

Carol DiBello, Submerged Lands Coordinator
Submerged Lands Program, Bureau of Parks and Lands
Maine Department of Agriculture, Conservation & Forestry
22 State House Station, Augusta, Maine 04333

RE: Submerged Lands Lease Application
Nordic Aquafarms, Inc.

Dear Carol:

This letter conveys "Comment #2" by Upstream Watch and the Maine Lobstering Union concerning the application of Nordic Aquafarm, Inc. for a submerged lands lease in the City of Belfast and Town of Northport, Maine. The Comments' author is Attorney Kim Ervin Tucker. The points below are a summary of what is explained at length in Comment #2.

Comment #2 makes the following points, each with supporting documentation and/or caselaw.

1. Nordic Aquafarms proposes to construct a water treatment and pumping facility on land currently owned by the Belfast Water District on the west side of Route in the southern most extreme of the City of Belfast.
2. Nordic proposes to discharge its wastewater through a 36" pipe in to Penobscot Bay. Nordic proposes to withdraw water from Penobscot Bay in two (2) 30" pipes alongside its discharge pipe.
3. The submerged land under Penobscot Bay, beyond the mean low water line, on which Nordic would place its pipes, is held in a public trust for all the people, for which the State of Maine asserts that it is Trustee. Placement of pipes on the land held in a public trust for the people of the State of Maine requires a lease from the State.
4. The State of Maine designated the Department of Agriculture, Conservation and Forestry (DACF), Bureau of Parks and Lands (BPL) as the State's agent for such leases. BPL has promulgated Rules to define the leasing process.
5. A fundamental rule of that leasing process is the requirement that an applicant demonstrate it has sufficient "title, right, or interest" (TRI) to cross all properties between the applicant and the submerged lands it wishes to lease. If an applicant cannot demonstrate sufficient TRI, its application is insufficient and must be rejected. In this case, Nordic has no interest at all in the intertidal land, so there can be no question about whether the interest is "sufficient". If there is no interest at all, there is no basis for Nordic's application.
6. Nordic has failed to meet its TRI burden, and Nordic cannot meet its TRI burden. Here is why.


- a. Nordic must cross US Route 1 with its pipes from the west side where its treatment plant is proposed, to the east side where Penobscot Bay is found. Nordic does not have permission to cross over, under or across US Route 1.
 - i. For this reason, Nordic has no TRI.
- b. Assuming it can cross US Route 1, Nordic must cross land of Janet and Richard Eckrote. The Eckrotes own land running from US Route 1 to the mean high-water line of Penobscot Bay. See the Eckrote deed – attached. As the deed reveals, the Eckrotes do not own the land between the mean high-water line and the mean low water line. The Eckrotes granted to Nordic an option to purchase an easement over the southern portion of their land, but that proposed easement stops at the mean high-water line. It has to stop there. That is all the Eckrotes own. The Eckrote easement cannot get Nordic to the mean low water line and so Nordic cannot reach the submerged land that the State might lease to it.
 - i. For this reason, Nordic has no TRI.
- c. Nordic recently submitted two writings by which it attempted to show that the Eckrotes wanted to give to Nordic whatever interest they had in and to the intertidal zone between their property and the Bay but, since they don't own any interest in the intertidal land, the writings are meaningless.
 - i. For this reason, Nordic has no TRI.
- d. In addition, the Eckrote land is restricted to residential uses. "The lot or parcel of land herein described is conveyed to Fred R. Poor (predecessor in title to the Eckrotes) with the understanding it is to be used for residential purposes only, that no businesses for profit are to be conducted there unless agreed to by Harriet L. Hartley, her heirs and assigns". Pipes are not residences. You can't live in them.
 - i. For this reason, Nordic has no right to use the Eckrote land for a commercial or industrial pipe.
- e. The easement location on the Eckrote property runs generally along the southerly bound of that parcel. Much of the easement is within 45' of the side line of the property. Construction this close to a property line is prohibited by the zoning rules of the City of Belfast.
 - i. For this reason, Nordic has no right to construct its pipe within the proposed easement.
- f. The Nordic pipeline would be constructed within the proposed easement. The zoning rules of the City of Belfast prohibit the use of any commercial or industrial accessory use in a residential zone. The Eckrote parcel is in a residential zone.
 - i. For this reason, Nordic has no right to use the Eckrote land for a pipeline.
- g. The land in the intertidal zone between the Eckrote land and the Bay is owned by Jeffrey Mabee and Judith Grace. Mr. Mabee and Ms. Grace strongly object to Nordic's attempt

to trespass on their land and will resist any attempt by Nordic or the State of Maine to do so.

- i. For this reason, Nordic has no TRI.
- h. The Mabee/Grace land is subject to a Conservation Easement in favor of Upstream Watch, a non-profit corporation located in Belfast. Upstream Watch has enforcement rights and is authorized to protect the use of the conserved land.
 - i. For this reason, Nordic has no TRI, as required by law.

The point is this: had Nordic submitted any modicum of evidence in the form of a title search (we know that Nordic, through its lawyers, had one performed over a year ago), or surveys (we know that Nordic or its consultants had at least 4 surveys prepared in the last year), BPL would know Nordic has no rights in the critical intertidal land. Title or right or interest is not, nor can it be "Sufficient" if it does not exist. Nordic's application is insufficient as a matter of law. There is no discretion involved.

Best Regards,



David B. Losee