



BOARD ORDER

IN THE MATTER OF

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
	) SYSTEM/WASTE DISCHARGE LICENSES
L-28319-26-A-N	)
L-28319-TG-B-N	)
L-28319-4E-C-N	) FIFTH PROCEDURAL ORDER
L-28319-L6-D-N	)
L-28319-TW-E-N	)
W-009200-6F-A-N	)

The Presiding Officer is in receipt of the “Motion for Inclusion of Conditions in Any Permits Issue[d] to Nordic Aquafarms, Inc.” dated November 8, 2019 (November 8<sup>th</sup> Motion), and the “Notice of NAF’s Lack of Title, Right or Interest, Pursuant to Chapter 2, § 11.D.2 for Failure to have a Complete Submerged Lands Lease Application Pending in the Bureau of Parks and Lands and Motion for Rescission of the Board’s Fourth Procedural Order and Suspension or [Termination] of Board Consideration of NAF’s DEP Permit Applications Until NAF has a Complete Submerged Lands Lease Application Pending in the Bureau” dated November 18, 2019 (November 18<sup>th</sup> Motion), which were submitted on behalf of Intervenors Mabee and Grace and the Lobstering Representatives. This procedural order responds to these motions.

**1. Motion for Inclusion of Conditions**

The November 8<sup>th</sup> Motion for inclusion of conditions is denied as premature. Nordic’s applications are still pending before the Board, and therefore no permits now exist on which conditions may be placed. After a hearing has been held, the parties may suggest in post-hearing briefs or proposed findings any conditions they consider appropriate if the Board decides to approve permits for the proposed project.

**2. Motion for Rescission of Fourth Procedural Order and Suspension or Termination of Board Consideration of Nordic’s Applications**

By letter dated November 22, 2019, Nordic Aquafarms, Inc. (Nordic) responded to the November 18<sup>th</sup> Motion to terminate proceedings.

By electronic mail on November 25, 2019, on behalf of the Bureau of Parks and Lands (Bureau), Assistant Attorney General Lauren Parker clarified the status of Nordic’s request for a submerged lands lease for its proposed project.

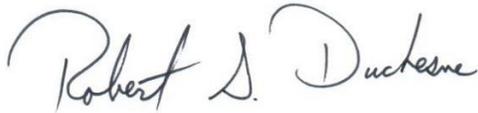
By electronic mail on November 26, 2019, Intervenors Mabee and Grace and the Lobstering Representatives responded to the Bureau's clarification of the status of Nordic's application for a submerged lands lease.

After consideration of the November 18<sup>th</sup> Motion, along with the response from Nordic dated November 22, 2019, the Bureau email dated November 25, 2019, and the Intervenors' email dated November 26, 2019, the motion is denied. To summarize the relevant procedural history, the Bureau conditionally approved a submerged lands lease to Nordic on September 11, 2019, a decision which Jeffrey R. Mabee, Judith B. Grace, the Maine Lobstering Union, Wayne Canning, and David Black, appealed to the Waldo County Superior Court. The Bureau subsequently moved the Superior Court to remand that matter to allow the Bureau to consider changes to the design of the pipeline portion of Nordic's proposed project. The Superior Court has yet to act on the motion to remand.

Contrary to the contentions set forth in the November 18<sup>th</sup> Motion and the Intervenors' email dated November 26, 2019, there has been no change to the applicant's Title, Right, or Interest (TRI) that warrants the rescission of the Fourth Procedural Order or the termination or suspension of these Board proceedings. While the appeal is pending before the Superior Court, the Bureau's approval of Nordic's application for a submerged land lease remains final and in effect. As the Bureau has explained, "[i]f the Court grants the Bureau's motion to remand, the Bureau anticipates that Nordic will modify its application for a submerged lands conveyance to reflect changes to the proposed project." If the matter is remanded to the Bureau, Nordic's application will again be pending. Therefore, absent a withdrawal by Nordic of its application upon remand, it appears that Nordic will maintain, at the very least, a pending application for a submerged lands lease with the Bureau, which is sufficient demonstration of TRI pursuant to Chapter 2, § 11(D)(2) of the Department's rules.

DONE AND DATED AT AUGUSTA, MAINE THIS 26th DAY OF NOVEMBER, 2019.

BOARD OF ENVIRONMENTAL PROTECTION



BY: \_\_\_\_\_  
Robert S. Duchesne, Presiding Officer