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From: Kim Ervin Tucker <k.ervintucker@gmail.com>
Sent: Wednesday, January 8, 2020 1:01 PM
To: Bertocci, Cynthia S; Bensinger, Peggy
Cc: Barry A. Costa-Pierce; Boak, Scott; Burke, Ruth A; Carrie Byron; Charles Tilburg; David Losee; DEP, Nordic Aqua Farms; Diane Hunt Braybrook; Donald W. Perkins, Jr.; Donna Broderick; Ed Cotter; Eleanor Daniels; Elizabeth M. Ransom; Erik Heim; Jacki Cassida; Jensen, Laura; Joanna B. Tourangeau (JTourangeau@dwmlaw.com); Lawrence Reichard; Marianne Naess; Martin, Kevin; Michael Lannan; Northport Village Corporation; Peter Tischbein; Wayback Farm; Strout Dana; David Losee
Subject: Re: Nordic Aquafarms - Renewed challenge to NAF's TRI
Attachments: 01-02-20 Mabee-JDL.pdf; Martin, Kevin - DEP.PDF

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Dear Ms. Bertocci and MS. Bensinger:

On January 2, 2020, the federal court held a telephonic hearing on an anti-SLAPP special motion to dismiss that the Eckrotes filed challenging our slander of title tort claim against them in the federal action (*Mabee and Grace v. Richard and Janet Eckrote*, Docket No. 1:19-cv-00432-JDL).

At the beginning of the hearing Sarah Gilbert, the Eckrotes' counsel, made a rather extraordinary claim regarding our reference to the March 3, 2019 letter amending the 8-6-2018 NAF-Eckrotes' Easement option agreement as a basis for our slander of title claim(s). She stated that the Eckrotes made "no claim of ownership" of the intertidal land in that March 3, 2019 letter and their 2-28-2019 acknowledgement. Please see the attached transcript at p. 7, lines 4-25 to p. 8, lines 1-2.

As you know, the Bureau of Parks and Lands expressly relied on that March 3, 2019 letter as a basis for determining that NAF had demonstrated "sufficient" TRI to proceed in the submerged lands lease process. However, we had noted to the Bureau, DEP and BEP that this letter never expressly states that the Eckrotes own any portion of the intertidal land on which their lot fronts. Ms. Gilbert has now confirmed that the Eckrotes never have made a claim of ownership of this intertidal land in this March 3, 2019 letter.

While the March 3, 2019 letter disparages my clients' title to the intertidal land on which the Eckrotes' lot fronts making it a proper basis for a slander of title claim, the Eckrotes' counsel has confirmed that this letter does not establish nor "claim" any ownership by the Eckrotes to this intertidal land according to the Eckrotes' counsel (with the Eckrotes on the call). Thus, the Eckrotes' counsel has now confirmed to the federal court, what we previously stated to the Bureau, Board and Department in our opposition filings, that the Eckrotes did not make a claim of ownership of the intertidal land when acknowledging the contents of the March 3 letter from NAF President Erik Heim to the Eckrotes. Thus, it is improper for this letter to be used by the Bureau, Board or Department to find NAF has proved "sufficient TRI" to obtain a submerged lands lease by reference to this March 3, 2019 letter.

Accordingly, it is improper for the Board to continue to rely on this March 3 letter to find sufficient TRI in NAF or to assert that this letter has the legal affect of amending the waterside boundary of the easement option granted on 8-6-2018 (the waterside boundary of which terminates at the Eckrotes' high water mark). As legal authority for this assertion, we note the following precedents of the Maine Supreme Judicial Court: *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 28 ("a grantor may not convey more than what he or she owns"), citing, *Eaton v. Town of Wells*, 2000 ME 176, ¶ 19, 760 A.2d 232. See also, *Dorman v. Bates Mfg. Co.*, 82 Me. 438, 448, 19 A. 915, 916 (Me. 1890) ("One can not convey what he does not own. One can not convey land, nor create an easement in it, unless he owns it.").

We submit the transcript of this federal hearing to the Board (and Department) as part of the NAF permit application record to prove that NAF lacks sufficient TRI to proceed in the Board proceedings at this time. Further consideration of NAF's applications should be suspended for lack of administrative standing by NAF based on this clarifying proof of the Eckrotes intent.

In addition NAF submitted an amendment to the 8-6-2018 easement option on January 7, 2020 to Kevin Martin of DEP, that again defers the closing date for this agreement to June of 2020. This document also states in relevant part as follows:

WHEREAS, as specified in the March 3, 2019 Letter Agreement, any easement rights Seller grants with respect to the intertidal zone and U S Route 1 adjacent to their real property are limited to whatever ownership rights we may have in and to said areas, if any, and no representation or warranty is made as to any such ownership rights;

This statement again clarifies that the Eckrotes have made no claim of ownership in the intertidal land in the March 3, 2019 letter and make no such claims in the 12-23-2019 amendment of the 8-6-2018 Easement P&S Agreement — although they and NAF have disparaged my clients' ownership interests in this land by providing this document to NAF for the purposes of establishing TRI in this land that my clients own by deed and in which the Superior Court for Waldo County quieted title in 1970. We submit that until and unless the Superior Court for Waldo County reverses this prior finding and judgment in the pending Declaratory Judgment action that we filed, and instead finds that the Eckrotes and/or NAF have an ownership interest in the intertidal land on which the Eckrotes' lot fronts (as opposed to my clients), the Board and Department lack jurisdiction to proceed with this lease now based on Ms. Gilbert's clarification of the intent of the March 3, 2019 letter and acknowledgment and the express statements all parties made in the December 23, 2019 amendment to the Easement Option Agreement (also attached below). We also submit the January 7, 2020 letter and the attached 12-23-2019 Easement option amendment in the Board's record for NAF's applications for various permits.

We request that this challenge to the Board's jurisdiction be put on the agenda for the next Board meeting. Thank you for your consideration. Kim Ervin Tucker (P: 202-841-5439)

On Dec 20, 2019, at 4:00 PM, Bertocci, Cynthia S <Cynthia.S.Bertocci@maine.gov> wrote:

Dear Parties and Interested Persons:

The Board of Environmental Protection will be holding a hearing in February 2020 on the applications by Nordic Aquafarms, Inc. for a land-based aquaculture facility in Belfast and Northport. A copy of the hearing notice is attached. The Board is required to publish notice a number of times prior to the hearing. The initial publication will be in the Bangor Daily News, Republican Journal, Camden Herald, and Courier Gazette on Thursday, December 26, 2020. The notice will be published twice more in January 2020.

Cynthia S. Bertocci
Executive Analyst, Board of Environmental Protection
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Phone: (207) 287-2452
Cynthia.s.bertocci@maine.gov

<Nordic - Nordic Hearing Notice.pdf>

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UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JEFFREY R. MABEE and
JUDITH B. GRACE,

CIVIL ACTION

Plaintiffs

Docket No: 1:19-432-JDL

-versus-

JANET ECKROTE and
RICHARD ECKROTE,

Defendants

Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Telephone Hearing** held before **THE HONORABLE JON D. LEVY**, United States District Court Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine, on the 2nd day of January 2020 at 9:58 a.m. as follows:

Appearances:

For the Plaintiffs: Dana F. Strout, Esquire
Kimberly J. Ervin Tucker, Esquire

For the Defendants: Sarah I. Gilbert, Esquire

Lori D. Dunbar, RMR, CRR
Official Court Reporter

(Prepared from manual stenography and
computer aided transcription)

1 (Telephone conference)

2 THE COURT: Good morning, this is Judge Jon Levy,
3 and I want to first make sure that we have people on the phone
4 line. And so starting on plaintiff's side of the case,
5 counsel, would you identify yourselves, please?

6 MR. STROUT: Yes, Dana Strout.

7 MS. TUCKER: Kim Tucker.

8 THE COURT: All right, thank you, Attorneys Strout
9 and Tucker. And do you have any other people who are
10 listening in on the phone call?

11 MR. STROUT: Yes, we have one of our consultants, an
12 individual named Paul Bernacki.

13 THE COURT: All right. And that's it?

14 MR. STROUT: That's it.

15 THE COURT: Thank you. And for the defendants?

16 MS. GILBERT: Good morning, Your Honor, Sarah
17 Gilbert for the Eckrotes, and the Eckrotes are also on the
18 line.

19 THE COURT: Thank you.

20 All right, and so let's formally begin by me identifying
21 the fact that we are having a telephonic hearing on Mabee, et
22 al., versus Eckrote, et al. This is Docket No. 19-CV-432.

23 In this case the Eckrotes have filed a second special
24 motion to dismiss the plaintiff's amended complaint; this is
25 ECF document No. 12. This is a motion that's brought under

1 Maine's anti-SLAPP statute, which is Title 14 Section 556.

2 So I'm going to entertain argument by phone this morning
3 on this case. The statute suggests that cases such as these
4 should receive docket priority where there is an anti-SLAPP
5 assertion made. That's why I scheduled this hearing for this
6 morning by telephone. And I'll hear first from -- Attorney
7 Gilbert, from you in support of the motion that you filed for
8 your clients, the Eckrotes. Please go ahead.

9 MS. GILBERT: Yes, Your Honor. On behalf of the
10 Eckrotes we have filed this special motion to dismiss because
11 the sole basis, as amended by the plaintiffs' complaint for
12 the slander of title action that they have brought before this
13 Court, is an allegation that a March 3rd letter that confirmed
14 terms of an easement option between a nonparty, Nordic
15 Aquafarms, and my clients, the Eckrotes, have somehow
16 slandered the plaintiff's title.

17 I have filed the anti-SLAPP motion to dismiss because
18 that letter was submitted and was always anticipated to be
19 submitted to a legislative body tasked with consideration of
20 various permits that have been filed by the nonparty Nordic
21 Aquafarms. Title 14 Section 556, the anti-SLAPP statute,
22 defines petition activity in an extremely broad fashion. To
23 quote the statute, it includes any activity -- excuse me, any
24 written or oral statement made before or submitted to a
25 legislative body. It also includes any statement reasonably

1 made in connection with an issue under consideration or review
2 by a legislative agency. Because the plaintiffs, having
3 amended their complaint, have limited the basis of their
4 action to this 2019 March 3rd letter, it's clear to
5 defendants, at least, that this lawsuit was meant to
6 intimidate or otherwise hamper the Eckrotes' ability to
7 participate with Nordic in the various permitting procedures
8 to which this March 3rd letter was submitted.

9 The anti-SLAPP statute contains no limitation for any
10 type of language to suggest that the petitioning activity must
11 be linked to the Eckrotes actually obtaining a permit. It is
12 way broader than that and simply states that if the activity
13 that the Eckrotes are engaging in is anticipated to be
14 submitted to a legislative agency for consideration that that
15 is also protected petitioning activity, regardless of whether
16 it's the Eckrotes themselves who are seeking the permit.

17 So that -- and I certainly will rest on my briefing on
18 this issue, but to suggest that the Eckrotes should -- you
19 know, should be -- should not have the protections of the
20 anti-SLAPP statute simply because it is not themselves who are
21 seeking the permit I think would be a very limited and
22 inaccurate reading of Section 556.

23 Now, if the Court finds that the Eckrotes have met their
24 burden in the first instance of showing that their signature
25 on this March 3rd letter submitted to the permitting agency

1 does constitute protected petitioning activity, then, as the
2 Court is aware, the burden is going to then shift to the
3 plaintiff. And they are going to have to show -- let's see,
4 the burden is going to shift to the plaintiff for them to show
5 then that the Eckrotes' exercise of their right to petition
6 was, quote, devoid of any reasonable factual support or any
7 arguable basis in law. So that would be the plaintiffs'
8 burden of proof if the Court agrees with us that this March
9 3rd letter does in fact constitute protected activity. And we
10 submit that the plaintiff cannot meet that burden.

11 As the Court is also aware, there is a pending action in
12 Waldo County Superior Court for quiet title, declaratory
13 judgment, and various other counts that are going to at some
14 point in the future decide who owns the disputed intertidal
15 lands that are also the subject of this lawsuit. The
16 plaintiffs would have to show preliminarily here that the
17 Eckrotes have no basis of success, basically, in that state
18 court action in proving that they are the true owners to the
19 intertidal land. That is a very high burden for the
20 plaintiffs to show here, and we submit that they can't do it.

21 Now, I also -- and I would take direction from the Court
22 on this point, but I have also moved to dismiss for other
23 reasons, specifically a failure to state a claim with regards
24 to our contention that the plaintiff has as a matter of law
25 failed to plead the elements of slander of title in this case,

1 and I'm happy to argue that now or to bifurcate the argument
2 and address that later.

3 THE COURT: So, yeah, let's start there, Attorney
4 Gilbert. As I understand, you've argued that the case should
5 be dismissed also because the complaint is time barred.
6 That's your argument, correct?

7 MS. GILBERT: Yes, Your Honor. In response to the
8 plaintiffs' amended complaint indicating that they were also
9 basing their action on the recording of a 2012 deed, my
10 response to that was that that action, if that were in fact
11 the basis for the action, could not constitute a timely
12 slander of title --

13 THE COURT: Isn't it sufficient that the plaintiffs
14 have responded by pointing out that in fact they don't claim
15 that slander of title occurred back in 2012, it only arose in
16 2019 with the September letter?

17 MS. GILBERT: Yes, Your Honor, so my interpretation
18 of the plaintiffs' response was that they were abandoning as a
19 ground for the action that the recording of the 2012 deed
20 constituted slander of title. Of course, to the extent they
21 have abandoned that basis I would say that would probably take
22 care of the motion.

23 THE COURT: And is your argument that the complaint
24 fails to state a claim tied to your argument about the impact
25 that the Law Court's Almeder decision has on this case?

1 MS. GILBERT: It is, Your Honor, in part. I would
2 like to address the failure to state a claim argument, though,
3 with something a little bit more basic, I think.

4 So if the plaintiffs are arguing that the March 3rd
5 letter, which I believe is identified as Exhibit G in the
6 plaintiffs' filings, if that letter does in fact constitute
7 the basis for the 2019 activity that they believe constitutes
8 slander of title, then I would direct the Court to the actual
9 language in that letter whereby Nordic Aquafarms confirms with
10 the Eckrotes that they intended -- I'll just read from it
11 here. It just says that they intended a broad easement over
12 your property, including any rights you have to U.S. Route 1
13 and the intertidal zone. And then it goes on to say that the
14 easement would address anywhere in those areas where we have
15 rights.

16 That is a clear indication that the ownership of the
17 intertidal land may or may not as contemplated at that time be
18 in dispute. My clients have merely, according to that letter,
19 provided an option for an easement to land that they
20 acknowledge where they have rights. They do not commit to
21 ownership of the intertidal zone in that letter. They
22 certainly do not intend to commit to ownership of the
23 intertidal lands in that letter, and I would submit as a
24 matter of law that if that letter does in fact form the basis
25 of the plaintiffs' action, again, it's an insufficient

1 pleading for purposes of meeting the factors of the slander of
2 title action.

3 THE COURT: Do you think that it's appropriate for
4 me to consider your arguments to dismiss apart from the relief
5 you seek under the anti-SLAPP statute? You're raising
6 traditional 12(b) reasons for possible dismissal of the
7 complaint, and my question to you, is it really procedurally
8 appropriate for me to get into those issues at this point?

9 MS. GILBERT: Well, as the Court noted, having filed
10 a special motion to dismiss, the statute does make clear that
11 it takes priority over any additional motion hearing, it's
12 essentially -- it's supposed to be fast tracked. So -- so to
13 answer the Court's question, no, I believe the Court -- you
14 know, I think the Court should consider the special action --
15 excuse me, special motion to dismiss prior to any additional
16 12(b)(6) motions. But, you know, I did want to raise that as
17 an issue because I think that the Court could for planning
18 purposes dispense with the 12(b)(6) issues as part of the --
19 you know, the outcome of this hearing.

20 THE COURT: All right. Now, I want to take you back
21 to your argument regarding the anti-SLAPP statute argument.
22 And specifically you assert -- I think you mentioned that the
23 easement document, the September 2019 easement letter, was
24 prepared I think you said in anticipation of it being
25 submitted to the government.

1 First of all, with respect to the government, as I
2 understand it from reading the complaint, the agency involved
3 here is the Bureau of Parks and Lands of the Department of
4 Agriculture, Conservation and Forestry. Is that correct?

5 MS. GILBERT: Yes, Your Honor, that's my
6 understanding.

7 THE COURT: And you characterize the September 2019
8 letter as being prepared for purposes of it being submitted to
9 that agency; is that correct?

10 MS. GILBERT: Yes, Your Honor.

11 THE COURT: In your work on this case, do you have
12 any reason to believe there's any factual dispute about that,
13 or is that an uncontested fact?

14 MS. GILBERT: I want to be careful here because I
15 have not been as involved -- I haven't been involved at all,
16 really, in the permitting procedures; and I know that
17 plaintiffs' counsel has, so I'm certain they have more
18 information than I will. But my understanding is that the
19 communication of this letter to those agencies and to the
20 representatives of those agencies as outlined in the e-mails
21 that the plaintiffs themselves have attached to the complaint,
22 that that actual transmission of the March 3rd letter to the
23 agency does in fact form the basis of the plaintiffs' slander
24 of title action. So I think we're all on the same page here
25 that the Eckrotes -- the plaintiffs' complaint is itself based

1 on the fact that the Eckrotes have -- this letter has made its
2 way to the agencies and that plaintiffs complain about that.

3 THE COURT: Right. Now, of course here it would be
4 Nordic Aquafarms, not the Eckrotes, who generated this letter
5 in the first instance for the Eckrotes to sign and then
6 submitted it to the Bureau of Parks and Lands for it to
7 consider. And so the actual party engaged in petitioning
8 activity, directly at least, is Nordic Aquafarms, not the
9 Eckrotes, correct?

10 MS. GILBERT: I would say the person -- the entity
11 seeking the permit is, of course, Nordic; but I would argue
12 that the Eckrotes are engaged in that process when the
13 anti-SLAPP statute is -- you know, in its broad definition it
14 defines what the Eckrotes have done.

15 THE COURT: So you represent the Eckrotes, so can
16 you represent to the Court, then, sort of without reservation
17 that when they signed this letter their testimony, if it
18 was -- if it came to that, would be that it was with the
19 intention and the understanding that it would be submitted to
20 the Bureau of Parks and Lands; is that correct?

21 MS. GILBERT: Yes, Your Honor. I believe the
22 Eckrotes have always understood that the purpose of this
23 easement is in connection with this broad-based salmon farm
24 project and that the nonparty Nordic Aquafarms was to be using
25 this option as some sort of basis for permitting procedures

1 and that they were aware of that when they executed it.

2 THE COURT: Now, you mentioned the separate quiet
3 title action that's pending in the Waldo County Superior
4 Court. Are you participating in that action as an attorney?

5 MS. GILBERT: I have been involved from the outset
6 in that action, Your Honor. It -- it's essentially -- it's
7 not stayed but there has been a gap in time for the Court --
8 for Justice Murray to consider all of the pending motions in
9 that action, but there hasn't been any recent activity, but I
10 have been involved since the outset.

11 THE COURT: That gets to my question. Exactly where
12 procedurally does that case stand? You said the pending
13 motions. What motions are pending before Justice Murray?

14 MS. GILBERT: Yes, Your Honor, there are several, so
15 I'll do my best to be accurate. But of most interest probably
16 to this is that Nordic Aquafarms has similarly filed a special
17 motion to dismiss the plaintiffs' action in state court, also
18 based on an anti-SLAPP basis. That has been briefed
19 extensively at this point and is currently under consideration
20 by Justice Murray.

21 Also pending there are motions for summary judgment
22 related to essentially two issues. One would be ownership of
23 the intertidal land and then the other is related to an
24 interpretation of what's been alleged to be a restricted
25 covenant concerning commercial activity on various parcels of

1 land at issue. Those are also under consideration. And I
2 think there might be other procedural motions that are pending
3 that are probably less significant to the Court that I could
4 list if I pull up my file.

5 THE COURT: All right. Attorney Gilbert, before I
6 turn to the attorneys for the plaintiffs in this case, is
7 there anything else you want to say?

8 MS. GILBERT: No, Your Honor. I'll rest on my
9 briefing, thank you.

10 THE COURT: Thank you, all right. So Attorneys
11 Strout and Tucker, who will be speaking?

12 MS. TUCKER: I will, Your Honor, Kim Tucker.

13 THE COURT: All right, Attorney Tucker, please
14 proceed.

15 MS. TUCKER: Thank you, Your Honor. First, we would
16 take issue with the supposition that the Eckrotes have ever
17 engaged in any petitioning activity. And in addition to the
18 discussion of that in our brief, I'd like to point the Court's
19 attention to Kobrin v. Gastfriend, 443 Mass. 327, 821 N.E.2d
20 60. The Maine Courts have cited this four occasions, that
21 particular decision of the Maine -- of the Massachusetts
22 Supreme Judicial Court, interpreting an almost identical
23 anti-SLAPP special motion to dismiss statute. And in that the
24 Court found that the statute does not apply to a defendant
25 that was not seeking from the Government any form of redress

1 for grievances of their own or otherwise petitioning on their
2 own behalf. And they pointed to the fact that this statute
3 should be narrowly construed to the extent that it's
4 potentially extinguishing the petitioning rights of other
5 litigants and so that there needs to be a balance. You
6 can't -- because you're elevating one party's ability to
7 petition over another's, potentially, so the Court tries to
8 balance those rights. And in that context the Kobrin decision
9 says that the right to petition under the Constitution has to
10 be the basis for the petitioning activity.

11 Here the Eckrotes have never filed anything with anyone
12 for anything of a government entity, not in the local
13 proceedings, not in the state proceedings, not in the federal
14 proceedings. All the Eckrotes have done is entered an
15 easement option agreement that by its own terms terminated the
16 boundaries for placing the pipes across their property at the
17 high-water mark. That was signed in August of 2018. And at
18 that time there was no slander of our clients' title or
19 anything else because there was no claim made to the
20 intertidal land.

21 And on January 7th of 2019 we raised the issue on behalf
22 of our clients, who were at the time members of a group called
23 Upstream Watch and on behalf of Maine Lobstering Union, we
24 raised concerns with the state, both the DEP and the Bureau of
25 Parks and Lands, that Nordic had filed only this easement

1 document in support of its allegation that it had sufficient
2 title, right, or interest to obtain permits.

3 At that time we said that the permits -- the easement
4 agreement they submitted terminated at the high-water mark and
5 therefore did not have sufficient TRIs extending over the
6 intertidals. As has been pointed out by the defendants in
7 this case, at that time our clients didn't know the full
8 extent of their ownership of the intertidal lands, and so at
9 that point there was no dispute as to the ownership. Frankly,
10 we assumed that the Eckrotes owned that intertidal land but
11 that the easement itself was deficient, and that had some
12 impact on the route for the pipelines, whether or not they
13 only had a 25-foot easement across their intertidal land or
14 not.

15 In response to that the Bureau of Parks and Lands on
16 January 18th issued an instruction to Nordic that they had
17 until April 18th to file further proof that they had
18 sufficient TRI across the intertidal land. We frankly assumed
19 at that point that they would just amend the easement
20 agreement and show where in the intertidal land that the
21 Eckrotes had they could put the pipe. That would impact the
22 route for the pipeline.

23 That didn't happen. Instead the March 3rd letter was
24 filed. And the March 3rd letter was not filed in a climate
25 where there was a dispute over ownership, because no one

1 assumed at that point, because the surveys had been withheld
2 from public view, both the 2012 survey, which showed that the
3 Eckrotes' lot terminates along high water, had never been
4 recorded and was not accessible to the public, and the April
5 2018 survey that Nordic had had done, also by Good Deeds, that
6 also showed that the Eckrotes' waterside boundary is along
7 high water. Neither one of those was accessible to us. We
8 didn't know there was a dispute.

9 So our question -- for the first time I'm hearing today
10 the assertion from Ms. Gilbert that that letter doesn't
11 specifically say they owned this and that it was entered in
12 the climate of a dispute. It wasn't. In fact, Ms. Gilbert
13 has filed a newspaper article that Jeffrey Mabee wrote in *The*
14 *Free Press* saying, hey, I didn't know I owned this until I got
15 this from -- in April, and then the lawyers looked at it and
16 said, do you know you own that intertidal land, which is true.
17 That's exactly what happened.

18 When the March 3rd letter came in, it was so strangely
19 worded that I started doing investigation as to did they
20 really own this land because why didn't they just say so in
21 the letter more plainly that they had. And the state accepted
22 that letter to show they owned it. So it has been interpreted
23 as a statement of ownership, and we've attached a copy of the
24 state's opinion saying that they rely on that March 3rd letter
25 in granting the leasehold of the intertidal land.

1 So it's concerning to me that it's sort of a moving
2 target here as to what the March 3rd letter purpose was, but
3 it says plainly in the thread -- and we've attached that
4 thread as Document 15-1 with the Court, the entire thread both
5 from the bureau when they submitted this to interested
6 parties, as well as when it was submitted by the counsel for
7 the Eckrotes and to Nordic. And then when Nordic submitted it
8 not until March 27th, they submitted that to the bureau. But
9 it specifically says the purpose of the March 3rd letter was
10 to amend the easements agreement, not to petition for permits,
11 but to clarify that the easement agreement, which is
12 unreported still, that that easement agreement included all of
13 the intertidal land that the Eckrotes have claimed ownership
14 in.

15 It wasn't until September 9th that there was a more
16 plain statement about what this -- the intent of this letter
17 was, and that was made in the declaratory judgment action.
18 We've amended our complaint to strip that out because the
19 purpose of those letters inform enough. But there has been no
20 petitioning activity by these parties. They haven't filed a
21 scrap of paper anywhere. Anything that's been filed with a
22 State agency was filed by Nordic, and there is no vicarious
23 entitlement under the SLAPP statute, and Kobrin makes that
24 clear.

25 And the Eckrotes, the only thing they stand to gain from

1 the permitting process is to profit from the easement, because
2 the easement option agreement, they only get the funds from
3 that by its own terms if Nordic gets all of its permits. So
4 while they have some vested profit motive there, they are not
5 petitioning the government for redress of anything protected
6 by the Constitution, and it is an abuse of the anti-SLAPP
7 remedy to say that this is covered by that statute. There is
8 nothing in that statute that contemplates this. In fact, if
9 you look at the purpose of the anti-SLAPP statute, it's to
10 address SLAPPs. But what has happened with Nordic and the
11 Eckrotes is they've attempted to weaponize the anti-SLAPP
12 remedy into a SLAPP claim itself. And that's -- our clients
13 have been -- and we frankly think that it's based on a fraud
14 from Nordic to have raised it. We asserted that in the
15 district -- in the superior court. It is not our intent to
16 try to litigate that claim here. We've tried to keep these
17 very separate in an effort to have the substance of who owns
18 this property determined.

19 However, it has already been determined that our clients
20 own this because there's a prior judgment that we've submitted
21 to the Court from June 26, 1970, on the identical property
22 description, already saying that the owners of this property
23 quieting title to this property in the predecessors in
24 interest to Jeffrey Mabee and Judith Grace, and their deed
25 contains the identical property description that was

1 referenced in the quiet title judgment by the superior court
2 in Ferris versus Hargrave.

3 So our position is, but for the fact for some reason the
4 regulatory agencies, City of Belfast, and the State of Maine
5 are ignoring a 49-year-old quiet title judgment, this already
6 has been resolved through all this last year, and we've now
7 had the Eckrotes' surveyor say that they don't own beyond the
8 high-water mark. Nordic's surveyor from the same company say
9 that the Eckrotes don't own beyond the high-water mark.

10 THE COURT: Let me interject here because you're now
11 getting into sort of the merits of the underlying action, and
12 I want to stay focused on the special motion to dismiss.

13 So let's just go back to the fundamental question here,
14 which is whether or not if when the Eckrotes signed the
15 March 3rd letter authored by Nordic Aquafarms they were
16 engaging in activity which is protected by the anti-SLAPP
17 statute. So the anti-SLAPP statute arguably defines
18 petitioning activity broader than the First Amendment of the
19 U.S. Constitution might define it. I'm reading from the
20 statute now. The party's exercise of its right of petition
21 means any written or oral statement made before or submitted
22 to a legislative, executive, or judicial body or any other
23 governmental proceeding. Let me just stop there.

24 This is a written statement, is it not, that was
25 submitted to an executive body? Any -- Attorney Tucker, do

1 you take issue with what I've just said in any way?

2 MS. TUCKER: Only as to who submitted it and the
3 purpose of the document. Our position is that the document
4 was drafted with the intent of amending the easement
5 agreement. It was submitted to a government entity by Nordic
6 and Nordic alone.

7 THE COURT: Okay. So that's -- actually in the end
8 is that sort of the key decision point here, that the -- your
9 view is that, because the Eckrotes can't prove that they
10 submitted the letter, they didn't engage in actual petition;
11 is that your view?

12 MS. TUCKER: That's in part our view, but in
13 addition to that I think the Kobrin decision and another
14 decision that explained Kobrin and the significance of it is
15 Demeuse v. WGME, Inc., that's superior court decision in
16 Maine, which is 2010 Maine Superior Lexis 63 is the citation
17 for that, and it's from May 4th of 2010. The Court describes
18 that you have to be petitioning on your own behalf. It's not
19 sort of the -- you know, you can say that the Eckrotes have a
20 profit motive that they would like to see satisfied, but they
21 certainly don't -- they were not petitioning for a redress of
22 a grievance from the government.

23 THE COURT: Well, the statute doesn't qualify the
24 reason for petitioning activity. It doesn't limit it to a
25 grievance, so I don't see a reason to exclude the profit

1 motive. If in fact a party is petitioning the Government out
2 of a motive of earning a profit, that's not excluded from the
3 coverage of the statute; is it?

4 MS. TUCKER: I think it is, Your Honor, and I
5 certainly think that it is qualified that it's not being done
6 on the Eckrotes' behalf. The petitioning -- the redress
7 that's being requested, in this case a permit, is not
8 something that would be issued to the Eckrotes.

9 THE COURT: But that's a --

10 MS. TUCKER: It's no different than if -- they would
11 be standing on no different grounds than one of the
12 contractors for Nordic.

13 THE COURT: Okay. But I'm trying to drill down on
14 your argument, and I don't see a basis in the language of the
15 statute to say that the statute doesn't apply because the
16 Eckrotes were motivated by profit. Is there anything else you
17 want to say on that point? I just don't see that in the
18 statute.

19 MS. TUCKER: I don't want to focus on a profit
20 motive, Your Honor. It's just that they are not -- they are
21 not filing documents on their own behalf.

22 THE COURT: Okay.

23 MS. TUCKER: And any petitioning activity was done
24 by Nordic for Nordic, whether or not the Eckrotes had -- knew
25 that that document was also going to be filed for the purpose

1 of the attempting to get those permits by Nordic. They did
2 not petition government themselves and they did not petition
3 the government on their own behalf. Both of those things
4 under the Kobrin decision and the Maine cases that cite Kobrin
5 rejects that as a basis for being protected under -- reject
6 that as protected petitioning activity.

7 THE COURT: Attorney Gilbert indicated that her
8 client doesn't believe that there's a factual dispute as to
9 the Eckrotes' intention or understanding when they signed this
10 letter. And that -- that is that it was their understanding
11 that it -- it would be submitted by Nordic Aquafarms to the
12 government support of Nordic Aquafarms' efforts to gain
13 permissions to do whatever it wants to do.

14 So I want to ask you that very question. Is there any
15 factual dispute here as to the fact that when the Eckrotes
16 signed this letter they understood that it was going to be
17 used in connection with the Nordic Aquafarms' application for
18 permissions?

19 MS. TUCKER: I have to say, Your Honor, that the
20 revisionist history that we're hearing for the first time
21 today, because this document and the thread of e-mails
22 accompanying it says that it is intended to amend the easement
23 agreement. It doesn't have any statement that it consented
24 for petitioning. Clearly it was necessitated by the fact that
25 the original easement agreement did not grant title, right, or

1 interest.

2 THE COURT: Okay.

3 MS. TUCKER: But I -- I would have to say that this
4 is the first time we're hearing this.

5 THE COURT: All right. Let me -- Attorney Tucker,
6 let me interject. Just for purposes of having to rule on this
7 motion, I need to know whether there's a factual dispute as to
8 whether the Eckrotes understood and part of their purpose in
9 signing this letter was to assist Nordic Aquafarms in getting
10 its permit. If that's a factual dispute, you know, it might
11 be that some discovery is needed in this case. But if it's
12 not a factual dispute then of course there wouldn't be the
13 need for discovery.

14 So apart from the -- what the documents reflect, the
15 chain of documents that preceded this letter, apart from that,
16 does your client dispute that the Eckrotes understood by
17 signing this letter that it was going to be used by Nordic
18 Aquafarms in its pursuit of a permit?

19 MS. TUCKER: We do dispute that that -- well, I
20 don't know whether we dispute it or don't dispute it. I would
21 say it is a disputed fact because it's the first time we've
22 heard this assertion was today, and there's been no
23 opportunity -- there's been no statements or affidavit ever
24 filed in either this declaratory judgment case or this when
25 the Eckrotes have attempted to assert an anti-SLAPP special

1 motion to dismiss. They have never made this assertion
2 before.

3 THE COURT: Okay. If I were to conclude that it's
4 necessary for the parties to conduct discovery on this issue,
5 what discovery would you need on that question?

6 MS. TUCKER: Depositions of the Eckrotes, as well as
7 depositions of -- a deposition of Gusta Ronson, the surveyor
8 that did the 2012 survey.

9 THE COURT: Why would you need the deposition of the
10 2012 survey? Aren't we just focused on -- and I'm trying to
11 focus on, let me put it that way -- whether there's a dispute
12 of fact as to the Eckrotes' purpose in signing the 2019
13 letter?

14 MS. TUCKER: What Ms. Gilbert said for the first
15 time today was is at the time they did that March 3rd letter
16 and what necessitated it was that at that time there was a
17 dispute regarding the ownership of the intertidal land. There
18 was not at that time. And in fact there was no one making a
19 claim that the Eckrotes didn't own it at that time because no
20 one was aware that that was the case. And so it's our belief
21 that the Eckrotes have known since at least August of 2012
22 that they do not own that intertidal land.

23 THE COURT: But that's a separate question from the
24 factual question of whether when they signed the letter they
25 understood it was going to be used by Nordic Aquafarms as part

1 of its effort to obtain permits. That's what I'm trying to
2 isolate as a factual question right now. So why would you
3 need to get into the 2012 survey on that question?

4 MS. TUCKER: Because if the Court were to determine
5 that they had engaged in petitioning activity, then we're
6 entitled to specify discovery, we may as well deal with that
7 question right now, we're entitled to specify discovery to
8 demonstrate that there's no basis in fact or law for the
9 petitioning activity they're engaging in. Because there is no
10 anti-SLAPP protection for making a claim against somebody
11 else's land to put a permit on it.

12 THE COURT: Right.

13 MS. TUCKER: Which is what we're asserting is
14 happening here.

15 THE COURT: Okay.

16 MS. TUCKER: And so we have already asked for
17 specified discovery of Ms. Ronson because she has previously
18 given us a draft of an affidavit, but Ms. Gilbert called her
19 and told her she was not allowed to sign that affidavit and --
20 or assist us in saying what her interpretation of the boundary
21 is and what she had advised the Eckrotes the boundary was and
22 when she advised them of it.

23 So we have been prevented up to this point -- and that's
24 one of the pending motions in front of Judge Murray related to
25 the anti-SLAPP special motion to dismiss that Nordic filed and

1 then the Eckrotes joined in in the declaratory judgment action
2 is a request for specified discovery. The Court has not said
3 whether or not they've even engaged in petitioning activity at
4 this point, but we had filed a request after a status
5 conference on -- we felt that we needed to specify discovery
6 of Ms. Ronson. And probably we would also need specified
7 discovery of Lee Woodward, who drafted the original 2012 deed,
8 as well as the easement agreement in 2018, which ended at the
9 high-water mark, and then participated, according to this
10 thread, in the March 3rd letter. So clearly we're going to
11 have to take his deposition as well.

12 THE COURT: Okay. Attorney Tucker, anything else?

13 MS. TUCKER: One other aspect, Your Honor, I just
14 wanted to raise on the issue of what the high-water mark is.
15 There has been a lot of discussion about the fact that the
16 high-water mark or the -- they called water in the 1946 deed
17 because it says along high-water mark of Penobscot Bay that
18 the reference to Penobscot Bay makes it a call to water. And
19 if it would be helpful to the Court we have some additional
20 case citations that make it clear that the reference to high
21 water is a monument. The high water itself is a -- high-water
22 mark is a monument limiting the Eckrotes' property boundary to
23 the high-water mark.

24 THE COURT: What are those citations?

25 MS. TUCKER: Excuse me?

1 THE COURT: What are the citations?

2 MS. TUCKER: Hold on, let me pull them up for you.

3 THE COURT: Attorney Tucker, maybe the best way to
4 proceed is I'll permit both sides after this hearing to submit
5 by e-mail submission to the Court. Actually I'm looking at
6 Amy Rydzewski, the case manager. What is the best way for us
7 to receive from the lawyers any further case cites they want
8 to provide us?

9 THE CLERK: The clerk's office always prefers things
10 to be on the docket.

11 THE COURT: Okay. So I'm going to authorize both
12 sides to submit just written submissions, it can be nothing
13 more than a single page, with any additional case citations
14 that you want to bring to the Court's attention.

15 MS. TUCKER: Thank you, Your Honor.

16 THE COURT: All right, thank you.

17 All right, Attorney Gilbert, tell me why you disagree
18 with Attorney Tucker that on these facts the Eckrotes might
19 have had in their mind that Nordic Aquafarms was going to use
20 the letter as part of its petitioning activity but what the
21 Eckrotes were doing was just working with another private
22 party spelling out the terms of an easement agreement from
23 which they were going to profit.

24 MS. GILBERT: Yes, Your Honor, and to highlight the
25 answer to that question I need only turn to the plaintiff's

1 amended complaint itself, specifically Paragraph 40, in which
2 case the plaintiffs allege specifically that according to the
3 e-mail thread submitted to the DRO with the March 3rd letter
4 as drafted by NAF counsel and the Eckrotes' counsel with the
5 intent of demonstrating that NAF has sufficient title, right,
6 and interest from the Eckrotes granting of an option for an
7 easement. So I think if the Court takes a close look at the
8 amended complaint and the factual assertions which are being
9 submitted, at least regular motions to dismiss, 12(b)(6)
10 motions, I think that the plaintiffs have in fact admitted
11 that the basis for their actions is precisely the intention of
12 the Eckrotes submitting this document to the agency -- to the
13 bureau, rather, in order to assist Nordic in obtaining a
14 permit.

15 If the Court looks for specific language to further
16 corroborate that, the Court will note in the amended complaint
17 that the plaintiffs have alleged that the Eckrotes have,
18 quote, aided and abetted Nordic, I think that term is used at
19 least once in the amended complaint, if not more than once;
20 and that the full basis -- excuse me, the true basis, I should
21 say, for the -- for this action in federal court is their
22 grievance with the fact that the Eckrotes assisted Nordic in
23 obtaining the permit. That assistance in obtaining permits or
24 participating in protected petitioning activity is precisely
25 the type of activity that's broadly defined in the statute.

1 And I think that the Court, based on the pleadings, can find
2 the answer to your questions. But no, the Eckrotes' intention
3 as to the drafting of -- excuse me, the execution of the
4 March 3rd letter that it's not disputed, I think either party
5 at this point, that that intention was to assist Nordic with
6 the permitting process.

7 THE COURT: And so as I understand your argument,
8 although I think I hear you acknowledging that the Eckrotes
9 did not personally submit anything to any governmental agency,
10 your argument is under the statute it's enough that they knew
11 that Nordic Aquafarms would be submitting these documents --
12 this document to a governmental agency. That's your point?

13 MS. GILBERT: Yes, Your Honor, and I would simply
14 add to that as well that, in addition to whatever perceived
15 profit motive the plaintiffs are alleging here, that this is
16 also more fundamental. The outcome of the permitting
17 procedures are going to dictate what happens to my clients'
18 property, and they obviously have an interest in the
19 administrative proceeding, they obviously have an interest in
20 what happens to their land. So it's a lot more fundamental
21 than simply obtaining funds for an easement or something of
22 that nature. This is going to outcome of the administrative
23 agency decision, in which they are participating to this
24 letter, will dictate the outcome of their land use. So it's a
25 bit more fundamental.

1 THE COURT: All right, counsel, I want to thank you
2 all for your assistance, for your argument this morning. I'm
3 going to ask that you submit any additional case citations by
4 the end of the day today, let's say by 4:00 p.m. today. I'll
5 take this under advisement. Given the fact that it's a motion
6 to dismiss under the anti-SLAPP statute, I will do everything
7 I can to enter a decision quickly in this matter. So thank
8 you for your participation today, and with that we'll conclude
9 our hearing.

10 MS. TUCKER: Thank you, Your Honor.

11 MS. GILBERT: Thank you, Your Honor.

12 (Time noted: 10:41 a.m.)

13

14 C E R T I F I C A T I O N

15 I, Lori D. Dunbar, Registered Merit Reporter, Certified
16 Realtime Reporter, and Official Court Reporter for the United
17 States District Court, District of Maine, certify that the
18 foregoing is a correct transcript from the record of
19 proceedings in the above-entitled matter.

20 Dated: January 7, 2020

21 /s/ Lori D. Dunbar

22 Official Court Reporter

23

24

25

January 7, 2020

By Electronic Mail Only

Kevin Martin, Esq.
Commissioner's Office
Department of Environmental Protection
17 State House Station
28 Tyson Drive
Augusta, ME 04333

RE: Extension of Nordic Aquafarms Inc. Land Agreements

Attorney Martin:

Enclosed please find the following extensions of the land agreements for the properties which are the subject of the Nordic Aquafarms, Inc. applications to the Department of Environmental Protection currently being considered by the Board of Environmental Protection for multi-media permit approvals (Air, MEPDES/WDL, NRPA, and SLODA).

1. Notice of Extension to July 31, 2020 of Belfast Water District and City of Belfast Agreement;
2. Extension to June, 2021 of Eckrote Agreement;
3. Extension to December, 2020 of Goldenrod Properties Agreement;
4. Extension tied to permitting for Cassida Agreement.

Please don't hesitate to let me know if you have questions.

Sincerely,



Joanna B. Tourangeau

cc: Nordic Service List



December 13, 2019

BY FEDERAL EXPRESS

Belfast Water District
285 Northport Avenue
Belfast, ME 04915

Re: Extension of Option and Evaluation Periods

Dear Sir or Madam,

Reference is hereby made to (i) that certain Options and Purchase Agreement (the "O&P Agreement") dated January 30, 2019 between the Belfast Water District (the "BWD"), the City of Belfast (the "City") and Nordic Aquafarms, Inc ("NAF"); and (ii) that certain Evaluation Agreement (the "Evaluation Agreement") dated January 30, 2018 between the BWD, the City and NAF, and each concerning certain land owned by the BWD adjacent to the Northport Avenue in Belfast, Maine; and as amended in the Amendment to Evaluation Agreement and Options and Purchase Agreement on April 15, 2019.

NAF wishes to exercise its 2nd right to extend the term of the Premises Option for an additional six (6) months. For the period ending July 30, 2020.

In consideration of the option, payment of FIFTEEN THOUSAND DOLLARS AND 00/100 (\$15,000) is made in accordance with paragraph 1 of the Amendment of Evaluation Agreement and O&P Agreement.

Please contact me if you have any questions.

Sincerely,

Erik Heim, President
Nordic Aquafarms, Inc

By Federal Express:
City of Belfast
131 Church St
Belfast, ME 04915

By Email and Federal Express:
Kelly & Associates, LLC
96 High Street
Belfast, ME 04915
Attn: William Kelly, Esq.
Email: bkelly11@bluestreakme.com

**AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This Amendment to Purchase and Sale Agreement (this “Agreement”) is made this 20th day of December 23, 2019 (the “Effective Date”) by and among **Richard and Janet Eckrote**, individuals with a mailing address of [REDACTED] (“Seller”), and **Nordic Aquafarms, Inc.** a Delaware corporation having an address of c/o Nordic Aquafarms, 511 Congress Street, Portland, Maine 04101, or its assignee (“Buyer”);

WHEREAS, the Buyer and Seller are parties to that certain purchase and sale agreement dated August 6, 2018 (the “Original P&S”), as modified by a letter agreement dated March 3, 2019 (the “Letter Agreement” and, collectively with the Original P&S and this Agreement, the “P&S”) pursuant to which the Buyer has agreed to buy from Seller and the Seller has agreed to sell to Buyer a subsurface easement on certain real property located in Belfast, Maine, as more fully described in the said Original P&S and Letter Agreement; and

WHEREAS, as specified in the March 3, 2019 Letter Agreement, any easement rights Seller grants with respect to the intertidal zone and U S Route 1 adjacent to their real property are limited to whatever ownership rights we may have in and to said areas, if any, and no representation or warranty is made as to any such ownership rights;

WHEREAS, Buyer is pursuing permits and approvals from the City of Belfast and State of Maine, including where applicable its agencies, and the acquisition of real property in connection therewith, for the purpose of permitting, constructing and operating an aquafarm in the City of Belfast, Maine (the “Project”); and

WHEREAS, Buyer and Seller have agreed to extend certain dates described in the P&S to allow the Buyer additional time to obtain the permits described above.

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and the mutual covenants contained herein, the parties agree that P&S shall be and it hereby is amended as follows:

Section 1 of the Original P&S is amended to add the following subsection aa., between subsection a. and subsection b.:

- aa. A second deposit in the amount of [REDACTED] shall be paid by Buyer as security for Buyer’s performance hereunder (together with all interest thereon the “**Second Deposit**”) within three (3) business days after the full execution of this Agreement to the Escrow Agent, who shall deposit it in a federally insured interest-bearing money market account and disburse it according to the terms of this Agreement. The Second Deposit shall be non-refundable to Buyer, except in

the event of Seller's default hereunder, and shall be applied in reduction of the Purchase Price payable at the Closing or as otherwise provided in the P&S. (subject to the terms and conditions in this Agreement) as of the date of this Agreement (the "Second Deposit"). This Second Deposit will be applied to the Purchase Price at the Closing.

Subsection b. under section 1 is hereby amended to replace [REDACTED] with [REDACTED]

Section 1 of the Original P&S is amended to add the following subsection d.:

In addition to the foregoing consideration, Buyer shall be responsible to reimburse the Seller for all real property taxes paid to the City of Belfast for the period of time beginning on the date of the Original P&S, prorated for any payment which covers a period of time prior to the execution of the Original P&S. The payment of taxes for the period of August 6, 2018 through the date of this Agreement shall be made within three days following the execution of this Agreement and continuing on the City of Belfast tax payment schedule until the Closing.

Section 2 of the Original P&S is hereby replaced, in its entirety, with the following:

2. TIME FOR PERFORMANCE; DELIVERY OF EASEMENT DEED. The Closing shall occur at such time (during normal business hours) and on such a business day (the "Closing Date") selected by Buyer by written notice given at least thirty (30) business days prior thereto (the "Closing Notice") at the offices of Drummond Woodsum in Portland, Maine or Buyer's preferred location, upon the sooner of June 30, 2021 or within thirty (30) days following the final, unappealable issuance of permits and approvals allowing the commencement and completion of the Project, including but not limited to permits and approvals issued by or under the Maine Site Location of Development Act, Air Emissions, Wastewater Discharge (MEPDES), Army Corps of Engineers, National Resources Protection Act and the City of Belfast, Maine and resolution of any litigation involving the issuance of such approvals allowing the commencement of the Project.

Buyer and Seller hereby agree that the following language shall be and hereby is added to the defined term "Easement":

The term "Easement" for the purposes hereof, shall mean a perpetual subsurface easement for the purpose of maintaining, owning and operating water pipes and related equipment, including in connection therewith installation of culverts, pipes, gaskets, pumps, valves and other equipment, together with an easement for the purpose of constructing, grading, excavating, and performing earth work as may be necessary to construct, install and maintain such culverts, pipes, gaskets, pumps, valves and other equipment as required or contemplated by

any approvals issued by any municipal, state or federal authorities for the installation and maintenance thereof.

Buyer and Seller hereby agree to replace the third sentence of section 13 of the Original P&S with the following:

A copy of any notice to Buyer shall also be simultaneously sent to Drummond Woodsum, 84 Marginal Way, Suite 600, Portland, ME 04101, Attention: Joanna B. Tourangeau, Esq.

This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. No party shall have the right to assign this Agreement without the prior consent of the other party, except that Buyer may assign this Agreement to any entity in which Buyer owns a majority of the equity interests without Seller's consent.

This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

Unless otherwise expressly provided, whenever a provision of this Agreement refers to a matter being satisfactory, it shall mean satisfactory in such party's sole discretion.

This Agreement may be executed in one or more counterparts, all of which shall collectively constitute a single instrument.

Disclosure. Except as and to the extent required by law, without the prior written consent of the other party, neither the Buyer nor the Seller shall nor shall either instruct its brokers, representatives or employees to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, a transaction between the parties, or any of the terms, conditions or other aspects of the transactions proposed in this Agreement except that the Buyer and its representatives are hereby authorized to disclose any aspect of this transaction in connection with the conduct of its pursuit of permits and due diligence.

Confidentiality. Except as and to the extent required by law, the Seller will not disclose or use, and it shall cause its representatives not to disclose or use any Confidential Information with respect to the Buyer furnished, or to be furnished, by the Buyer in connection herewith at any time or in any manner except in connection with the transaction discussed in this Agreement or in furtherance of its due diligence review or efforts to secure financing for this transaction. For purposes of this letter of intent, "Confidential Information" means any information concerning the Buyer's identity, assets, or the Premises; provided that it does not include information that the Seller can demonstrate (i) is generally available to or known by the public other than as a result of improper disclosure by the Seller or (ii) is obtained by the Seller from a source other than the Buyer or its representatives, provided that such source was not bound by a duty of confidentiality to the Buyer with respect to such information.

This Agreement is an amendment to the P&S, the terms and conditions of which, except as modified hereby, remain in full force and effect.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:

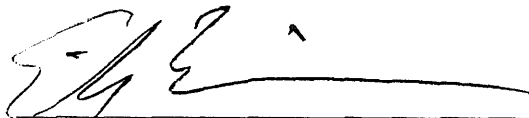
SELLER:

Name: Richard Eckrote

Name: Janet Eckrote

BUYER:
NORDIC AQUAFARMS, INC.

By:



Name: Erik Heim
Title: President

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:

SELLER:

[Handwritten Signature] 12/24/19

Name: Richard Eckrote

[Handwritten Signature]

Name: Janet Eckrote

BUYER:
NORDIC AQUAFARMS, INC.

By:

Name: Erik Heim
Title: President

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

This Second Amendment to Purchase and Sale Agreement (this "Agreement") is made this 5th day of December, 2019 (the "Effective Date") by and among **Goldenrod Properties, LLC**, a Maine limited liability company with a mailing address of P.O. Box 345, Belfast, ME 04915 ("Seller"), and **Nordic Aquafarms, Inc.** a Delaware corporation having an address of c/o Nordic Aquafarms, 511 Congress Street, Portland, Maine 04101, or its assignee ("Buyer");

WHEREAS, the Buyer and Seller are parties to that certain purchase and sale agreement dated August 22, 2018, which was amended in March of 2019 (the "Original P&S" and, as amended and together with this Agreement, the "P&S") pursuant to which the Buyer has agreed to buy and lease from Seller and the Seller has agreed to sell and lease to Buyer certain real property located in Belfast, Maine, as more fully described in the said P&S; and

WHEREAS, Buyer is pursuing permits and approvals from the City of Belfast and State of Maine, including where applicable its agencies, and the acquisition of real property in connection therewith, for the purpose of permitting, constructing and operating an aquafarm in the City of Belfast, Maine (the "Project"); and

WHEREAS, Buyer and Seller have agreed to extend certain dates described in the P&S to allow the Buyer additional time to obtain the permits described above.

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and the mutual covenants contained herein, the parties agree that the P&S shall be, and it hereby is, amended as follows:

Section 2 of the P&S is hereby replaced, in its entirety, with the following:

2. TITLE; DEED. The Fee Interest will be conveyed at the closing of the transactions contemplated by this Agreement (the "Closing") by a good and sufficient quitclaim deed with covenant running to Buyer and the deed shall convey good and marketable title to the land described therein, free from encumbrances and liens of any type whatsoever, except those encumbrances and liens that are satisfactory to Buyer in accordance with Section 5(C) below. Upon execution of this amendment, Buyer will pay to Seller [REDACTED] which shall not be credited toward the Purchase Price and shall be considered solely the consideration for the Seller's execution of this Agreement. [The remaining language from the Original P&S regarding the Construction Lease is intentionally omitted as no longer applicable.]

Section 3 of the P&S is hereby replaced, in its entirety, with the following:

3. PURCHASE PRICE; DEPOSIT; ESCROW AGENT.

A. Purchase Price. The agreed purchase price for the Fee Interest is [REDACTED] (the "Purchase Price") payable as follows (subject to the prorations and other adjustments provided in this Agreement):

- i. A deposit in the amount of [REDACTED] shall be paid by Buyer on the date hereof as a non-refundable deposit and shall effectively act as an option fee (the "Initial Deposit"). This Initial Deposit will be applied to the Purchase Price at the Closing; and
- ii. A deposit in the amount of [REDACTED] shall be paid by Buyer as a non-refundable deposit (subject to the terms and conditions in this Agreement) on or before June 30, 2020 (the "Second Deposit"). This Second Deposit will be applied to the Purchase Price at the Closing; and; and
- iii. [REDACTED] shall be paid by Buyer to Seller at the Closing by immediately available funds.

The Buyer and Seller further agree that section 4 of the Original P&S shall be and it hereby is replaced, in its entirety, with the following:

4. TIME FOR PERFORMANCE; DELIVERY OF DEED. The Closing shall occur at such time (during normal business hours) and on such a business day (the "Closing Date") selected by Buyer by written notice given at least thirty (30) business days prior thereto (the "Closing Notice") at the offices of Drummond Woodsum in Portland, Maine or Buyer's preferred location, but in no event shall the Closing shall take place later than December 31, 2020 (the "Outside Closing Date").

The Buyer and Seller further agree that section 6.B. of the Original P&S shall be and it hereby is replaced, in its entirety, with the following:

B. Deed. Seller shall execute, acknowledge and deliver to Buyer the deed as provided herein;

This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. No party shall have the right to assign this Agreement without the prior consent of the other party, except that Buyer may assign this Agreement to any entity in which Buyer owns a majority of the equity interests without Seller's consent.

This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

Unless otherwise expressly provided, whenever a provision of this Agreement refers to a matter being satisfactory, it shall mean satisfactory in such party's sole discretion.

This Agreement may be executed in one or more counterparts, all of which shall collectively constitute a single instrument.

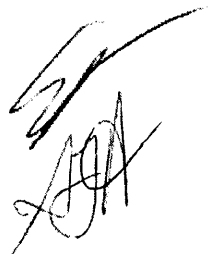
Any dates in this Agreement may be extended, at Buyer's option, in the event of any governmental action, including, without limitation, a moratorium on development, imposed, declared or otherwise instituted by a municipality or any other similar governmental authority for a number of days equal to the days such moratorium or similar government action is pending.

Disclosure. Except as and to the extent required by law, without the prior written consent of the other party, neither the Buyer nor the Seller nor its brokers, representatives or employees, and each shall instruct its representatives not to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, a transaction between the parties, or any of the terms, conditions or other aspects of the transactions proposed in this letter of intent, except that the Buyer and its representatives are hereby authorized to disclose any aspect of this transaction in connection with the conduct of its due diligence.

Confidentiality. Except as and to the extent required by law, the Seller will not disclose or use, and it shall cause its representatives not to disclose or use and Confidential Information with respect to the Buyer furnished, or to be furnished, by the Buyer in connection herewith at any time or in any manner except in connection with the transaction discussed in this letter of intent or in furtherance of its due diligence review or efforts to secure financing for this transaction. For purposes of this letter of intent, "Confidential Information" means any information concerning the Buyer's identity, assets, or the Property; provided that it does not include information that the Seller can demonstrate (i) is generally available to or known by the public other than as a result of improper disclosure by the Seller or (ii) is obtained by the Seller from a source other than the Buyer or its representatives, provided that such source was not bound by a duty of confidentiality to the Buyer with respect to such information.

This Agreement is an amendment to the P&S, the terms and conditions of which, except as modified hereby, remain in full force and effect.


[SIGNATURE PAGE FOLLOWS]

A handwritten signature in black ink, appearing to be 'J. J. J.', is located in the bottom right corner of the page.

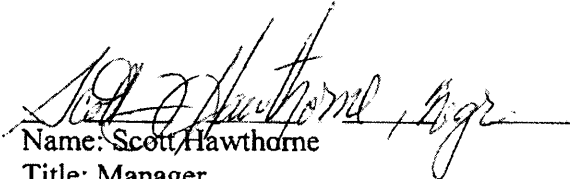
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:

SELLER:
GOLDENROD PROPERTIES, LLC



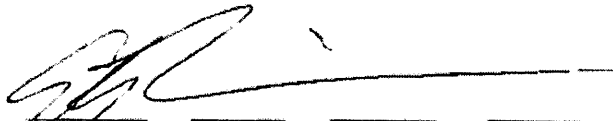
Edward Cotto, SVP

By: 

Name: Scott Hawthorne
Title: Manager

BUYER:
NORDIC AQUAFARMS, INC.



By: 

Name: Erik Heim
Title: President

**SECOND AMENDMENT TO
LEASE AGREEMENT**

This Second Amendment to Lease (this "Agreement") is made this ^{December} ~~November~~ 4 day of November, 2019 (the "Effective Date") by and among **Samuel E. Cassida**, an individual resident of the State of Maine, having an address of 271 Northport Avenue, Belfast, Maine 04915 ("Landlord"), and **Nordic Aquafarms, Inc.** a Delaware corporation having an address of c/o Nordic Aquafarms 511 Congress Street, Portland, ME, 04101, or its assignee ("Tenant");

WHEREAS, the Tenant and Landlord are parties to that certain Lease agreement dated January 29, 2018 (the "Original Lease"), as affected by an Amendment to Lease Agreement dated March 11, 2019 (the "First Amendment" and, collectively with the Original Lease and this Agreement, the "Lease") pursuant to which the Tenant was granted a lease together with a purchase option to buy from Landlord and the Landlord agreed to lease and sell (in the event such option to do so is exercised by Tenant) certain real property located in Belfast, Maine, as more fully described in the said Original Lease; and

WHEREAS, Tenant is pursuing permits and approvals from the City of Belfast and State of Maine, including where applicable its agencies, and the lease, acquisition, and development of real property in connection therewith, for the purpose of permitting, constructing and operating an aquafarm in the City of Belfast, Maine (the "Project"); and

WHEREAS, Tenant and Landlord have agreed to make certain payments, amend certain terms and extend certain dates described in the Original Lease and the First Amendment to allow the Tenant additional time to obtain the permits described above.

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and the mutual covenants contained herein, the parties agree that the following language be, and it hereby is, added to the end of Section 3.3:

Notwithstanding and without limiting the generality of the foregoing, the Landlord acknowledges and agrees that it shall join in, execute and consent to recording of covenants, conditions and restrictions on the use of such portions of Landlord's land which is not specifically part of the Leased Premises but which abuts the stream flowing from the Leased Premises onto Landlord's land as may be required by the Maine Department of Environmental Protection or other permitting authority as a condition of the approval of the Project.

Additionally, the parties agree that the following sentence shall be added to section 4.1 of the Original P&S following the first sentence thereof:

Tenant shall pay to Landlord, in connection with and in consideration of the increase in the Term provided below in this Agreement, an amount equal to [REDACTED] (referred to herein as the "Advance Payment") which payment shall be made within seven (7) days following the execution of this Agreement. Landlord and Tenant each agree that

the Advance Payment shall constitute payment of [REDACTED] as defined in the Lease. In the event that the Tenant exercises the Purchase Option described in Article Fourteen of the Original Lease, the Advance Payment shall be credited against the purchase price.

Additionally, the parties agree that the language of Section 14.1 in the Original Lease shall be amended to replace the reference to [REDACTED] with "[REDACTED]", it being the intent of the Landlord and Tenant that the Advance Payment contemplated by this Agreement shall be credited against the purchase price in the event that Tenant exercises the Purchase Option.

Additionally, the parties agree that the first sentence of section 3.1 of Rider A to the Original Lease shall be and it hereby is replaced, in its entirety, with the following:

Section 3.1 For the period beginning upon expiration of the Diligence Period and ending upon receipt of the Governmental Approvals, unless further extended by Tenant as herein after provided or until the Lease is earlier terminated (as may be extended or earlier terminated, the "Permitting Period"), Tenant shall diligently pursue all final, unappealable Governmental Approvals from any Governmental Authorities necessary or desirable for the development and operation of the Project.

This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. No party shall have the right to assign this Agreement without the prior consent of the other party, except that Tenant may assign this Agreement to any entity in which Tenant owns a majority of the equity interests without Landlord's consent.

This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

Unless otherwise expressly provided, whenever a provision of this Agreement refers to a matter being satisfactory, it shall mean satisfactory in such party's sole discretion.

This Agreement may be executed in one or more counterparts, all of which shall collectively constitute a single instrument.

Any dates in this Agreement may be extended, at Tenant's option, in the event of any governmental action, including, without limitation, a moratorium on development, imposed, declared or otherwise instituted by a municipality or any other similar governmental authority for a number of days equal to the days such moratorium or similar government action is pending.

Disclosure. Except as and to the extent required by law, without the prior written consent of the other party, neither the Tenant nor the Landlord nor its brokers, representatives or employees, and each shall instruct its representatives not to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the existence of discussions regarding, a transaction between the parties, or any of

the terms, conditions or other aspects of the transactions proposed in this letter of intent, except that the Tenant and its representatives are hereby authorized to disclose any aspect of this transaction in connection with the conduct of its due diligence.

Confidentiality. Except as and to the extent required by law, the Landlord will not disclose or use, and it shall cause its representatives not to disclose or use and Confidential Information with respect to the Tenant furnished, or to be furnished, by the Tenant in connection herewith at any time or in any manner except in connection with the transaction discussed in this letter of intent or in furtherance of its due diligence review or efforts to secure financing for this transaction. For purposes of this letter of intent, "Confidential Information" means any information concerning the Tenant's identity, assets, or the Property; provided that it does not include information that the Landlord can demonstrate (i) is generally available to or known by the public other than as a result of improper disclosure by the Landlord or (ii) is obtained by the Landlord from a source other than the Tenant or its representatives, provided that such source was not bound by a duty of confidentiality to the Tenant with respect to such information.

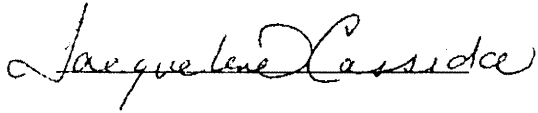
This Agreement is an amendment to the Original Lease, the terms and conditions of which, except as modified hereby, remain in full force and effect.


(no further text – the signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:

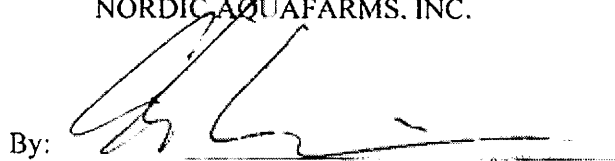
LANDLORD:




Name: Samuel E. Cassida

TENANT:
NORDIC AQUAFARMS, INC.



By: 
Name: Erik Heim
Title: President