 102-1134. The Board also established Condition of Approval 22, Wetland Alterations and Mitigation, in this Zoning Use Permit and the Site Plan Permit, that establishes the requirement for Nordic for Nordic to report to the Code and Planning Department any proposed changes in its wetland alteration plans.

**Sec. 102-1135 Uses in floodplains.**

***Any proposed land use located in a floodplain must be in compliance with the provisions of chapter 78, article II.***

The Planning Board found that Nordic is not proposing to construct any new structures in an area that is identified on the FEMA maps. The existing Belfast Water District offices that Nordic will purchase and use for a future visitors center are located on the edge of the flood zone, Zone A. The Board based its Findings on a review of information in the Nordic application (Attachment 19) and a review of the FEMA maps. There was no public testimony offered at the October 16, 2019 public hearing that the Board conducted on flooding.

The Board, in its Shoreland Permit issued to Nordic on December 17, 2020, established a Condition of Approval that requires Nordic to comply with any and all flood zone requirements (reference Chapter 78, Floods) that may be associated with the renovation or potential expansion of the Belfast Water District offices, and the proposal to convert such offices to a Visitor's Center. The Board, in this Zoning Use Permit, reference Condition of Approval 29, established requirements associated with Nordic's use of the Water District offices as a Visitors Center, and potential public safety concerns associated with a failure of the existing dam on the Upper Reservoir of the Little River.

**Sec. 102-1136 Soils.**

***Soils must be adequate for the intended purpose.***

The Board noted that Nordic's project involves an extensive amount of soils/earth removal associated with the construction of on-site buildings. The intent is to use soil materials that are more appropriate for the construction of on-site buildings. The Board, recognizing that Nordic is installing soils that can support the intended construction, found that the soils Nordic intends to use will be adequate for their intended purpose.

**Sec. 102-1137. Significant Water Intake and Significant Water Discharge/Outfall Pipes.**

The Board found that it issued a specific Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit to Nordic at its meeting of December 22, 2020, and that the Board's Findings on this Permit, and the Conditions of Approval it established that Nordic must satisfy identify, address the requirements of this standard.

**DECISIONS OF BELFAST PLANNING BOARD**  
**ZONING USE PERMIT**

The City of Belfast Planning Board, at its meeting of December 22, 2020, made the following supportive findings and took the following actions on the Nordic request for a Zoning Use Permit.

**Finding # 1:** The Planning Board found that Nordic Aquafarms submitted its application for a Zoning Use Permit on June 11, 2019. Wayne Marshall, pursuant to Section 102-106(b)(1) and in his capacity as appointed Code Enforcement Officer, issued a letter dated June 12, 2019 that the application was complete for purposes of Planning Board Review.

**Finding # 2:** The Board found that the uses proposed by Nordic are permitted activities that require the review of the Planning Board and that the proposed activities must satisfy applicable requirements in Chapter 102, Zoning, as well as applicable requirements in other City Ordinances.

**Finding # 3:** The Planning Board, consistent with general requirements in Chapter 102, Zoning, Section 102-106, Application Review and Approval, conducted several duly noticed public hearings at which the Board accepted public comment on all or elements of the Zoning Use Permit application. The dates of these hearings are as follows: August 19, 2019, January 8, 15, and 22, 2020, and October 7 and 8, 2020. The Board also notes that it held 38 public meetings on the Nordic applications between June 26, 2019 and December 22, 2020.

**Board Action # 1:** The Board, at its meeting of December 22, 2020, adopted a Motion by a vote of 5-0 to adopt the Findings of Fact for the Zoning Use Permit application for Nordic Aquafarms, Inc, that were presented at the Board meeting of December 22, as such were amended at the meeting. Motion by David Bond and second by Geoff Gilchrist.

**Board Action # 2:** The Board, at its meeting of December 22, 2020, adopted a Motion by a vote of 5-0 to adopt the Conditions of Approval for the Zoning Use Permit application for Nordic Aquafarms, Inc, that were presented at the Board meeting of December 22, 2020, as such were amended at the meeting. Motion by David Bond and second by Geoff Gilchrist.

**Board Action # 3:** The Planning Board, consistent with requirements of Section 102-106, at its meeting of December 22, 2020, adopted a motion by a vote of 5-0 to approve the Zoning Use Permit application of Nordic Aquafarms, Inc, subject to Nordic's compliance with the Planning Board's adopted Conditions of Approval. Motion by David Bond and second by Geoff Gilchrist.

The above actions of the Board award a Zoning Use Permit to Nordic Aquafarms.

On behalf of the Belfast Planning Board



Richard (Declan) O'Connor  
Acting Chair on Nordic Application

This decision of the Planning Board is subject to an administrative appeal to the City of Belfast Zoning Board of Appeals pursuant to standards identified in the City Code of Ordinances, Chapter 102, Zoning, Article II, Administration, Division 4, Appeals and Variances.

**CITY OF BELFAST PLANNING BOARD  
ADOPTED CONDITIONS OF APPROVAL  
NORDIC ZONING USE PLAN PERMIT  
ADOPTED DECEMBER 22, 2020**

The City of Belfast Planning Board approved the issuance of a Zoning Use Permit to Nordic Aquafarms, Inc (hereinafter Nordic) at its meeting of December 22, 2020. The Board, at this same meeting, adopted Findings of Fact that describe the project and its decision to find that the Nordic Site Plan and Zoning Use Permit application satisfies requirements of the City Code of Ordinances, Chapter 102, Zoning, including the following: the Article V, Districts, Division 7, Residential II, and Division 19, Route One South Business Park Zoning Districts, Article VIII, Supplementary District Regulations, and Article IX, Performance Standards, Division 2, Environmental Standards, as well as Administrative requirements associated with the issuance of a Zoning Use Permit subject to Planning Board review that are identified in Article II.

The Planning Board, at its meeting of December 22, 2020, adopted these Conditions of Approval to apply to the Zoning Use Permit issued to Nordic. The Board specifically notes that these Conditions are essentially the same Conditions of Approval that the Board adopted for the Site Plan Permit it issued to Nordic, except for specific references to the Zoning Use Permit rather than the Site Plan Permit, or references to both the Zoning Use Permit and Site Plan Permit.

Planning Board approval of the Zoning Use Permit is predicated on the Site Plan application (that includes information for the Zoning Use permit) and accompanying plan sheets, as such have been amended, that were submitted and accepted by the Board, and which are incorporated as part of the Board approved project, a copy of which are on file at the Code and Planning Department offices in Belfast City Hall. Further, Board approval is subject to Nordic's compliance with the following Conditions of Approval adopted by the Board.

**1. Permitted Uses.**

The Planning Board determined that the uses proposed by Nordic are permitted uses in both the zoning districts and the shoreland districts in which the Nordic project is located. This Board decision enabled the Board to consider the Site Plan application (that includes the Zoning Use Permit information, reference Attachment 4) submitted by Nordic. The permitted uses include:

**1.1 Route One South Business Park zoning district.** Nordic proposes to operate a land-based aquaculture facility for the rearing and processing of salmon that includes the installation and use of two significant water intake pipes and one significant water discharge pipe, the installation of three significant groundwater wells, and accessory uses such as a visitors' center. The Planning Board determined that the following provisions of Chapter 102, Zoning, Article V, District Regulations, Division 19, Route One South Business Park, Section 102-682, Permitted Uses Requiring Planning Board Review, allow the following uses:

- Subsection (3) Aquaculture, land based, including uses that are accessory to the aquaculture operation, such as but not limited to: fish processing, byproducts,

research laboratory, offices, on-site child care, storage, accessory retail sales, and a visitor's center. A land-based aquaculture operation may discharge wastewater to and use water from a marine or fresh waterbody.

- Subsection (9) Significant groundwater well.
- Subsection (10) Significant water intake or significant water discharge/outfall pipe.

**1.2 Limited Residential zoning district.** The Ekrote easement area that is located on the easterly side of Route One is proposed to be used for the installation of significant water intake and significant water discharge pipes associated with Nordic's facility. The Planning Board determined that the following provisions of Chapter 102, Zoning, Article V, District Regulations, Division 7, Residential II Zoning District, Section 102-422, Permitted Uses Requiring Planning Board Review, Subsection (12) allows Significant water intake or significant water discharge or outfall pipes.

**1.3 Shoreland Zoning.** The portion of the Nordic project located near the existing Belfast Water District offices is located in the General Purpose District of the Shoreland Zone. This is the only portion of the Nordic site located on the westerly side of Route One that is in the Shoreland Zone. Nordic proposes to use the existing Water District offices as a Visitors Center, and to use the existing paved area for access to the Visitors Center and for parking. The Planning Board found that the Official Shoreland Map adopted as part of Chapter 82, Shoreland, Article IV, Districts, Sec. 82-131, Districts established; Official Shoreland Zoning map, identifies that the above referenced area is in the General Purpose district of the Shoreland Zone. Further, the Board found that Sec. 82-135, Table of Land Uses of this same Article, Subsection (14) allows Land Based Aquaculture.

**1.4 Shoreland Zoning.** The Ekrote easement area located on the easterly side of Route One is located in the Limited Residential District of the Shoreland Zone. The Planning Board found that the Official Shoreland Map adopted as part of Chapter 82, Shoreland, Article IV, District, Section 82-131, Districts established: Official Shoreland Zoning Map, identifies that the above referenced area is in the Limited Residential district of the Shoreland Zone. Further, the Board found that Section 82-135, Table of Land Use of the same Article, allows the following uses: Subsection (14), Land Based Aquaculture, and Subsection (16), Significant Water Intake or Discharge/Outfall Pipes.

The Planning Board determined that any proposal by Nordic to establish a new use on the property or to convert an existing use to an alternative use that was not considered by the Board shall require the review and approval by the Belfast Planning Board as a change of use.

## **2. Size of Site.**

The Nordic Site Plan application (includes the Zoning Use Permit information) identifies the size of the Nordic site and all property that will be owned or leased by Nordic or controlled by Nordic via easement rights. The main Nordic site located on the northwesterly side of Route One is about 56 acres in size and consists of the following properties: Belfast Water District, propose to acquire ownership of part of Map 29, Lot 39; Samuel Cassida, propose

to lease Map 4, Lot 104; and Goldenrod Properties, LLC (Matthews Brothers), propose to own part of Map 4, Lot 12A. Nordic also has an agreement with Richard Ekrote to acquire certain easement rights to a property located on the easterly side of Route One, Map 29, Lot 36, for the installation of the significant water intake and significant water discharge/outfall pipes.

Any proposal by Nordic to increase or decrease the amount of land owned or controlled by Nordic for the operation of their land-based salmon aquaculture facility shall require the review and approval of the Belfast Planning Board as an amendment to the approved Zoning Use Permit and Site Plan Permit.

**3. Compliance with City Planning Board Permits.**

The Belfast Planning Board has approved five permits (see list below), including this requested Zoning Use Permit, in its review of the Nordic project, and has determined that the Nordic project complies with standards identified in the above City Ordinances. Nordic must comply with the Conditions of Approval established by the Planning Board in each of the five respective permits approved by the Board to allow Nordic to operate pursuant to terms of this Zoning Use Permit. If Nordic fails to comply with the Conditions of Approval identified in any or all of the respective permits, and the City issues one or more Notices of Violation pursuant to standards identified in Chapter 90, Site Plan, Section 90-2, Violations, Enforcements, Penalties, Chapter 82, Shoreland, Section 82-2, Violations, Enforcements, Penalties, and/or Chapter 102, Zoning, Article II, Administration, Division 5, Enforcement, associated with Nordic's failure to comply, and Nordic fails to resolve said Violations to the City's satisfaction, the City Code and Planning Department shall find Nordic in default of terms of the Zoning Use Permit and shall suspend approval of the Zoning Use Permit and Nordic's ability to operate pursuant to terms of the Zoning Use Permit until such time that the Violation(s) is resolved to the City's satisfaction.

The Permits approved by the Belfast Planning Board that are associated with Condition # 3 include:

- Chapter 90, Site Plan, Site Plan Permit;
- Chapter 82, Shoreland, Shoreland Permit;
- Chapter 102, Zoning, Significant Water Intake Pipe and Significant Water Outfall/Discharge Pipe Permit;
- Chapter 102, Zoning, Significant Groundwater Well Permit; and
- Chapter 102, Zoning, Zoning Use Permit.

**4. Compliance with Permits Issued by Code Enforcement Officer.**

Construction of the Nordic project will require the issuance of permits by the City Code Enforcement Officer. Nordic shall be responsible for obtaining all City permits required from the Code Enforcement Officer by City Ordinances and complying with terms of said permits.

The Board specifically noted that it reviewed and considered requirements of Chapter 78, Floods, in its award of the Site Plan Permit and Zoning Use Permit. The only structure proposed to be located in a designated flood zone is the existing Belfast Water District offices that Nordic intends to use as a Visitor's Center. If Nordic's conversion of this existing office facility to a Visitor's Center qualifies as a substantial improvement pursuant to Chapter 78 requirements, Nordic shall be responsible for obtaining the required permit and complying with terms established by the Code Enforcement Officer to be in compliance with terms of this Zoning Use Permit approved by the Planning Board. However, any proposed expansion in the footprint of the facility shall require the review and approval of the Belfast Planning Board.

**5. Amendments to City Site Plan Permit.**

Amendments proposed to the Conditions of Approval and the accompanying approved Nordic Site Plans identified in this Zoning Use Permit shall require the review and approval of the Belfast Planning Board, unless the terms of a specific Condition adopted by the Board authorizes the City Code and Planning Department and/or the Department's Code Enforcement Officer to approve an amendment to a Condition of Approval and/or the accompanying Site Plans. A request for an amendment that requires review by the Planning Board shall include the Board conducting a duly noticed public hearing regarding said request.

**6. Expiration of Zoning Use Permit.**

The Zoning Use Permit issued by the Planning Board to Nordic shall expire on December 22, 2025, the same date as the Site Plan Permit the City issued to Nordic, if Nordic has not initiated substantial construction and development on the project site.

**7. Transfer of Ownership.**

The Belfast Planning Board issued this Zoning Use Permit to Nordic Aquafarms, Inc. (Nordic). Nordic shall not sell, lease, assign or otherwise transfer the development or any portion thereof, and shall not transfer Nordic's obligations pursuant to this Zoning Use Permit, without the prior written approval of the Belfast Planning Board. Nordic must establish to the satisfaction of the Planning Board that the party to whom Nordic's obligations are proposed to be transferred has the financial ability and technical capacity to comply with all Zoning Use Permit requirements, and if there are any deficiencies or violations at the time of the proposed transfer, that the identified deficiencies or violations can be resolved prior to the transfer, or there is a definitive plan to address said concerns that has been reviewed and approved by the Planning Board. The Belfast Planning Board shall conduct a duly noticed public hearing regarding any request to approve a transfer of ownership.

**8. Compliance with State and Federal Permits.**

Nordic shall comply with terms of all permits issued by the State of Maine (State) and the U.S. (Federal) government, and shall provide the City Code and Planning Department copies of all such issued permits, and any and all amendments to said permits. Nordic, within ten business days of an action by a State or Federal permitting authority, shall inform the Code and Planning Department of any orders regarding project construction, operation and compliance that may be issued by a State or Federal agency, and shall describe the action performed by Nordic to comply with the respective order. Further, if there are significant discrepancies between terms of permit conditions stipulated in a respective State or Federal permit and requirements stipulated by the Planning Board in the City Zoning Use Permit that could materially impact facility operations or construction, Nordic shall bring such concerns to the attention of the Planning Board for review and potential action.

**9. Phased Construction.**

The Belfast Planning Board has approved Nordic's proposed approach to construct the Nordic facility in two distinct phases. Nordic, post the completion of Phase I construction, shall provide a report to the Planning Board that identifies how project construction satisfies Conditions of Approval and Zoning Use Permit requirements established by the Board, and that describes Nordic's operations conducted to date regarding the rearing and processing of salmon. Nordic shall produce this report to the Board prior to the commencement of any Phase II construction. If the report produced by Nordic, or the Planning Board's review of this report and information provided by the Code and Planning Department or its agents identifies deficiencies regarding compliance with City Permits, Nordic shall not be issued any City Permits to begin Phase II construction until such deficiencies and non-compliance concerns are resolved to the satisfaction of the City.

**10. Public Sewer.**

**10.1 Construction of Private Sewer Connection.** Nordic shall construct a privately owned sewer service that connects to the public (City) sewer service for sanitary wastes generated at the Nordic facilities. This sewer line shall be constructed in the location shown on the approved Site Plan. Bob Richards, Superintendent, Public Works, on March 7, 2019, issued a Road Opening Permit that allowed and established terms for the installation of Nordic's private sewer service in the Perkins Road right-of-way. Nordic shall comply with all terms established in the Final Road Opening Permit. Nordic also shall obtain a Sewer Connection and Service Use Permit from the City and pay all fees associated with said permit.

The Road Opening Permit issued by Bob Richards identified the payment of a performance guarantee, an escrow account, to the Public Works Department for work to be performed pursuant to this Permit. This performance guarantee shall be replaced and included in the Performance Guarantee, an Irrevocable Letter of Credit, required by the Belfast Planning Board in Condition of Approval 36, particularly reference 36.1.

**10.2 Wastes to City Wastewater Treatment Facility.** Jon Carmen, Superintendent of the City Wastewater Treatment Facility, has provided Nordic a letter that identifies the wastes that the City Wastewater Treatment Plant will accept from the Nordic facility. If Nordic sends unacceptable wastes to the Wastewater Treatment Plant, the City, pursuant to Chapter 62, Utilities, Article II, Sanitary Sewer System, Division 1, Generally, Section 62-33, Violations, Enforcement, Penalties, may pursue such action as a nuisance and land use violation.

**10.3 Sewer Connection Required.** Nordic shall establish the connection to the City sewer system as part of Phase 1 operations. This connection must be established prior to issuance of a Certificate of Occupancy for any building that will produce sanitary wastes.

## **11. Public Water.**

The Nordic facilities will use public water provided by the Belfast Water District. Nordic shall construct all connections to public water in accordance with requirements of the Belfast Water District and shall provide a letter attesting to such from the Belfast Water District prior to the Belfast Code Enforcement Officer issuing a Certificate of Occupancy for any building that is connected to public water.

## **12. Electrical Service.**

**12.1 On-Site Electrical Service.** On-site electrical service shall be constructed in the manner and locations shown on the approved Site Plans. Nordic shall demonstrate that it has provided required electrical service to each respective building prior to the Belfast Code Enforcement Officer issuing a Certificate of Occupancy for said building.

**12.2 Off-Site Electrical Service.** Based on preliminary information provided by Nordic to the Belfast Planning Board, Nordic's operations may require extensive off-site improvements to Central Maine Power's (CMP) facilities to address electrical demands associated with Nordic's facilities and operations. To date, however, Nordic has provided no specific information regarding the extent of improvements required to CMP's facilities, how such improvements (or lack thereof) could impact electrical service to Belfast and surrounding communities, when such improvements may be constructed and who will pay for such, and how such improvements may interface with Nordic's on-site power generation facilities. Further, the Minor Air Emissions Permit issued to Nordic by the Board of Environmental Protection establishes maximum limits on the amount of power (limits on amount of emissions that can occur based on amount of fuel used) that Nordic can produce from its on-site generators, meaning that Nordic, as identified in its Site Plan application, will be reliant on CMP for the majority of its power.

Planning Board approval of the Nordic project is predicated on information provided in the Nordic application and testimony from Nordic representatives to the Board, including: Nordic shall rely on CMP for the majority of its power, improvements are required to CMP's facilities to support Nordic's operations, and Nordic's on-site power generation will occur within the parameters established in the DEP Minor Air Emissions Permit. As only limited information has been provided to date to the Planning Board regarding Nordic's use of electricity, Nordic, within one year of the date of issuance of a Zoning Use Permit, shall provide information to the Code and Planning Department that identifies the following: off-site improvements that CMP must make to support the Nordic facility; how and when CMP will make required improvements; the party responsible for the cost of making required improvements; how Nordic's on-site electrical power generation will interface with CMP's service; and the degree to which Nordic will rely on power provided by CMP. The Board anticipates that most of this information can be provided through documentation provided by CMP to the Public Utilities Commission.

The Code and Planning Department shall review the above information, determine if the identified approach is consistent with the Nordic permit application submitted to the Planning Board, and report its findings to the Planning Board. In particular, any proposal by Nordic to change the classification of Air Emissions Permit issued to Nordic by the Board of Environmental Protection shall require Nordic to submit an amendment to the City Zoning Use Permit for Board review and approval.

**12.3 On-Site Power Generation.** Nordic, as identified in 12.2 above, has obtained a Minor Air Emissions License (Permit) from the Department of Environmental Protection to operate a series of 8 on-site generators to provide both peak shaving and emergency power for Nordic's operations. The Planning Board, recognizing that the City has minimal definitive standards to regulate air emissions, has determined that it largely will rely on the above DEP Permit to regulate specific air emissions associated with Nordic's on-site power generation activities, and by extension, regulating the amount of power (amount of fuel used) that Nordic can operate its on-site power generation facilities. And, as identified in 12.2 above, any proposal by Nordic to change the classification of the DEP Air Emissions license shall require the review and approval of the Belfast Planning Board as an amendment to this Zoning Use Permit.

Further, any proposal by Nordic to increase the height of the exhaust pipes (chimneys) to greater than 70 feet, shall require review and approval by the Planning Board as an amendment to this permit application to determine if the proposed increase in height has any adverse impact on air quality, air emissions and odors, and to determine if there is any adverse impact on public views.

**12.4 City Electrical Permit.** The Belfast Planning Board, in consultation with the Code and Planning Department, has determined that the electrical installations proposed by Nordic, both in scale and complexity, raise concerns regarding the amount of time and expertise required to conduct on-site electrical inspections to ensure compliance with the State Electrical Code. Thus, the Planning Board authorizes the Code and Planning Department and City Code Enforcement Officer to obtain third-party professional

services to conduct required electrical inspections and to assess a fee, a surcharge, in addition to the standard fee for a City Electrical Permit, to obtain third party inspection services. The Code and Planning Department is authorized to determine the appropriate amount of this fee for any and all City Electrical Permits requested by Nordic. The Code and Planning Department shall be responsible for providing Nordic a report on how said surcharge fees were expended, and shall return any unexpended funds to Nordic.

**13. On-Site Solar.**

Nordic has expressed interest in installing on-site solar to assist in addressing its energy demands. The City Code Enforcement Officer, consistent with standards identified in Chapter 102, Zoning, Article VIII, Supplementary District Regulations, Division 9, Solar Energy Systems, is authorized to review and issue a permit for any roof-mounted solar energy system, regardless of the size of the system that is proposed. The Belfast Planning Board shall be responsible for the review and approval of any request to install a ground-mounted solar energy system, regardless of its size, to ensure that the location of the proposed system complies with requirements of the above referenced Division 9, and the requirements of Chapter 90, Site Plan.

**14. On-Site Dumpsters.**

The Nordic project involves the use of several on-site dumpsters for the management of solid wastes and recyclable materials. Nordic shall obtain contractual services for the regular servicing of these solid waste dumpsters and recyclable containers. The Planning Board determined that these dumpsters do not need to be screened in the areas shown on the plan where the dumpsters will be located, however, if any dumpster location is visible from a neighboring property or from the Visitors Center and associated parking areas, then screening would be required. The Planning Board authorized the Code Enforcement Officer to review and approve proposed revisions to the locations for the identified dumpsters, and/or to approve the location of additional dumpsters, provided all locations and the screening of dumpsters comply with the above guidelines established by the Board, and if warranted, City requirements identified in Chapter 102, Zoning, Article VIII, Supplementary District Regulations. Nordic shall not use said dumpsters for the storage of fish wastes or wastes associated with operations of the Wastewater Treatment Plant.

**15. Fish Waste and Wastes Associated with Operation of the Wastewater Treatment Plant.**

Nordic shall provide for the regular collection, storage and disposal of fish wastes and wastes associated with operation of the Wastewater Treatment Plant. All such wastes and containers shall be stored in an indoor area to minimize the amount of odors associated with such wastes. Nordic identified potential facilities that could properly collect and dispose of these wastes in its Site Plan application, and shall provide evidence to the Code and Planning Department that it has obtained contractual services for the regular collection and disposal of such wastes at an appropriate facility.

## **16. Odor Management.**

**16.1 Nordic Odor Response Protocol.** Prior to operation of the facility, Nordic shall submit an odor complaint response and resolution protocol to the Code and Planning Department for review and approval. The proposed protocol shall establish guidelines for reporting, documenting, investigating, responding to, and providing notification to the Code and Planning Department, of odor complaints associated with project operations. This protocol shall include measures for Nordic self-reporting (no specific outside complaint) facility operations that resulted in unintended odors. Nordic shall notify the Code and Planning Department of any odor complaints within one business day of receiving the complaint, and shall notify the Department of the outcome of its investigation including any corrective actions taken within two business days of its completion.

**16.2. Odor Violations and Nordic Corrective Measures.** Chapter 102, Zoning, Article IX, Performance Standards, Division 2, Environmental Standards, Section 102-1127, Odors, states that no land use shall be permitted to produce harmful or noxious odors that are perceptible beyond lot lines. Nordic, upon any finding by the Code and Planning Department with Section 102-1127 requirements, shall take immediate short-term action to adjust operations at the source of the odor to reduce odor output and achieve compliance. Within 21 calendar days of a determination of non-compliance by the Department, Nordic shall submit, for review and approval, a mitigation plan, including a schedule for implementation, that proposes long-term actions to resolve the odor issue and bring the development into compliance.

## **17. Hazardous Wastes and Management of Hazardous or Special Materials.**

**17.1 Hazardous Waste during Construction.** Neither Nordic or the City are aware of the potential presence of any hazardous wastes on this site, and neither has any reason to suspect the presence of hazardous materials. The Planning Board, however, requires that if any development of this site results in the discovery of any hazardous material, that Nordic immediately alert the City Code Enforcement Officer and State Department of Environmental Protection of the presence of hazardous materials, and that all construction activities in the affected area cease until a course of action to correct the problem is identified.

**17.2 Handling of Special Wastes.** Certain wastes that are routinely generated at the Nordic site, such as materials from the wastewater treatment facility, and wastes that may be generated from unanticipated events, such as a massive fish die-off, require special handling and disposal. Nordic shall comply with all State and Federal requirements regarding the handling of such wastes and the proper disposal of such in State approved landfills or other facilities licensed to accept such wastes.

## **18. Emergency Response Plan.**

**18.1 Requirement to Prepare and Submit Plan to City.** The Maine Department of Environmental Protection (DEP), in the Site Location of Development Act/Natural Resources Protection Act (NRPA/SLODA) Permit that it issued to Nordic, reference Conditions 17 and 18 in the DEP NRPA/SLODA Permit, requires Nordic to develop an emergency response and facility closure plan that identifies worst case scenarios, including unanticipated disease outbreak and spread, unanticipated fish die-off, and unanticipated closure of the wastewater treatment facility or the facility as a whole. The DEP stipulated that this plan may be a standalone document or incorporated into an overall operations and maintenance plan for the facility, and that the emergency response and facility closure plan must establish thresholds that trigger implementation of the plan. Continuing, for the scenarios accounted for in the plan, Nordic must identify all possible solid waste types and potential volumes associated with each phase of operation, including those types of solid waste identified by Nordic in its application and additional waste types associated with closure of the wastewater treatment facility and facility as a whole, if any, and must address how each type of solid waste will be handled and disposed. Lastly, the DEP determined that the plan may be developed sequentially with each phase, and that it must be submitted to the DEP for review and approval prior to construction of the corresponding phase of development.

The Planning Board requires Nordic to concurrently submit to the Code and Planning Department the above referenced Emergency Response Plan that will be presented to the DEP. The Code and Planning Department shall have an opportunity to review the Emergency Response Plan and to identify additional specific measures, if any, that Nordic shall be required to incorporate into a similar Plan to address concerns identified in this Zoning Use Permit, or other Permits issued by the Planning Board or the Code Enforcement Officer. This Plan will be considered Nordic's Emergency Response and Closure Plan for the City of Belfast. The Code and Planning Department must accept this Plan prior to the start of any construction on Phase I and Phase II.

**18.2 Requirement to Implement Plan.** Nordic shall implement the emergency response and facility closure plan should a triggering event occur, and shall immediately contact the Code and Planning Department to inform the Code Enforcement Officer that they have implemented the emergency response and facility closure plan and shall regularly inform the Code Enforcement Officer of their implementation efforts. Post the duration and response to the event, Nordic shall provide a report to the Code Enforcement Officer that identifies the following: what caused the triggering event, the steps that Nordic implemented to address the event, how all wastes were properly disposed, overall adverse impacts, if any, on Nordic's operations, and the measures that Nordic implemented to resume operations.

## 19. Noise

**19.1 Construction Activities.** Nordic shall conduct on-site construction activities between the hours of 7:00 am and 7:00 pm, or during daylight hours, whichever is longer, and shall not conduct construction activities on Sundays. There are four specific exceptions to this Condition authorized by the Planning Board:

- a) Activities associated with the construction and removal of the temporary by-pass road on Route One. There are no specific time of day or number of days per week limits on this construction activity.
- b) Activities associated with the construction of the private sewer line within the bounds of the Perkins Road right-of-way. There are no specific time of day or number of days per week limits on this construction activity.
- c) Activities associated with the construction of the significant water intake and significant water outfall discharge pipes, both on-land and off-shore construction. There are no specific time of day or number of days per week limits on this construction activity.
- d) Activities associated with construction that occurs entirely within the confines of an enclosed building, provided that said construction does not generate noise levels that exceed 55 db as measured 25 feet from the exterior of the building in which the construction activities are taking place. The City may take sound measurements using a hand-held decibel meter to determine compliance with this standard.

In addition to the above exceptions specifically authorized by the Planning Board, Nordic may request and the Code Enforcement Officer may grant specific one-time exceptions to the above standards if Nordic demonstrates to the satisfaction of the Code Enforcement Officer that an exception is warranted to address a specific construction concern.

In adopting this Condition, the Planning Board noted that the City Code of Ordinances, Chapter 34, Miscellaneous Offenses, exempts construction activities that occur between the hours of 5:00 am and 10:00 pm from specific sound level regulation. The Board, in an effort to better regulate construction noise, and to be consistent with DEP Standards (reference SLODA/NRPA Permit), chose to impose the DEP standards for regulating construction noise rather than relying upon the standards in Chapter 34 of the City Code of Ordinances.

**19.2 Construction Equipment.** The applicant shall employ the use of non-road heavy equipment during all phases of construction of the project such as, but not limited to, backhoes, bulldozers, front-end loaders, excavators, and dump trucks, that are equipped with engines which at minimum meet U.S. Environmental Protection Agency Tier 2 emission standards as specified in 40 C.F.R. § 89.112 (effective June 17, 1994 and last revised July 13, 2005) and 40 C.F.R. §89.113 (effective June 17, 1994 and last revised October 23, 1998).

**19.3 Project Operations.** All project operations shall comply with the maximum decibel levels established by the State Department of Environmental Protection in Chapter 375 §10. Further, the City Code Enforcement Officer shall enforce these DEP standards in lieu of standards currently identified in the City Code of Ordinances, Chapter 102, Zoning, Article IX, Performance Standards, Division 2, Environmental Standards, Section 102-1129, to manage Nordic project operations. The Code Enforcement Officer has the authority to issue a Notice of Violation based on noncompliance with standards identified in Chapter 375 §10. Further, the Code Enforcement Officer can use a hand-held decibel meter to determine noise levels.

**20. Stormwater Management.**

**20.1 Construction of Stormwater Improvements.** Nordic shall construct all stormwater management improvements identified on the approved Site Plan to the standards identified in the Nordic Plans. Nordic shall complete construction of improvements associated with a specific Phase of construction during that Phase of construction, and may not begin Phase II construction until all Phase I stormwater facilities are constructed and operational.

The City, prior to issuance of an Occupancy Permit for any building on the site, shall require the completion of the stormwater improvements associated with the respective Phase of construction, and shall require a certificate of construction from a licensed civil engineer certifying that the stormwater improvements have been constructed to the specifications identified on the approved Site Plan.

**20.2 Inspection of Stormwater Improvements.** Condition of Approval 23 in the Natural Resources Protection Act/Site Location of Development Act Permit issued by the Board of Environmental Protection identifies State requirements for Nordic to use two third-party inspectors to monitor all phases of construction. The specific language for this condition is as follows: "The applicant shall retain the services of at least two third party inspectors to monitor all phases of construction of the proposed primary facility site. The inspectors must be retained and work in accordance with the Special Condition for Third-Party Inspection Program included with this Order. The applicant may alter the number of third-party inspectors needed for the project with prior Department approval".

a) The City, similar to the Department of Environmental Protection, must monitor Nordic activities associated with construction of stormwater improvements to determine compliance with City Permit requirements. The City is prepared to accept reports generated by the above third-party inspectors to assist the Code Enforcement Officer and/or City Engineer in determining compliance with City Stormwater requirements, provided said reports are submitted to the City Code Enforcement Officer in their entirety and in a timely manner. This approach to stormwater inspections, however, does not preclude the City Code Enforcement Officer or City Engineer from conducting independent on-site inspections and

making determinations that may or may not be consistent with those of the third-party inspectors or the Department of Environmental Protection.

- b) While it is the City's intent to use the State's Third-Party Inspection Program, if the Code Enforcement Officer determines that the services available through the State's third-party inspection program are inadequate for the City's inspection needs, Nordic shall be responsible for paying a fee to the City to enable the City to engage the services of City Engineer or similar services to provide necessary inspection services on behalf of the City.
- c) Nordic, in accordance with Condition 26 in the Bureau of Environmental Protection Natural Resources Protection Act/Site Location of Development Act Permit, shall retain the services of the project's stormwater design engineer to oversee the installation of the stormwater treatment structures according to the details and notes specified on the approved plans. Further, within 30 days of completion of the stormwater structures, Nordic must submit a log of inspection reports detailing the items inspected, photographs taken, and the dates of each inspection to the Department of Environmental Protection for review. The City hereby requires Nordic's stormwater design engineer to submit this same report to the City and in accordance with the same monthly schedule. The City Code Enforcement Officer and/or City Engineer shall review the report to determine compliance with City requirements established in the City Zoning Use Permit.

**20.3 Amendments to Stormwater Improvement Plans.** The City Code Enforcement Officer, after consultation with the City Engineer and/or other inspector services available to the City, shall have the authority to approve changes in the location, size or type of specific stormwater improvements that may be proposed during project construction by Nordic or recommended by City Engineer or other inspection services. Said authority applies to limited forms of field changes. Any proposal that involves significant alterations to the method to manage stormwater shall require the review and approval of the Belfast Planning Board as an amendment to this Zoning Use Permit.

**20.4 Maintenance of Stormwater Improvements.** Post project construction, Nordic shall be responsible for maintaining all stormwater improvements in good working condition. Nordic shall provide the Code Enforcement Officer (CEO) a plan for the regular inspection and maintenance of all stormwater improvements. All maintenance reports and any and all corrective action taken by Nordic to address any identified deficiencies shall be provided to the CEO within 30 calendar days of the inspection. Any failure by Nordic to address identified deficiencies shall be considered a violation of City Ordinances and shall be subject to penalties for a violation identified in City Ordinances and State law. Further, the CEO shall have the authority to inspect stormwater facilities at any point in time, and if warranted, to cite any deficiencies that the CEO deems warrant corrective action, and to issue a notice of violation that the CEO may deem appropriate.

## **21. Soil and Erosion Control.**

**21.1 Implementation of Soil and Erosion Control Measures.** The Nordic project development involves a significant amount of soil removals. It is critical that Nordic consistently employ the soil and erosion control measures identified in the approved Site Plan application in a good quality and consistent manner, and that the number of open areas at any point in time and the re-stabilization of such areas, complies with limitations identified in the soil and erosion control plan.

**21.2 Inspection of Soil and Erosion Control Measures.** Condition of Approval 23 in the Natural Resources Protection Act/Site Location of Development Act Permit issued by the Board of Environmental Protection, identifies State requirements for Nordic to use two third-party inspectors to monitor all phases of construction. The specific language for this condition is as follows: "The applicant shall retain the services of at least two third party inspectors to monitor all phases of construction of the proposed primary facility site. The inspectors must be retained and work in accordance with the Special Condition for Third-Party Inspection Program included with this Order. The applicant may alter the number of third-party inspectors needed for the project with prior Department approval".

a) The City, similar to the Department of Environmental Protection, must monitor Nordic construction to determine compliance with City Permit requirements regarding the implementation of effective soil and erosion control measures. The City is prepared to accept reports generated by the above third-party inspectors to assist the Code Enforcement Officer and/or City Engineer in determining compliance with City soil and erosion control requirements, provided said reports are submitted to the City Code Enforcement Officer in their entirety and in a timely manner. This approach to conducting regular soil and erosion control inspections, however, does not preclude the City Code Enforcement Officer or City Engineer from conducting independent on-site inspections and making determinations that may or may not be consistent with those of the third-party inspectors or the Department of Environmental Protection.

b) If the Code Enforcement Officer determines that the services available through the State's third-party inspection program are inadequate for the City's inspection needs, Nordic shall be responsible for paying a fee to the City to enable the City to engage the services of City Engineer or similar services to provide necessary inspection services on behalf of the City.

**21.3 Amendments to Soil and Erosion Control Measures.** The City Code Enforcement Officer, after consultation with the City Engineer and/or other inspector services available to the City, shall have the authority to approve changes in the on-site measures that Nordic and its contractors employ to best management soil and erosion control concerns. Said authority applies to limited forms of field changes. Any proposal that involves significant alterations to the method to manage soil and erosion control, particularly any proposal to increase the amount of area that can be open at

any point in time, shall require the review and approval of the Belfast Planning Board as an amendment to this Zoning Use Permit.

**21.4 Reports to Code Enforcement Officer.** Any reports prepared by Nordic's General Contractor or by Nordic's project design engineer shall regularly be provided to the City Code Enforcement Officer for review and potential action.

**22. Wetland Alterations and Mitigation.**

The City of Belfast does not have independent City standards regarding the regulation of inland wetlands. Chapter 102, Zoning, Article IX, Performance Standards, Division 2, Environmental Standards, Section 102-1134, Uses in Wetlands, requires that any use in a wetland area must demonstrate compliance with a DEP Natural Resources Protection Act Permit. The Belfast Planning Board recognizes that the Board of Environmental Protection has issued a Natural Resources Protection Act Permit to Nordic that allows the fill and alteration of certain wetland areas subject to Nordic making a payment to the Maine in Lieu Fee Compensation Program and making certain on-site wetland/stream restoration improvements. The Planning Board requires Nordic to provide evidence to the Code and Planning Department and Planning Board of any amendments to the issued State permits that affect the amount of wetland disturbance or the requirements that Nordic must satisfy regarding any wetland alterations.

**23. Traffic Management and Internal Driveways.**

**23.1 Site Access.** Access to the Nordic site during both project construction activities and long-term facility operations shall be limited to the single access drive off of Route One that now serves the Belfast Water District facilities. This access shall be constructed to the specifications identified on the approved plan, as such was amended and presented to the Board for review in the Nordic Final Site Plan application. Any request to construct or use an additional access to the site shall require the review and approval of the Belfast Planning Board as an amendment to this Zoning Use Permit.

Notwithstanding this Condition, the Planning Board recognizes that construction activities associated with the installation of Nordic's sanitary sewer line from their facility to Perkins Road will result in some construction activities accessing the site from Perkins Road. Traffic associated with said construction activities shall be limited solely to construction of the sanitary sewer line.

**23.2 Management of Construction Traffic.** Nordic shall prepare and submit a plan to the Code and Planning Department that identifies how Nordic and its contractors shall manage truck traffic associated with project construction, particularly truck traffic associated with the on-site removal or addition of earthen materials. Said plan shall be submitted a minimum of 30 days prior to the start of any Phase I construction, and said plan shall be updated and resubmitted prior to the start of any Phase II construction. The report shall address the following:

- a) Where earthen materials that will be added to the site will be sourced and the proposed travel route for all trucks.
- b) Where earthen materials that are to be removed from the site will be disposed and the proposed route for all trucks.
- c) Information regarding the size of trucks that the contractor will typically use, estimates of the average number of truck trips/day, estimates of the number of truck trips each day and for each hour between the hours of 7:00 am and 9:00 pm and 3:00 pm to 6:00 pm, and estimates of the number of days per week and days per month that this amount of truck traffic is projected to occur.
- d) A description of measures that Nordic and its contractors propose to implement to minimize potential traffic conflicts at key intersections in the City of Belfast, and a description of why Nordic believes the proposed measures may serve to reduce potential traffic conflicts at the significant intersections in Belfast that may be impacted by this construction traffic. Examples of such measures include but are not necessarily limited to: number of trucks that can use an intersection during specific times of the day, size of the truck that will be used to reduce the total number of trips, the route for truck traffic, signage, temporary flaggers, temporary signalization changes, and such. The assessment shall be prepared by a traffic consultant engaged by Nordic and will focus on key intersections that involve truck turning movements. Nordic shall consult with the Code and Planning Department to determine the key intersections associated with the assessment.

The Code and Planning Department shall be responsible for the review and approval of the traffic management plan for Phase I construction. The Code and Planning Department shall be responsible for the review and approval of any proposed amendments to the Phase I Plan associated with Phase II construction.

- 23.3 Construction of Temporary By-pass Road on Route 1.** Nordic shall construct a temporary by-pass road on Route 1 to foster installation/construction of the intake/discharge pipe under Route 1. Construction of the by-pass road shall comply with the lay-out identified in the Site Plan presented to the Planning Board. Any significant amendments to this lay-out that are required by the Maine Department of Transportation or the City Public Works Department shall require the review and approval of the Belfast Planning Board to ensure that overall Zoning Use Permit requirements are satisfied. Construction of the by-pass road shall be prohibited between May 15 and September 15. The sole purpose of the by-pass road is to enable construction of the intake/discharge pipes. Thus, post the completion of construction of the above pipes, Nordic shall work to remove the by-pass road, and to complete any and all reconstruction of the lay-out of Route One as soon as reasonably practical.

The Maine Department of Transportation has determined that this section of Route One is located within the Urban Compact area and that the City is responsible for the issuance of any Road Opening Permit associated with the installation of the intake/discharge pipes. Bob Richards, Belfast Superintendent of Public Works, issued a Conditional Road Opening Permit to Nordic for the proposed installation of the intake/discharge pipes on February 20, 2019. Nordic shall provide evidence to the Code Enforcement Officer that Nordic has obtained a Final Road Opening Permit

from the Public Works Director and any and all permits that may be required from the Maine Department of Transportation prior to the construction of the temporary by-pass road on Route One and construction of the intake/discharge pipes.

It is also noted that the Conditional Road Opening Permit identified the payment of a performance guarantee, an escrow account, to the Public Works Department for work to be performed pursuant to this Permit. This performance guarantee, subject to the consent of the Superintendent of Public Works, shall be replaced and included in the Performance Guarantee, an Irrevocable Letter of Credit, required by the Belfast Planning Board in Condition of Approval 36.1.

**23.4 Approaches to Traffic Management.** The Traffic Study dated June 3, 2019 prepared by Traffic Resources Management on behalf of Nordic identified two recommendations that should be implemented to benefit traffic management. In addition, the Belfast Planning Board identified an improvement that should benefit traffic safety and sight distance at the intersection. These recommendations include:

- a) The roadside edge to the north of the main access drive should be mowed further to the north and regularly maintained to provide greater sight distance. Nordic shall be responsible for performing this work prior to the start of project construction and maintaining such through-out operation of the facility. This recommendation was identified by Traffic Resources Management.
- b) The existing bank located to the south of the access entrance to the site shall be regraded to increase the amount of visibility of vehicles exiting the access drive. Nordic shall be responsible for performing this work during construction of the temporary by-pass road. This recommendation was identified by the Belfast Planning Board.
- c) Traffic Resources Management recommended that the City request MDOT to reduce the existing traffic speed from 50 mph to 40 mph for an area that is about 400 feet in length to encompass all of the Nordic access drive after the salmon farm is operational. The Belfast Planning Board requires Nordic to cooperatively work with the City to pursue MDOT reducing the traffic speed in this area and potentially an area that is greater in length, and to make this request prior to the start of project construction traffic.

**23.5 Internal Driveway Construction.** The Nordic Site Plan identifies the location of internal driveways that Nordic intends to construct to serve on-site facilities. All internal driveways shall be constructed to the standards identified on the Nordic plans. Nordic shall provide the City Code Enforcement Officer a certificate of construction from a licensed civil engineer certifying that the construction of the respective driveway complies with standards identified on the Site Plan prior to the Code Enforcement Officer issuing a Certificate of Occupancy for any building/facility that uses that driveway for access.

## **24. Parking.**

**24.1 Amount and Location of Parking.** Nordic shall provide the amount of parking, including handicap accessible parking, in the locations identified on the approved Site

Plans. The Code Enforcement Officer shall have the authority to approve a proposed amendment that involves a shift in the location of the on-site parking between approved parking areas, or that results in an addition or a reduction in the amount of parking in any parking area, provided any such request for an amendment involves 10 percent or less of the amount of parking shown in any parking area on the Site Plan. Any such request that affects greater than 10 percent of the identified parking shall require the review and approval of the Planning Board as an amendment to the Zoning Use Permit.

**24.2 Parking for Visitors Center/Little River Trail.** Nordic shall provide on-site parking in the locations shown on the Site Plan to benefit persons who wish to use the Little River Trail (future City property) and the Visitors Center that Nordic proposes to establish. Nordic shall not unduly restrict the ability of persons, the public, to use this parking for the Little River Trail. Further, during all construction activities, Nordic shall ensure that there is safe access and adequate parking for vehicles and safe access for all pedestrians who want to use the Trail.

**24.3 Construction of Parking Areas.** All on-site parking areas shall be constructed to the standards identified on the Nordic Site Plans. Nordic shall provide the City Code Enforcement Officer a Certificate of Construction from a licensed civil engineer certifying that the parking areas were constructed to standards identified on the Nordic plans prior to issuance of a certificate of occupancy.

**25. Site Lighting.**

On-site exterior lighting installed by Nordic shall comply with the locations and style of fixtures identified on the approved Site Plan. Nordic shall ensure that none of their exterior lighting causes a glare on any public road or on any adjacent private or public property. The Planning Board requested that Nordic minimize the intensity of any exterior lighting to the greatest extent practical between the hours of 9:00 pm and 5:00 to minimize the degree of impact on the night sky. The Planning Board authorized the Belfast Code Enforcement Officer to review and approve specific requests from Nordic to change the location or style of light fixture shown on the approved plan, provided the new location and/or style of fixture is consistent with the overall lighting plan approved by the Planning Board.

**26. Buffering and Landscaping.**

**26.1 Amount of Bufferyard.** Nordic shall retain the size of all bufferyards identified on the approved Site Plan. The bufferyard for the area located adjacent to Route One between the site entrance and the site's property boundary that abuts the Cassida property (Map 29, Lot 40) shall be a minimum of 60 feet in width/depth; the minimum structure setback requirement is 75 feet. For all other developed areas on the site, the minimum width/depth of the bufferyard shall be 40 feet; the minimum structure setback is 50 feet. Any request by Nordic to change the amount of bufferyard for any area shown on the approved Site Plan shall require the review and approval of the Belfast Planning Board.

**26.2 Amount of Planting in Bufferyards and On-Site Landscaping.** The amount of planting and the size and type of plantings shall comply with information depicted on the landscaping plans submitted in the Nordic Site Plan, including LP 101 (as such was amended, 'LP 101, Planting Plan, Area A, Response to City Comments, dated 8-18-20 prepared by SMRT'), LP 101A, LP 102, LP 103, LP 104, LP 105, LP 106, LP 107, and LP 501.

Nordic shall be required to plant all bufferyard areas (areas along common lot lines with abutting properties) as soon as reasonably practical to try and stimulate the growth of plantings in the bufferyard yards and to enhance the effectiveness of said plantings providing vegetative screening. Nordic shall plant on-site landscaping for the respective buildings and parking areas as soon as practical post the construction of the respective buildings and parking areas, and prior to issuance of a Certificate of Occupancy for the respective building. However, if an occupancy permit is requested during the winter months, the Code Enforcement Officer can issue a temporary occupancy permit until the plantings can be installed during the next regular growing season.

For all new landscaping, Nordic must implement an effective program for at least the first 2 years after planting of the new landscaping for the maintenance and watering of this landscaping. This maintenance program shall be described in writing and the written maintenance plan shall be provided to the Code Enforcement Officer prior to issuance of an occupancy permit for any building on the site. Nordic also shall provide semi-annual reports to the CEO regarding the operation and status of this maintenance plan. Further, any landscaping that dies shall be replaced with similar quality landscaping within that growing season, or if the plants die during the winter months, the following growing season.

Nordic shall obtain the review and approval of the Code Enforcement Officer prior to the removal of any tree in a recognized bufferyard area for the bufferyards adjacent to Route One and the private properties located along Perkins Road.

**26.3 Plantings on Private Properties.** Several private property owners on Perkins Road have requested (through the Planning Board public hearing process) that Nordic install plantings on their respective private properties in an effort to enhance the amount of vegetative buffer on their property. Two specific property owners who approached the Board to request such include Eleanor Daniels and Donna Broderick, owners of Map 4, Lot 10A, and Randy and Jackie Curtis, owners of Map 4, Lot 12. The Planning Board noted that there are only 4 private residential property owners on Perkins Road who directly abut the Nordic site, and that there are no other residential properties on other roads who share a common property line. The Planning Board requested that Nordic, if requested by a private property owner, openly work with the individual private property owners on Perkins Road who directly abut the Nordic site and to enter agreements with said owners to install additional plantings on their properties.

## **27. Nordic Water Use.**

Nordic has identified its plans to use up to 455 gpm (gallons per minute) of groundwater produced from its on-site groundwater wells, up to 500 gpm of water from the Belfast Water District and up to 250 gpm of surface water from the Little River to support its fish rearing and production operations. Nordic also intends to use 3,925 gpm of saltwater from Belfast Bay.

**27.1 Maximum Amount of Water Use.** Pursuant to information identified in Nordic's Site Plan Permit application, the Planning Board establishes the following as limits on the amount of freshwater that Nordic can use to support its fish rearing and processing activities:

- a) Water from Nordic's on-site groundwater wells, at a rate of up to 455 gallons per minute, calculated as a daily average rate;
- b) Public water supplied by the Belfast Water District, a maximum of 500 gallons per minute; and
- c) Surface water from the Little River, regardless if the extraction of said waters involves the impoundment from the Lower Reservoir Dam or directly from the surface flows of the River should the dam be removed, at a rate of up to 250 gallons per minute, calculated as a daily average rate.

Any request by Nordic to increase the amount of freshwater used from any or all of the above sources shall be considered an amendment to this Zoning Use Permit and shall require the review and approval of the Belfast Planning Board. The Board shall conduct a duly noticed public hearing associated with its review of an amendment.

**27.2 Monitoring and Reporting on Amount of Water Use.** Nordic, beginning with the commencement of any fish rearing activities, shall submit monthly reports to the Code and Planning Department that identify the amount of water used on a daily basis and the source of such water to conduct its fish rearing and production/processing activities. The amount of water used shall be expressed in total gallons of saltwater used per day, total gallons of freshwater used from each of the three identified sources per day, and a calculation of the average gallons of water used on a per minute basis from each of the three identified sources. Nordic shall provide a written description of any significant daily, weekly and monthly variations in the amount of freshwater used from any of the above sources, and shall identify if there were any extenuating circumstances associated with said variations. The report also shall identify how water use was impacted by the start and continuance of Phase II operations.

**27.3 Monitoring of Little River Flows.** Condition 31 in the Department of Environmental Protection Natural Resources Protection Act/Site Location of Development Act Permits establishes certain requirements for Nordic to collect background data regarding groundwater quality and surface flows of the Little River during project construction and to provide monthly reports on these issues to the DEP no less than monthly. The Belfast Planning Board requires Nordic to provide this

same reporting information to the Code and Planning Department, and if not stipulated by the Department of Environmental Protection, requires that the monitoring efforts occur during the time period of both Phase I and Phase II construction.

**27.4 Monitoring of Goose River Flows.** Conditions 32 and 33 in the Department of Environmental Protection Natural Resources Protection Act/Site Location of Development Act Permit establishes certain requirements for Nordic to collect background data regarding water quality and water flows in the Goose River. This monitoring effort is associated with Nordic's projected use of up to 500 gpm of water from the Belfast Water District. The DEP also requires Nordic to establish a longer-term monitoring program. The Planning Board hereby establishes a requirement that Nordic must provide all information collected from this monitoring effort required by the DEP to the Code and Planning Department.

**28. Nordic Use of Lower Reservoir Dam.**

The Nordic Site Plan Permit application identifies Nordic's intent to extract surface water from the Little River to support facility operations, and to use the existing Lower Reservoir Dam to assist in the extraction of surface waters. Nordic, however, has also provided testimony to the Planning Board indicating that they can successfully support facility operations by using surface waters from the Little River if the Lower Reservoir Dam is removed. The following Conditions address requirements that Nordic must satisfy regarding the long-term availability of the Dam or its removal.

**28.1 Evidence of Right, Title and Interest.** Nordic, prior to the start of construction of any on-site facilities, shall submit compelling evidence to the Planning Board that it has Right, Title and Interest, subject to the future receipt of any and all federal, state and City permits, to install any piping and other needed infrastructure to extract surface water from the Little River should the Lower Reservoir Dam be removed at a future date.

**28.2 Purchase of Lower Reservoir Dam.** Nordic, per its purchase and sale agreement with the Belfast Water District (and the City of Belfast), has a window of time to exercise its option to purchase the Lower Reservoir Dam. Nordic, a minimum of 60 days prior to the expiration of this option, shall submit a statement to the Planning Board regarding its decision to purchase or not purchase the dam, and how this decision will affect the approach Nordic intends to use to extract surface water from the Little River.

**28.3 Board Review of Removal of Lower Reservoir Dam.** If Nordic or another party proposes to remove the Lower Reservoir Dam, Nordic shall submit detailed plans for how it proposes to extract surface water from the Little River for the review and approval of the Belfast Planning Board. Said plans shall be submitted to the Planning Board a minimum of 6 months prior to the removal of the dam.

**28.4 Permits to Extract Water if Dam is Removed.** Nordic shall apply for and shall obtain any and all required federal, state and City permits for extracting surface water from the Little River, if the Lower Reservoir Dam is to be removed, and shall provide evidence to the City Code Enforcement Officer that it has obtained any federal and state permits that may be required.

**28.5 Nordic Cooperation with Public or City Interest to Consider Removal of the Lower Dam.** Nordic, regardless if it is or is not the owner of the Lower Reservoir Dam, shall work cooperatively in future community and agency discussions that may occur regarding the potential removal of the Lower Reservoir Dam, should it be requested to do so by the City Council.

**29. Nordic Use of Visitors Center with Respect to Safety of the Upper Reservoir.**

Nordic's Site Plan application identifies its intent to convert the existing Belfast Water District offices located near the Lower Reservoir Dam to a Visitors Center. The Planning Board supports this proposal, however, it identified potential issues regarding how the building may be used with respect to potential safety issues associated with the Upper Reservoir Dam on the Little River, a dam that is not located on the Nordic site, and a dam that Nordic has no intent to use to support its operations. The following conditions identify measures that Nordic must address regarding its use of the existing Water District offices as a Visitors Center. The Board noted that the Visitors Center is proposed to be established in Phase II of project construction, and that more information may become available regarding the Upper Reservoir Dam in the intervening years between the issuance of this Zoning Use Permit and when the Visitors Center is established that could affect the applicability of these Conditions or Nordic's establishment of the Visitors Center.

**29.1 Nordic Contingency Plan.** Nordic shall prepare a contingency plan for an emergency evacuation of the existing Belfast Water District offices that will be converted to a Visitors Center in the event of a potential failure of the Upper Reservoir Dam. Should a failure of the Upper Dam occur, Nordic shall provide evidence for the review and approval of the Planning Board that it is safe for persons to reoccupy the Visitors Center building prior to any re-occupancy of the building.

**29.2 Analysis of Dam Safety Reports.** Nordic shall consider any and all engineering assessments of the condition and safety of the Upper Dam that may be prepared by any party in evaluating its use of the Belfast Water District building as a Visitors Center, and shall provide copies of said assessments to the Code and Planning Department.

**29.3 Discontinuance of Visitors Center.** Nordic shall obtain the review and approval of the Belfast Planning Board prior to discontinuing the long-term use of the current Belfast Water District office building as a Visitors Center. This Condition, however, shall not prohibit Nordic from closing the building as a Visitors Center in the short-term if Nordic believes there is too great of a public safety risk to continue use of the building as a Visitors Center.

**30. City Purchase of Water District Property Adjacent to the Lower Reservoir.**

Planning Board approval of the Nordic Zoning Use Permit, as well as the Shoreland Permit and Site Plan Permit, is contingent on the sale of about 40 acres of land located adjacent to the Lower Reservoir to the City of Belfast. Approximately 24 acres of this land is located in the City of Belfast and about 16 acres are located in the Town of Northport. The City is committed to purchasing this property as part of the current Purchase and Sale Agreement between the Belfast Water District, Nordic Aquafarms and the City. The Planning Board determined that the City acquiring public ownership of the 40 acres is critical to providing public protection of critical public and Shoreland resources, including but not limited to public access to the Little River Trail.

**31. On-Site Fuel and Oxygen Storage.**

The Nordic project involves both the on-site storage of bulk amounts of fuel and oxygen. Nordic shall conduct all storage operations in compliance with all state and federal requirements. The amount of on-site storage and location of all on-site storage facilities shall occur in accordance with information identified on the Nordic Site Plan. A proposal to change the location of any storage facility or to increase its storage capacity by more than 10% shall require the review and approval of the Belfast Planning Board. The Planning Board authorizes the Code Enforcement Officer to review and approve a request to increase the capacity of any storage facility by less than 10%.

**32. Building Appearance.**

Architectural Plan Sheets 68-01AE200, 70-02AE200, 72-03AE200, 75-04AE200, 77-07AE200, 79-08A200, 80-09AE100, and 82-10A200 submitted as elements of Nordic's Site Plan application provide overall information regarding the architectural appearance of the buildings proposed on the site. Nordic also presented information in its power point presentations to the Board during the Board's review of the Preliminary Site Plan application that identified its intended approach regarding the exterior appearance of most buildings. The Board requires the Nordic project to use exterior building materials that are appropriate for the respective buildings, that complement the project site, and that are consistent with the architectural plans included in the Site Plan application and the overall renderings presented to the Planning Board. That said, the Board also provides Nordic flexibility in the final design and appearance of the buildings. If there are significant changes proposed to the designs identified in the Architectural Drawings, said changes shall require the review and approval of the Belfast Planning Board.

**33. Project Signage.**

The City has not yet established specific sign standards in Chapter 86, Signs, for the Route One Business Park zoning district. In the absence of specific standards, the Planning Board stipulates that Nordic must comply with the following standards:

- a) **Permanent Signage.** Nordic, prior to erecting any permanent on-site, on-ground or on-building informational and directional signage for the project's operating facilities, shall

submit a comprehensive sign management plan for the review and approval of the Belfast Planning Board as an amendment to this Zoning Use Permit. The Board requests that the plan submitted by Nordic include adequate on-site signage to direct persons to the respective on-site facilities, however the overall approach should reflect using no more signage than is necessary. Further none of the signage shall be internally lighted or digital signage, and the amount of externally lighted signage should again, be no more than necessary to allow efficient and safe operations for a facility that will operate 24 hours per day for each day of the year.

Nordic shall be permitted a maximum of one sign at the main site entrance. This sign shall generally be consistent with the size and style of sign that the Belfast Water District has installed. Further, it shall not be internally illuminated, and any external lighting of the sign shall be designed to be down-directed so as to minimize the amount of glare on the road and on the surrounding sky.

The Belfast Code Enforcement Officer shall use the sign management program approved by the Belfast Planning Board to issue sign permits and to regulate the amount, size, location and type of signs allowed on the property. Nordic shall obtain a sign permit for all non-directional signs that it proposes, as such were approved by the Planning Board.

- b) **Temporary Construction Signs.** The Code Enforcement Officer shall have the authority to approve the number, size, type, and location of temporary construction signs on the Nordic site. The Code Enforcement Officer shall use public safety as the main criteria in making a decision regarding a request to install any requested temporary construction sign.

#### **34. Snow Storage and Removal.**

Nordic shall regularly remove snow from all internal access roads and parking areas to enhance the safe use of said areas. On-site snow storage shall not adversely affect use of any private road or parking area, any stormwater management facility, or on-site plantings, particularly in a bufferyard area.

#### **35. Evidence of Financial Capacity.**

- 35.1 Phase I Development and Financing.** Prior to the start of construction on Phase I of the development, including any site alterations, Nordic shall submit evidence of sufficient funds solely designated for this project or that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance including, but not limited to a letter from a financial institution, governmental agency, or other funding entity indicating a commitment, or intent to commit, to provide Nordic a specified amount of funds and the uses for which the funds may be utilized, in a form acceptable to the City Code and Planning Department and City Attorney, which form shall not be unreasonably denied. Such evidence must, at a minimum, include an updated time schedule for the development, updated cost estimates for the project, a cost-loaded schedule for all

construction, and the identification of all costs necessary to comply with all terms and conditions of all permit approvals from the City of Belfast related to the proposed development, and any updated costs necessary to comply with said permit approvals. Nordic must provide evidence of any updates to its corporate structure and demonstrate that the proposed financing is either clearly linked from the financing institution to Nordic or that sufficient funds have been set aside and specifically dedicated for and to the proposed development.

Upon the completion of Phase I development, Nordic shall provide a report to the Code and Planning Department and City Attorney that documents the financing that was used to complete Phase I development and that certifies that Nordic had sufficient funds available to complete all development. This report shall be provided to the City prior to the start of any Phase II development, and issuance of a Permit from the Code Enforcement Officer for said work.

**35.2 Phase II Development and Financing.** Prior to the start of construction on Phase II of the development, including any site alterations, Nordic shall submit evidence of sufficient funds solely designated for this project or that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance including, but not limited to a letter from a financial institution, governmental agency, or other funding entity indicating a commitment, or intent to commit, to provide Nordic a specified amount of funds and the uses for which the funds may be utilized, in a form acceptable to the City Code and Planning Department and City Attorney, which form shall not be unreasonably denied. Such evidence must, at a minimum, include an updated time schedule for the development, updated cost estimates for the project, a cost-loaded schedule for all construction, and the identification of all costs necessary to comply with all terms and conditions of all permit approvals from the City of Belfast related to the proposed development, and any updated costs necessary to comply with said permit approvals. Nordic must provide evidence of any updates to its corporate structure and demonstrate that the proposed financing is either clearly linked from the financing institution to Nordic or that sufficient funds have been set aside and specifically dedicated for and to the proposed development. Additionally, if Nordic proposes to use cash flow generated from Phase I operations, to in-part fund the development of Phase II, as part of the evidence of sufficient funds analysis to be conducted by the Code and Planning Department and City Attorney, Nordic shall submit to the City of Belfast all information it is required to submit to the State of Maine as required in the Combined Order, which shall include the most recent annual corporate report, financial statements, bank statements, or other evidence indicating that such funds have been, and will continue to be, set aside for the Phase II development.

**35.3. Technical Assistance to the City.** In evaluating the existence of sufficient evidence of funds for development for Phase I and Phase II as described in Conditions 35.1 and 35.2 above, the City may, in its discretion, obtain advice from a professional consulting firm skilled in the analysis of the funding package chosen by Nordic for both Phase I and Phase II. Nordic shall, in advance of each phase of the

development, pay for the reasonable fees of such professional consulting firm engaged by the City.

**36. Performance Guarantee for Project Development.**

**36.1 Irrevocable Letter of Credit for Project Construction.** Nordic shall provide a performance guarantee as required in section 90-13 for all “required improvements”, which the Planning Board has historically interpreted to be those improvements required to meet the Site Plan Permit and Zoning Use Permit approvals involving all site related improvements, construction and infrastructure that have the potential of impacting public land and infrastructure and offsite private lands, including, but not necessarily limited to, erosion control and surface drainage; wetland, stream, and groundwater mitigation; construction costs associated with the Route 1 crossing and repair, and the accompanying construction and subsequent removal of the temporary by-pass road on Route 1; construction of the private sewer line in the Perkins Road right-of-way, the planting of landscaping and vegetative buffers; the construction of on-site roads, driveways and parking areas; and the installation of the inflow and discharge pipes into Penobscot Bay, as described on Schedule 1 that will be prepared by the Code and Planning Department prior to issuance of a Zoning Use or Site Plan Permit attached to these Conditions of Approval. Schedule 1 shall set forth the scope of required improvements, the estimated stage in overall development when said required improvements are anticipated to be constructed, and the reasonable estimate of construction costs of each category of required improvements.

Prior to commencing work on each category of required improvements as listed in Schedule 1, Nordic and the City shall establish a performance guarantee in the form of an irrevocable letter of credit as required by Section 90-13(a)(3). Said irrevocable letter of credit shall be issued by an institutional Lender acceptable to the City, against which the City may demand a site draw for construction of any required improvement that the City deems is inadequate or incomplete. The amount of the letter of credit shall be sufficient to cover the associated costs of the required improvements, which are listed in Schedule 1. Prior to demanding a site draw from said Lender under the irrevocable letter of credit, the Code and Planning Department shall issue a written demand for cure of the inadequate or incomplete construction, and provide Nordic with a reasonable opportunity to commence an immediate and continuing good faith effort to cure any such failure. Upon a failure of Nordic to substantially cure a written demand for inadequate or incomplete construction pursuant to a Chapter 90-13(c), which said cure period shall not exceed 30 days from the date of the notice to cure, the City shall demand a site draw on the irrevocable letter of credit in the amount associated with the correction or completion of a required improvement, and the City may thereafter use the site draw funds to cure the required inadequate and/or incomplete construction. Provided, however, the cure period for demanded corrections or completions of required improvements that involve damage to environmentally sensitive, drainage, erosion, and/or protection of wildlife habitat areas may be shortened as necessary to require best practices

remediation in a time-sensitive manner as necessary to effectively remediate such a failure.

Any funds received from Nordic through the Lender by the City which are not necessary for implementation of the cure of inadequate or incomplete construction shall be timely returned to the Lender, as provided in 90-13(b). Further, certain elements of the Performance Guarantee, such as but not limited to crossing of Route One and the removal of the temporary by-pass road and the repairs to Perkins Road associated with installation of Nordic's private sewer line, shall remain in effect for a period of twelve months post the completion of the work to ensure that the improvements are performing as intended.

**36.2 Performance Bond for Intake/Discharge Pipes.** While the Planning Board has established other permit conditions, reference 36.1 above, that require Nordic to provide an irrevocable letter of credit to complete infrastructure the City has deemed subject to Chapter 90, Section 90-13(a)(3) performance guarantee requirements, the Planning Board finds that additional consideration must be made to fund the potential removal or modification of the significant water intake and discharge pipes proposed to be installed within the intertidal area, in the event that Nordic elects to commence construction after a favorable Superior Court decision is issued, but in advance of a final decision regarding any potential appeal to the Maine Law Court. In such circumstances, and prior to Nordic commencing any construction in the intertidal zone, Nordic shall provide a Performance Bond to the sole benefit of the City, in an amount sufficient to fund the potential removal or modification of said intake and discharge piping that Nordic has chosen to construct within the intertidal area, and restoration of the area to its pre-construction condition (subject to such limitations, modifications and/or requirements as may be imposed by any State or Federal licensing, permitting or enforcement agency). Said Performance Bond (Guarantee) funds may be used solely by the City in the event that a Maine Law Court decision substantively determines that neither Ekrote nor Nordic have sufficient right, title or interest to engage in the uses permitted in the intertidal zone, and said Performance Bond (Guarantee) fund may be used by the City, in its sole discretion, to remove or modify said intake and discharge pipes, provided that Nordic is first provided an opportunity to remove or modify the pipes at its own costs, but refuses or is unable to do so in an expeditious manner. Said Performance Bond (Guarantee) requirement shall terminate at such time as the Maine Law Court determines that sufficient right, title or interest is vested in Ekrote and/or Nordic, such that Nordic may proceed with the uses permitted by the City regarding construction and use of said intake and discharge pipes in the intertidal area claimed by Ekrote and/or Nordic.

**37. Right, Title and Interest.**

Chapter 90, Site Plan, Section 90-42(10) of the Belfast Code of Ordinances provides that an applicant must demonstrate right title or interest, which is interpreted by the Planning Board as requiring a legally cognizable expectation to use the properties for the intended uses. The Application dated June 11, 2019 contains in Attachment 8, a number of Options to Purchase or Lease real property rights from multiple owners of real property, including the Belfast

Water District, Samuel E. Cassida, Goldenrod Properties, LLC, and Richard and Janet Ekrote. Several Parties-in-Interest have submitted Motions and multiple requests for the Planning Board to adjudicate disputed claims relating to the right to cross and use the upland and intertidal lands of Richard and Janet Ekrote. The Planning Board has found the evidence of title and the "Easement Purchase And Sale Agreement" (Attachment 8, Exhibit 1, as clarified by a letter dated March 3, 2019 from Nordic and signed by the Ekrote) to be sufficient to process this administrative application. The Planning Board is also mindful that a suit to determine the ownership of the intertidal lands, and application of private deed covenants, regarding the Ekrote property. (See, Mabee Grace *et al* v. NAF, Waldo County Superior Court, Docket No. RE 2019-18).

**37.1 Requirement to Fully Demonstrate Right, Title and Interest.** No permit issued by the Belfast Planning Board, and no construction activity thereby permitted, shall be valid or commence until such time as Nordic has obtained and recorded, in the Waldo County Registry of Deeds, the deeds, easements and lease interests for which it has the options to purchase, as described in Attachment 8, and which are required for the permitted uses to be conducted. Nordic shall provide the Belfast Code and Planning Department and City Attorney with copies of the recorded instruments reflecting the fee, easement and lease rights conveyed to Nordic, as soon as the recording information is available.

Being mindful of the pending dispute over real property rights relating to Nordic's use of the Ekrote property, in the event that a final judgment is issued by a Court of competent jurisdiction which effectively terminates all or a part of Nordic's executory or perfected/vested legal rights necessary to use the Ekrote property, then in that event Nordic shall cease all work, construction, and/or uses hereby permitted relating to uses on, over or under the upland and/or intertidal areas of the Ekrote property. All permits issued by the Planning Board shall thereby be immediately suspended relating to permitted uses on each and all of the properties described in Attachment 8, until such time as the Planning Board has acted on a subsequent amendment or application to re-issue or issue appropriate use permits.

In the event that Nordic's work, construction, and/or uses are terminated in part or in whole by said final Court Order, then in that event, Nordic shall immediately stabilize any ongoing construction and uses related to the "required improvements" described in Condition 36.1 of the Financial Conditions. In the event that Nordic does not immediately stabilize the construction of required improvements, based on the best practices and permitted construction methods, the Belfast Code and Planning Department may immediately and unilaterally use the "required improvement" and performance guarantee funds described in Condition 36.1 to stabilize and complete construction of required improvements.

**37.2 Additional Requirements Regarding Ekrote Easement Area and Construction of Intake/Discharge Pipes.** No work on the intake or discharge pipes that Nordic proposes to locate within the intertidal area adjacent to the Ekrote property shall commence until a final judgment issued by the Waldo County Superior Court, Docket

No. RE-2019-18, effectively determines that Ekrote and/or Nordic have sufficient legal right, title or interest in and to the intertidal area that is sufficient for Nordic to engage in the uses approved in the City permits. Additionally, prior to the commencement of construction, Nordic shall record a deed in the Waldo County Registry of Deeds which grants and conveys sufficient right, title or interest from Ekrote to Nordic that entitles Nordic to use the Ekrote property (upland and intertidal) for the uses approved in the City permits.

The City, in its approval of permits issued to Nordic, does not hereby grant any permission or right to Nordic and/or the Ekrote to impair or encumber any real property rights of any abutter, person or entity. Rather, the Planning Board has determined that Nordic has sufficiently met City review criteria stipulated in the respective City Ordinances to warrant issuance of the permits, including this Zoning Use Permit and the Site Plan Permit, requested by Nordic, subject to certain conditions of approval imposed by the Board. The Planning Board, in its record, noted that Nordic is involved in pending litigation in the Waldo County Superior Court (Docket No. RE-2019-18) to determine right, title and interest of the intertidal area adjacent to the Ekrote property. Therefore, if Nordic chooses to proceed to exercise the rights obtained through the City permits prior to a final judgment from the Maine Law court, should an appeal be taken from any final Superior Court Judgment, Nordic shall indemnify and hold harmless the City of Belfast, the Planning Board and the Zoning Board of Appeals (collectively "City") from any suit or action naming the City as a party, in which said suit or action a party seeks damages, fees and/or costs from the City, its agents, experts, employees, officers and/or officials relating to the permits issued by the City.

### **38. Construction Schedule.**

Nordic, a minimum of 60 days prior to the start of all on-site construction activities for both Phase I and Phase II, shall provide the City Code Enforcement Officer an updated and current construction schedule for all anticipated construction activities, and shall regularly update this schedule to ensure that the Code Enforcement Officer and the City have an accurate understanding of anticipated construction activities.

### **39. Site Maintenance During Project Construction.**

Nordic shall comply with the following standards during project construction to assist in minimizing public nuisances associated with project construction and to maintain the project site in reasonable condition:

- a) Nordic shall be responsible for removing at the end of each construction day any dirt that accumulates at the intersection of Route One and the entrance to the Nordic facility.
- b) Nordic shall ensure that dust created from construction activities shall be controlled and kept to a minimum. Nordic shall accomplish such by using techniques such as but not necessarily limited to the following: watering surface materials, minimizing surface wind speed using windbreaks or source enclosures, placing mulch on disturbed areas as soon as practical, covering trucks while hauling materials, early

- paving of access roads when practicable, early seeding and loaming of disturbed areas when practicable, and placing limitations on the time and location of idling heavy equipment.
- c) Nordic shall obtain a City Demolition Permit for the removal of any existing structures on the property that are proposed to be demolished and shall properly dispose of all materials from any demolition and those associated with preparation of the existing site for construction, including stumps, and shall provide the City information regarding where such materials will be disposed.
  - d) Nordic shall properly dispose of construction debris at an authorized disposal site, and shall provide the City Code Enforcement Officer verification of the disposal site.

**40. Blasting.**

Prior to the start of construction for each phase of construction, Nordic shall submit a final site-specific blasting plan, blast assessment and pre-blast survey to the Code and Planning Department for review and approval by the Code Enforcement Officer. In its submissions, Nordic must also include an assessment of vibration and overpressure in multiple directions from the project site and an assessment of vibration predictions at the Upper Reservoir Dam and the Lower Reservoir Dam, as a result of blasting. Nordic also shall routinely inform area residents of its blasting schedule in advance of blasting activities that are planned for the upcoming week of construction.

**41. Preconstruction Meetings.**

Condition of Approval 25 in the Natural Resources Protection Act/Site Location of Development Act Permit issued by the Department of Environmental Protection, identifies State requirements for Nordic to conduct a pre-construction meeting prior to each phase of the project to discuss, among other topics, the construction schedule, erosion and sedimentation control, and adherence to the conditions of the DEP Order (Permit). The DEP stipulated that this meeting must be attended by the applicant's representative, (DEP) Department staff, the ESC and stormwater design engineers, the contractor(s), and the third-party inspectors for that phase of the project. Nordic shall be responsible for informing the City Code and Planning Department of the dates of any and all preconstruction meetings so that Department staff and City representatives can attend and participate.

Further, Nordic shall regularly engage with appropriate City staff to schedule a monthly construction meeting to discuss upcoming construction activities, particularly those relevant to compliance with City permit requirements. The City Code Enforcement Officer may request more frequent meetings if the CEO deems such meetings appropriate.

**42. Nordic Website Regarding Permit Requirements and Construction Activities.**

Nordic shall maintain a company managed website to benefit the dissemination of information regarding project construction, development and operations. The website, at a minimum, shall include information on the following: plans that depict the facilities that will

be constructed on the site and an overall schedule for the construction of said facilities; current and updated information on upcoming construction activities that will be of interest to the public, such as but not limited to when blasting activities and the construction of the Route One Bypass will occur; and links to state, federal and City websites that an individual can access to find current information on project permits issued to Nordic, and construction and similar reports that have been submitted by Nordic to comply with permit conditions.

**43. As-Builts.**

Nordic, within 90 days of the completion of all Phase I construction activities, and similarly within 90 days of the completion of all Phase II construction activities, shall provide the Code and Planning Department both electronic and printed copies of as-builts for all site improvements. The electronic copies shall be provided in both CAD and PDF formats.

**44. Severability of Permit Requirements.**

The invalidity or unenforceability of any provision, or part thereof, of this Permit shall not affect the remainder of the provision or any other provisions in Permits issued by the Planning Board. This Permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

**45. Board Consideration of Information in Issuance of Permit.**

In granting this permit approval, the Planning Board has relied upon the oral and written representations of Nordic, its agents, experts and officers, including representations on the record and as part of the application process, such as clarifying emails and communications to the Code and Planning Department. Material deviations or violations of the filings and representations may cause the approval to be subject to review by the Planning Board regarding compliance with its findings of fact, conclusions of law and conditions of approval.

**46. City Enforcement of Permit Conditions**

Failure to comply with any Condition of Approval identified in this Permit may result in any or all of the following actions:

- a. Issuance of a Stop Work Order;
- b. Denial or revocation of any Building Permit;
- c. Review, modification or revocation, after hearing, of any permit or approval issued to this project by the Planning Board or Code Enforcement Officer;
- d. A requirement that the Applicant conform with all performance standards and review criteria of all ordinances within the Belfast Code of Ordinances within a definite time period; and/or
- e. Referral to the Belfast Code Enforcement officer, or any State of Maine or Federal permitting agency or enforcement authority.

**47. Grade V Operator Required.**

Nordic shall engage the services of a Grade V Operator (as such is identified by the State of Maine) to operate and manage the on-site Water Treatment facility.