



BOARD ORDER

NORDIC AQUAFARMS, INC) APPLICATIONS FOR AIR EMISSION,
Belfast and Northport) SITE LOCATION OF DEVELOPMENT,
Waldo County, Maine) NATURAL RESOURCES PROTECTION ACT, and
) MAINE POLLUTANT DISCHARGE ELIMINATION
A-1146-71-A-N) SYSTEM/WASTE DISCHARGE LICENSES
L-28319-26-A-N)
L-28319-TG-B-N)
L-28319-4E-C-N) TWENTY-SECOND PROCEDURAL ORDER
L-28319-L6-D-N)
L-28319-TW-E-N)
W-009200-6F-A-N)

The Board of Environmental Protection (Board) held an adjudicatory hearing in Belfast from February 11 through February 14, 2020 on Nordic Aquafarms, Inc.’s (Nordic’s) applications for permits for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport. In accordance with provisions of Chapter 3 § 27(B) of the Department’s *Rules Governing the Conduct of Licensing Hearings*, the Department staff issued draft proposed decision documents for each of Nordic’s applications to the parties and interested persons with opportunity to comment. Comments received on the draft proposed decision documents address, among other topics, the proposed findings and conclusions regarding Nordic’s title, right, or interest (TRI) in portions of the property proposed for development, including the coastal wetland. Recent developments of public record have occurred related to this issue, and the Board intends to take official notice of two recent matters of public record. The following history sets forth the background for this decision by the Board.

1. Chapter 2, § 11(D) of the Department’s *Rule Concerning the Processing of Applications and Other Administrative Matters* specifies means of demonstrating sufficient TRI for the Department to accept an application as complete for processing. An applicant must maintain sufficient TRI throughout the entire application processing period.
2. The Department accepted Nordic’s application as complete for processing on June 13, 2019 based, in part, on evidence of a pending submerged lands lease application. That application was approved by the Bureau of Parks and Lands (BPL) on September 11, 2019. That decision was appealed to Superior Court and subsequently remanded back to BPL due to a change in some aspects of the design of the proposed project in the intertidal area. This resulted in a reversion to a pending application before BPL.
3. On September 4, 2020, BPL issued “Submerged Lands Lease – Final Findings and Decision,” a new decision stating that it will grant a submerged lands lease and submerged lands dredging lease to Nordic Aquafarms after the BPL receives from Nordic a copy of a recorded easement conveying to Nordic rights to the upland including the intertidal land that Nordic proposes to use for the proposed pipes.

4. On October 5, 2020, although not specifically identified as a comment on the draft decision documents, attorney Kim Ervin Tucker, on behalf of Intervenors Jeffrey R. Mabee, Judith B. Grace, and Lobstering Representatives and Interested Person Friends of the Harriet L. Hartley Conservation Area submitted a copy of the cover sheet referencing her clients' Rule 80C petition for review appealing the September 4, 2020 decision by BPL on Nordic's application for a submerged lands lease.

Chapter 3, § 20(C) of the Department's rules authorizes the Board to take official notice of any facts of which judicial notice could be taken, including statutes, regulations, and non-confidential agency records. Parties must be notified of material so noticed and afforded an opportunity to contest the materiality or substance of the matters noticed.

Ruling: Given the length of this application processing proceeding and the requirement that an applicant continue to demonstrate TRI throughout the process, it is appropriate for the Board to take official notice of the recent September 4, 2020 decision by a sister agency, BPL. The Board also takes official notice of the pending 80C appeal of this decision. In taking official notice of these documents, the Board makes no findings regarding the substance of these documents, nor the merits of any findings or allegations in them. The Board takes notice solely of the fact that the BPL decision was issued approving the application and notice of the 80C appeal solely for the fact that it was filed and that the BPL decision has been appealed to Superior Court.

The BPL decision as well as a copy of the Rule 80C complaint challenging that decision (minus the exhibits) will be entered into the record as evidence of the matters noticed.¹ Parties may comment on the Board's decision to take official notice of these documents. Any such comments must be filed by 5:00 p.m. on Friday, October 23, 2020. The Board requests that parties refrain from addressing the merits of BPL's findings and the allegations of the Rule 80C complaint as the Board will not be examining the BPL's decision or the 80C complaint in this proceeding.

DONE AND DATED AT AUGUSTA, MAINE THIS 15th DAY OF OCTOBER, 2020

BOARD OF ENVIRONMENTAL PROTECTION



BY: _____

Robert S. Duchesne, Presiding Office

¹ The Board accepts the 80C complaint into the record but, because the Board will not be examining the merits of the assertions in the complaint, the supporting exhibits are not admitted.