STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF PARKS & LANDS
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

NORDIC AQUAFARMS, INC. RESCISSION OF FINAL FINDINGS AND DECISION DATED SEPTEMBER 4, 2020

APPLICANT: Nordic Aquafarms, Inc. (Nordic)

PROJECT LOCATION: City of Belfast and Town of Northport

APPLICATION: Submerged Lands Lease Application No. SL 2352, dated September 26, 2018, as amended on November 20 and December 5, 2018 (one modification sent in two sections), and as further amended by submissions dated March 22, 2019, January 10, 2020, and February 6, 2020, to install three pipes (the Pipes) on submerged lands as part of a proposed commercial, land-based aquaculture operation (the Project).

BACKGROUND: The procedural history related to Nordic's application is set forth more fully in the Bureau's Final Findings and Decision, dated September 4, 2020 (the Final Decision), a copy of which is attached as Exhibit A.

In its Final Decision, the Bureau found that Nordic demonstrated sufficient right, title, and interest (RTI) in the upland property adjacent to the littoral zone for which Nordic sought a submerged lands lease. As explained in the Final Decision, the Bureau based its RTI decision on Richard Eckrote's and Janet Eckrote's deed to the property located at 282 Northport Avenue in Belfast, which deed the Bureau understood to include a call to the water, and a Purchase and Sale Agreement between the Eckrotes and Nordic, as later amended by letter agreement, pursuant to which the Eckrotes agreed to convey Nordic an easement across their property for the Pipes.

While the Bureau was processing Nordic's application, Jeffrey Mabee and Judith Grace (collectively, Mabee) were also claiming title to the intertidal land between 282 Northport Avenue and the submerged lands for which Nordic sought a lease (the Relevant Intertidal Land) and conveyed to Upstream Watch a conservation easement (the Conservation Easement) over the Relevant Intertidal Land. Upstream Watch later assigned the Conservation Easement to the Friends of Harriet L. Hartley Conservation Area (the Friends). The Conservation Easement prohibits "structures of any sort, especially any principal or accessory structures erected, constructed or otherwise located in furtherance of any commercial or industrial purpose." The Bureau noted that the validity of the Conservation Easement as it applied to the Relevant Intertidal Land would turn on the resolution of the title dispute over the Relevant Intertidal Land, which was styled *Mabee v. Nordic Aquafarms, Inc*, RE-2019-0018 (the Title Litigation). The Title Litigation was pending during the Bureau's review of Nordic's application.

ANDREW R. CUTKO, DIRECTOR
BUREAU OF PARKS & LANDS
18 ELKINS LANE, HARLOW BUILDING

PHONE: (207) 287-3821
FAX: (207) 287-6170
WWW.MAINE.GOV/DACF/

In addition to finding that Nordic demonstrated sufficient RTI, the Bureau found that Nordic otherwise satisfied the Bureau's review criteria for a submerged lands lease and dredging lease as set forth at 12 M.R.S. § 1862 and 01-670 C.M.R. § 53 (2014) (the Chapter 53 Rules). As such, the Bureau determined that it would grant to Nordic Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL after Nordic submits to the Bureau a copy of a recorded easement conveying Nordic rights to the upland, including the Relevant Intertidal Land, that Nordic proposes to use for its water intake and water discharge Pipes within 30 days of Nordic's receipt of all necessary permits and approvals (the Final Decision Condition). Mabee, along with the Friends, the Maine Lobstering Union, Wayne Canning, and David Black, appealed the Final Decision to Superior Court. The Superior Court appeal of the Final Decision—*Mabee v. Department of Agriculture, Conservation and Forestry*—is docketed AP-2020-04.

During the Rule 80C appeal of the Bureau's Final Decision, and while the Title Litigation was pending, the City of Belfast condemned property interests related to the Relevant Intertidal Land (the Condemnation). Mabee, the Friends, and Upstream Watch appealed the Condemnation, which is styled *Mabee v. City of Belfast*, BELSC-RE-2021 (the Condemnation Appeal). The Superior Court entered a stipulated judgment in the Condemnation Appeal that addresses the impact of the Condemnation on the Conservation Easement. Assuming the validity of the Conservation Easement, the Stipulated Judgement declares that 33 M.R.S. §§ 477-(A)(2)(B) and 478 prohibit the City from unilaterally amending or terminating the Conservation Easement and that the Condemnation did not amend or terminate the Conservation Easement.

Following the Condemnation, Nordic submitted to the Bureau an easement recorded in the Waldo County Registry of Deeds, Book 4679, Page 157 (the Pipes Easement), pursuant to which the City conveyed to Nordic the right to construct, operate, and maintain the Pipes on the property including the Relevant Intertidal Land. Nordic asked that the Bureau not issue Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL until Nordic receives the final building permits for the Project of which the Pipes are a part.

The Superior Court resolved the Title Litigation in favor of the Eckrotes and Nordic, which judgment was appealed to the Law Court. After resolving the Title Litigation, the Superior Court affirmed the Bureau's Final Decision. Mabee, the Friends, the Maine Lobstering Union, Wayne Canning, and David Black appealed to the Law Court the Superior Court's decision affirming the Bureau's Final Decision. The Law Court appeal of the Bureau's Final Decision is docketed WAL-22-299.

The Law Court issued its opinion in the Title Litigation, *Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, 290A.3d 79 (*Mabee I*). Among other things, the Law Court held that Mabee owns the Relevant Intertidal Land and that the Conservation Easement is valid and applies to the Relevant Intertidal Land. As a result of *Mabee I*, the Law Court remanded without vacatur the appeal of the Final Decision to Superior Court with instructions to remand to the Bureau for the Bureau to "determine the impact, if any, of *Mabee I* on the challenged approval." The Superior Court so remanded the Final Decision to the Bureau. The Law Court's Order of Remand states that the Bureau may "choose to make [its] determination[] on the existing record[] or expand the record[]

to include materials such as a referenced subsequent conveyance after the exercise of eminent domain power that Nordic suggests should result in no change to the viability of the approvals."

The Bureau has not issued Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL to Nordic, and Nordic has not paid any rent to the Bureau.

EXPANSION OF THE ADMINISTRATIVE RECORD AND POST-REMAND PROCEEDINGS: On remand, the issue before the Bureau is limited to determining "the impact, if any, of *Mabee I* on the challenged approval." Nordic and Mabee (together with the Friends, the Maine Lobstering Union, David Black, and Wayne Canning) each addressed the remand issue in written submissions with attachments. To resolve the remand issue, the Bureau is expanding the administrative record to include materials submitted to the Bureau while the Rule 80C appeal was pending and on remand, such as Nordic's letter with attachments dated September 8, 2021; Nordic's letter with attachments dated June 27, 2023 (the June 27 Letter); Mabee's motion to vacate with attachments dated June 28, 2023; and Mabee's email with attachments dated August 10, 2023. The Bureau has reviewed and considered those materials for purposes of this decision.

The Bureau has determined that its Chapter 53 rules do not require it to invite public comment on the remand issue. As such, and because of the limited issue before the Bureau on remand and the multiple prior public comment periods (identified in the Final Decision), the Bureau has not invited public comment on the remand issue.

BRIEF SUMMARY OF ARGUMENTS ON REMAND: On remand, Nordic contends that the Pipes Easement conveys to Nordic the necessary property interests to construct, operate, and maintain the Pipes and asks the Bureau to act in a manner substantially similar to the Department of Environment Protection (DEP), which, through its Commissioner, suspended Nordic's DEP permits. Specifically, Nordic requests that the Bureau amend the Final Decision by tying the Final Decision Condition to the DEP Commissioner issuing an order lifting her suspension of Nordic's DEP permits. Effectively, Nordic requests that the Bureau toll its Final Decision indefinitely. Nordic does not identify any legal authority in support of its request.

Mabee primarily contends that *Mabee I* establishes that the Bureau's RTI finding in its Final Decision was error. Mabee therefore argues that the Bureau must vacate its Final Decision and dismiss Nordic's Application.

FINDINGS: Based on its review of all the information in the administrative record, the Bureau makes the following findings.

Submerged lands are public trust lands that the Bureau administers on behalf of the public. A submerged lands lease conveys a real property interest in public trust lands. The Bureau's review criteria for such leases balance public trust rights in submerged lands and riparian owners' common law rights to submerged lands.

Chapter 53 Rules § 1.7(B)(10) states, "Materially incorrect information submitted in conjunction with an application for a Submerged Lands conveyance shall constitute grounds for

reconsideration of or rescinding of any Findings, Conclusions, or Conveyances issued by the Bureau." To qualify for a submerged lands lease, an applicant must demonstrate sufficient RTI in the upland property adjacent to the littoral zone in which the lease is sought. Chapter 53 Rules § 1.6(B)(1)(a). If the holder of a submerged lands conveyance loses RTI in the adjacent upland, "then the lease or easement shall be invalid, and all leasehold or easement interest in the Submerged Lands shall be extinguished." Chapter 53 Rules § 1.6(B)(1)(b).

During the application processing period, Nordic's claim of sufficient RTI was disputed. As explained in the Final Decision, competing title claims to the adjacent upland do not preclude the Bureau from determining, pursuant to its Chapter 53 Rules, that an applicant has demonstrated RTI sufficient for the Bureau to process a submerged lands lease application. As the Final Decision acknowledges, however, a court judgment may defeat what was previously sufficient RTI by resolving the title dispute against the submerged lands lease applicant.

Contrary to Mabee's argument, *Mabee I* does not compel the Bureau to conclude that its RTI Finding, as set forth in the Final Decision, was error: the Final Decision is based on the record as of September 4, 2020. The record for the Final Decision excludes *Mabee I* because *Mabee I* issued on February 16, 2023. Had *Mabee I* issued before the Final Decision, the Bureau's Final Decision would have reflected *Mabee I's* holding as to ownership of the Relevant Intertidal Land. [1] Nordic's RTI submission was not materially incorrect while the Bureau was processing Nordic's application; however, it has become so.

Pursuant to *Mabee I*, Mabee, not the Eckrotes, owned the Relevant Intertidal Land while the Bureau was processing Nordic's application, and the Conservation Easement is valid. Per its plain language, the Conservation Easement prohibits the Pipes on the Relevant Intertidal Land. And pursuant to the Stipulated Judgment, the Condemnation did not terminate or amend the Conservation Easement.[2] Nordic contends that the Pipes Easement conveys to Nordic the right to construct, operate, and maintain the Pipes. The Bureau disagrees. Although the Pipes Easement purports to convey such rights to Nordic, the Pipes Easement is subordinate to the Conservation Easement, and the Conservation Easement prohibits the Pipes. Taken together, *Mabee I*, the Conservation Easement, and the Stipulated Judgment render materially incorrect Nordic's claim of RTI for Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL.[3]

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[1] As Mabee notes in his motion, "a determination of whether a party owns the intertidal land adjacent to their upland waterfront property requires a 'meticulous' review of all the deeds in the relevant title chain to determine the boundaries of the property and what the claimant's predecessors-in-interest owned and conveyed." The Bureau is not a court and is not equipped to perform such comprehensive title analyses. Thus, in situations of competing claims to title, the Bureau's Chapter 53 Rules do not require the applicant to submit a quiet title judgment to satisfy the Bureau's RTI standards.

[2] As between Mabee and the City, ownership of the Relevant Intertidal Land is at issue in the Condemnation Appeal.

[3] Had the Bureau already issued Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL, *Mabee I*, the Conservation Easement, and the Stipulated Judgment would have rendered those leases invalid and extinguished the leaseholds. Chapter 53 Rule § 1.6(B)(1)(b). A different result does not obtain here because the Bureau has not yet issued Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL.

As to Nordic's request that the Bureau toll the Final Findings for an indefinite period of years, neither the Bureau's submerged lands leasing statute, 12 M.R.S. § 1862, nor the Chapter 53 Rules expressly authorize the Director to suspend his decision to issue submerged lands conveyances and the Bureau declines to do so. Especially where, as here, three years have already passed since the Final Decision issued, and the time frame for completing construction is typically two years. Chapter 53 Rules § 1.6(B)(22). If and when Nordic will obtain a valid property interest that conveys to Nordic the right to install the Pipes on the Relevant Intertidal Land is unknown. As trustee of Maine's publicly owned submerged lands, the Bureau will not maintain indefinitely a pending lease over these lands after an application has been initially reviewed and approved.

DECISION: Pursuant to Chapter 53 Rules § 1.7(B)(10), the Bureau rescinds its Final Decision (as well as its prior Final Findings and Decision dated September 11, 2019) to issue to Nordic Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL. Nordic may re-apply in the future for a submerged lands lease and dredging lease for the Pipes if there is a material change to its RTI, such as a valid modification of the Conservation Easement to allow the now-prohibited Pipes.

APPEAL RIGHTS: In accordance with 5 M.R.S. § 11002 and Maine Rule of Civil Procedure 80C, this decision may be appealed to Superior Court within 30 days of receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

Signed: _____ Date: September 7, 2023

Andrew R. Cutko
Director, Bureau of Parks and Lands

EXHIBIT A to Bureau's Rescission of its Final Findings And Decision

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF PARKS AND LANDS
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

SUBMERGED LANDS LEASE – FINAL FINDINGS AND DECISION

APPLICANT: Nordic Aquafarms, Inc. (Nordic)

PROJECT LOCATION: City of Belfast and Town of Northport

APPLICATION: Submerged Lands Lease Application No. SL2352, dated September 26, 2018, as amended on November 20 and December 5, 2018 (one modification sent in two sections), and as further amended by submissions dated March 22, 2019, January 10, 2020, and February 6, 2020, to install three pipes (the pipes) on submerged lands as part of a proposed commercial, land-based aquaculture operation (the project).

BRIEF PROCEDURAL BACKGROUND: On April 4, 2019, the Bureau accepted Nordic's application as complete. In its Final Findings and Decision dated September 11, 2019 (September 2019 Findings), the Bureau approved Submerged Lands Lease Application No. SL2352 and the issuance of Submerged Lands Lease No. 2141-L-48 and Dredging Lease No. 05-21DL, subject to the conditions set forth in the September 2019 Findings. The September 2019 Findings were appealed to Superior Court pursuant to 5 M.R.S. § 11002.[1] During the pendency of that appeal, the Bureau learned that in August of 2019 Nordic proposed changes to the design of the pipes' installation as part of its application for various regulatory permits. Those design changes are described in an email to the Bureau from Nordic dated October 23, 2019.[2] Nordic did not notify the Bureau of these design changes prior to the Bureau issuing the September 2019 Findings. Because the September 2019 Findings did not account for the new project design, the Bureau moved the Superior Court to remand to the Bureau the September 2019 Findings. Through an order dated December 19, 2019, the Court remanded the September 2019 Findings back to the Bureau. Nordic submitted its design changes to the Bureau on January 10, 2020 and submitted additional information on February 6, 2020.

PROJECT DESCRIPTION: Nordic has applied to the Bureau for a lease to install three pipes—one water discharge pipe and two water intake pipes—on submerged lands (land seaward from the mean low-water mark to the three-mile territorial limit) in Penobscot Bay as part of a commercial, land-based aquaculture operation. To reach the submerged lands, the pipes would cross property, including the intertidal lands (land between the mean high-water and mean low-water marks), located at 282 Northport Avenue, Belfast. The pipes would originate in Belfast and extend seaward. The water discharge pipe would terminate in Belfast. The water intake pipes would cross the Belfast town line and terminate in Northport. Nordic proposes to lease a 40-foot-wide corridor of submerged lands for the pipes, as depicted on Exhibit A dated December 30, 2019 (the proposed lease area is labeled on Exhibit A as "40' wide submerged lands lease area").

Of the three pipes, one is a 36-inch-diameter water discharge pipe extending approximately 2,850 feet seaward of the mean low-water mark as depicted on Exhibit A. The other two pipes are 30-inch-diameter

[1] *Mabee v. Dep't of Agriculture, Conservation, Forestry, Submerged Lands Program*, AP-2019-4 (Me. Super. Ct., Waldo Cty.).
[2] Nordic modified the pipe design to reduce impacts to the coastal wetland and lessen associated mitigation requirements. The modification did not change the location of the pipes.

ANDREW R. CUTKO, DIRECTOR
BUREAU OF PARKS AND LANDS
18 ELKINS LANE, HARLOW BUILDING

PHONE: (207) 287-3821
FAX: (207) 287-6170
WEB: WWW.MAINE.GOV/DACF

water intake pipes each extending approximately 5,550 feet seaward of the mean low-water mark as depicted on Exhibit A.[3] The pipes would be buried with five feet of excavated material (also referred to as "cover") for approximately 850 feet from the mean high-water mark to the mean low-water mark. From the mean low-water mark to approximately 1,850 feet, the pipes would continue buried with five feet of cover. For the next 400 feet, approximately, the pipes would transition from being buried with five feet of cover to gradually reducing the amount of cover and being exposed where the water depth is approximately 35 feet at low tide. From this stage, the pipes would be anchored slightly above the sea floor with concrete anchors secured with helical anchors or guide piles, as necessary, which helical anchors or guide piles would be spaced every 15 feet, to their respective termination points. After transitioning to being exposed, the water discharge pipe would extend another 600 feet, terminating in approximately 38 feet of water at low tide. The last 100 feet of the water discharge pipe would incorporate three diffuser valves spaced 50 feet apart that project approximately 34 inches vertically above that pipe. The two water intake pipes would continue, exposed, for approximately 2,700 feet easterly and terminate in approximately 48 feet of water at low tide. The seaward end of each water intake pipe includes a water intake structure that would extend vertically approximately 8 feet from the bottom of each pipe.

Nordic would bury the pipes with excavated material until the pipes reach a water depth of 35 feet at low tide. Where the pipes would be buried, the resulting elevation of submerged lands would be close to the approximate original elevation. Additionally, as set forth in its March 2019 submission, Nordic proposes to remove from submerged lands approximately 4,000-8,000 cubic yards of excess excavated material not utilized in burying the pipes on submerged lands. That excess material, along with excess material excavated from intertidal lands, would be barged to Searsport to be disposed of at an upland receiving site.

REVIEW COMMENTS: On October 9, 2018, the Bureau sent the first notice requesting public comment on the September 2018 version of the application. The Bureau did not distribute a notice for public comment for the November-December 2018 amendment because the Bureau was awaiting additional information from Nordic.[4] Nordic submitted the requested information with the amendment in March 2019. As of March 2019, Nordic proposed to cover the subtidal portion of the pipes with five feet of riprap material seaward to an approximate depth of 30 feet at low tide. After reaching that depth, the pipes would then have rested on the bottom substrate with protective cover (i.e., mats). As described above, Nordic is no longer proposing to cover the pipes with riprap or mats. The Bureau accepted the application as complete on April 4, 2019. Comments received during 2019 are addressed in the September 2019 Findings, which discussion is summarized below and incorporated herein.

2019 Comment Periods:
On April 8, 2019, the Bureau sent notice of the application to the City of Belfast, the Town of Northport, Northport Village Corporation, immediate shorefront abutters and additional shorefront owners in Belfast and Northport, other interested parties, and the Department of Marine Resources (the DMR). The Bureau requested that comments be submitted to the Bureau by May 8, 2019. During the April 2019 comment period, the Bureau received comments from the City of Belfast, Upstream Watch and the Maine Lobstering Union (collectively, Upstream Watch), the southwesterly abutter, and 17 members of the public. The Bureau received six additional comments from the public during the month and a half prior to the comment period and nine comments after the comment period had ended. The Bureau obtained additional information from the DMR and the U.S. Army Corps of Engineers (the USACE). Comments addressed possible environmental impacts of the project; compliance with municipal regulations; and whether the application

[3] The Bureau's notice for public comment listed the total length at approximately 5,510 feet. This does not represent a change in the project, rather a refinement in the Bureau's calculation. Also, the Bureau measures water depth from the low-water elevation. The application describes water depths from the high-water elevation.

[4] Nordic altered the proposed location of the pipes from its original submission and November amendment in response to comments submitted by shorefront property owners and other interested parties regarding the crossing of intertidal land and littoral zones.

was complete for processing, including whether Nordic has sufficient right, title, and interest (RTI) in the adjacent upland. The Bureau issued its Preliminary Findings and Decision on July 16, 2019, and accepted comments on those findings during the 30-day reconsideration period. Comments received during the 30-day reconsideration period addressed potential environmental impacts, ownership of the intertidal zone, and potential impacts to commercial fishing.

In the September 2019 Findings, the Bureau clarified that environmental impacts and compliance with municipal regulations are not within the Bureau's purview when considering a request for a submerged lands conveyance. However, pursuant to subsection 1.6(B)(10) of the Bureau's Chapter 53 rules (01-670 C.M.R. ch. 53), the terms of a submerged lands lease require that the lessee obtain all permits or other approvals required by federal, state, and local law and remain in compliance with all such permits and approvals for the duration of the lease term.

Several comments asserted that the application was not complete for processing because the site plan submitted with the application did not bear a registered surveyor' s seal. Subsection 1.7(A)(3) of the Bureau's Chapter 53 rules requires an applicant to submit a detailed site plan; subsection 1.7(A)(3) does not, as a matter of course, require that an applicant submit a plan bearing a registered surveyor's seal. As such, and because the site plan submitted with the application was sufficiently detailed for the Bureau to determine the proposed location and nature of the project, the Bureau did not request that Nordic submit a site plan stamped by a registered surveyor.[5]

Many comments, including those of Upstream Watch, addressed Nordic's legal interest in the intertidal property where the proposed pipes would be located. The Bureau requested that Nordic submit by June 16, 2019, additional information supporting its RTI in the adjacent upland. Nordic timely submitted additional information related to its RTI in the adjacent upland. Upstream Watch requested and was allowed one week, until June 28, 2019, to respond to Nordic's RTI submission. Subsequently, Nordic submitted to the Department of Environmental Protection (the DEP), with a copy to the Bureau, additional documentation related to RTI.

February 2020 Comment Period:
On February 27, 2020, the Bureau distributed a notice for public comment on the January 2020 and February 2020 submissions to the City of Belfast, the Town of Northport, Northport Village Corporation, immediate shorefront abutters and additional shorefront owners in Belfast and Northport, other interested parties, the DMR, and the USACE. The Bureau also posted the notice for public comment and Nordic's application materials on the Bureau's website. The deadline for submitting comments was March 27, 2020.

The Bureau received comments from the agent representing Jeffrey Mabee and Judith Grace, The Friends of the Harriet L. Hartley Conservation Area, the Maine Lobstering Union, Belfast Lobsterman David Black, and Wayne Canning, a Lobster Zone Council representative for District 11 (collectively referred to in their submission, and in these findings, as Petitioners). Additional comments were received from Mr. Black, Mr. Canning, four individuals, and the DMR.

Many comments pertained to potential environmental impacts from the pipe installation, dredging activity and spoils removal, such as mercury resuspension from disturbing contaminated marine sediment, and changes in water temperature and salinity as a result of the discharge water. As stated above, and in the September 2019 Findings, the scope of the Bureau's review when considering an application to issue a submerged lands lease does not include review of environmental impacts. Most of the Bureau's review is

[5] Although the Bureau's rules do not require a plan bearing a registered surveyor's seal, Nordic's 2020 submission included a site plan bearing a registered engineer's seal.

focused on impacts resulting from the physical occupation of submerged lands to the exclusion of other users.

Other comments suggested that the project would negatively affect an existing aquaculture lease site used for mussel culture by degrading water quality. The Bureau also considers potential effects of a project on commercial marine facilities. However, that aquaculture site is located in Northport and is approximately two miles to the south from the proposed discharge pipe.

Two parties commented that the Bureau cannot approve a lease for the removal of dredged material because Nordic did not include dredging and the proposed disposal route as part of its application and because dredging must be applied for separately. As a result, the commenters asserted that the Bureau's notice for public comments was incomplete and that Nordic should file an amendment to the application, or separate application for dredging and disposal, and the Bureau should distribute another notice to include the proposed dredging and disposal route. Comments were also received regarding potential impacts to fishing activity from the dredge spoils transport route.

Contrary to the commenters' assertions, Nordic's March 2019 submission proposes to remove marine sediment from submerged lands as part of the installation of the pipes and the September 2019 Findings expressly state that "Submerged Lands Dredging Lease No. 05-21DL will be granted to Nordic." In both the January and February 2020 submissions, Nordic confirmed that the volume of submerged lands to be removed and proposed disposal at an upland facility had not changed from the March 2019 submission. Moreover, the Bureau does not require applicants to submit a separate application for dredging activity when that dredging activity is associated with the installation of structures for which the applicant has submitted a submerged lands lease application, as is the case here.[6] Thus, the Bureau did not re-notice the application or separately notice the dredging. Further, the potential for interference with fishing gear during transport is addressed in the timing approvals and notifications to the fishing community as required by other regulatory agencies, including the DMR and the USACE.

The Bureau also received comments regarding potential interference with fishing activity in the project area, impacts to abutters' rights to wharf out and install moorings, failure to meet littoral zone setbacks, lack of a recorded easement, and lack of RTI. These comments are addressed below.

June 2020 Preliminary Findings And Decision

The Bureau issued its Preliminary Findings and Decision on June 11, 2020 (2020 Preliminary Findings). Copies of the 2020 Preliminary Findings were distributed to the applicant, City of Belfast, Town of Northport, Petitioners, and interested parties who commented on the application in 2019. The 2020 Preliminary Findings were also posted on the Bureau's website. The distribution included a 30-day reconsideration period and all petitions for reconsideration and related information were due by July 11, 2020.

Near the end of the reconsideration period, the Bureau became aware that two neighboring property owners had not received the 2020 Preliminary Findings so the Bureau mailed them copies and extended the deadline for comments to July 24, 2020. Following the reconsideration period extension, the Bureau was informed that one of these property owners wanted to submit a comment but had not received the mailing due to an address discrepancy. The Bureau opened the comment period for one day to allow for the owner's submission.

[6] The Bureau requires that an applicant apply for a dredging lease, as opposed to a submerged lands lease, when dredging is the only activity on submerged lands for which a lease is sought.

Reconsideration Period Comments

The Petitioners submitted comments reiterating their previous comments regarding potential environmental effects from dredging and dredge spoils removal, particularly before the applicant submits its Sediment and Analysis Plan (SAP) to the USACE, and potential impacts to Essential Fish Habitat (EFH). Petitioners contend that the Bureau is unable to assess the potential impacts to fishermen prior to receiving the results of the SAP. As previously stated, environmental and habitat impacts are not within the Bureau's purview, and the Bureau has considered the potential physical impacts to fishermen, using the criteria within its authority. Petitioners also repeated comments regarding the Bureau's decision not to require a modified application and to re-notice the public and Town of Searsport where the proposed dredge spoils would be off-loaded from barges for upland disposal. The comments did not contain any new information to change the Bureau's decision that re-noticing is not necessary because, as the Bureau previously explained, the applicant confirmed that the volume of material to be removed from submerged lands has not changed and that potential impacts to fishing gear on the barge route would be addressed through the DMR and USACE reviews. The Bureau reserves the authority to review for potential temporary impacts to fishing gear (e.g. lobster traps) affected by proposed barge routes. However, the Bureau's standard review procedure regarding temporary impacts of a barge route on fishing gear is to defer to DMR's recommendations to the Department of Environmental Protection for incorporation into its Natural Resources Protection Act permit.

Petitioners also reiterated previous comments, as well as new comments in light of a recent court case, regarding the applicant's lack of RTI in the intertidal land it proposes to occupy, and the Bureau's littoral zone delineations and waiver from setbacks. These comments are addressed below.

The property owner referenced above that received late notice of the 2020 Preliminary Findings commented that he was not opposed to the project. The project would cross the property owner's littoral zone (previously identified as Helmers), which is highlighted in green on Exhibit B.

FINDINGS: Based upon its review of all information in the administrative record, the Bureau makes the following findings in accordance with 12 M.R.S. § 1862 and the Bureau's Chapter 53 rules.

RIGHT, TITLE, AND INTEREST (RTI):

Pursuant to subsection 1.6(B)(l) of the Bureau's Chapter 53 rules, an applicant for a submerged lands conveyance must demonstrate that it has sufficient RTI in the upland property adjacent to the littoral zone in which the submerged lands lease is sought. To demonstrate RTI, Nordic submitted an Easement Purchase and Sale Agreement between Nordic and Richard Eckrote and Janet Eckrote (the Eckrotes). The Eckrotes own property located at 282 Northport Avenue in Belfast. Per the Easement Purchase and Sale Agreement, the Eckrotes have agreed to convey to Nordic an easement over the property depicted in Exhibit A to the Easement Purchase and Sale Agreement for the pipes. Exhibit A to the Easement Purchase and Sale Agreement shows the prospective easement ending at the mean high-water mark. Upon the Bureau's request, Nordic submitted to the Bureau a letter dated March 3, 2019, from Nordic to the Eckrotes, which is countersigned by the Eckrotes on February 28, 2019, and pursuant to which the Eckrotes confirm their understanding that the area subject to the Easement Purchase and Sale Agreement "includes the entirety of [the Eckrotes'] rights in the intertidal zone." Included in Nordic's 2020 submission is an Amendment to the Easement Purchase and Sale Agreement between Nordic and the Eckrotes, signed by the Eckrotes on December 24, 2019, that extends the Easement Purchase and Sale Agreement through June 30, 2021.

During the 2019 comment periods, Upstream Watch and others commented that Nordic lacks sufficient RTI in the intertidal land adjacent to the Eckrotes' property because a different shorefront owner—Jeffrey Mabee and Judith Grace—owns the intertidal land in front of the Eckrotes' property and has encumbered that intertidal land with a conservation easement (the 2019 conservation easement) that would prohibit the pipes. Some comments asserted that issuing a submerged lands lease would constitute an unconstitutional

taking of Jeffrey Mabee's and Judith Grace's private property for public use. Additionally, the Petitioners contend that Nordic lacks sufficient RTI because a 1946 deed, which may be in the Eckrotes' chain of title, purports to limit the use of the Eckrotes' property to residential purposes only. Petitioners also submitted a copy of a quiet title action in 1970, which Petitioners contend establishes that the Eckrotes' do not own the intertidal land.[7]

Commenting on the 2020 submission, the Petitioners repeated the arguments described above, contending that Nordic does not have sufficient RTI to apply for a submerged lands lease. In addition, the Petitioners contend that the Easement Purchase And Sale Agreement does not meet the RTI requirement because the document has not been recorded. Although the Bureau's submerged lands application requests that the applicant provide a recorded document, the Chapter 53 rules do not require that a document be recorded to satisfy the Bureau's RTI requirements. The Bureau's application form does not supersede its Chapter 53 rules. Petitioners also assert that the March 3, 2019 letter amending the Easement Purchase And Sale Agreement does not state that the Eckrotes have title to the intertidal land and does not change the boundaries of the easement, therefore the easement does not extend beyond the mean high-water mark.

Petitioners also submitted comments during the reconsideration period in reference to a recently decided court case[8] involving municipal permitting and easement rights. In the case, the court determined that the municipality could deny a permit to cut trees within an easement area because the rights granted by the easement were determined to be insufficient to establish right, title and interest for that particular purpose. Because the Eckrotes and the applicant do not dispute the scope or the location of the easement, *Tomasino* does not compel the conclusion that the applicant lacks RTI for its submerged lands lease application.

Upon receipt of the application in 2018, the Bureau obtained a copy of the Eckrotes' deed, which is recorded in the Waldo County Registry of Deeds, Book 3697, Page 5. The metes and bounds description in the Eckrotes' deed includes the following calls: "to the high-water mark of Penobscot Bay; thence generally southwesterly along said Bay." Nordic and Upstream Watch each submitted a legal opinion and an opinion from a surveyor opining on the extent of the Eckrotes' ownership. Based on the Eckrotes' deed, which includes a call to the water, the Colonial Ordinance presumption of ownership to the low water mark, the Easement Purchase and Sale Agreement, as amended, including by the letter dated March 3, 2019, the Bureau finds that Nordic has demonstrated sufficient RTI in the upland property adjacent to the proposed submerged lands lease area for the Bureau to process the lease application.[9] The Bureau will not issue a submerged lands lease to Nordic until Nordic provides the Bureau with a copy of a recorded easement from the Eckrotes to cross the upland property, including the intertidal lands, adjacent to the submerged lands for which the lease is sought.

The Bureau acknowledges that there are competing claims of title to the intertidal land in front of the Eckrotes' property and a dispute over the validity of the 2019 conservation easement.[10] The Bureau, however, lacks the authority to resolve competing title claims; resolution of such claims is a function of the courts. Additionally, the existence of competing title claims does not preclude the Bureau from determining, pursuant to its Chapter 53 rules, that an applicant has demonstrated RTI sufficient for the Bureau to process a submerged lands lease application.

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[7] *Ferris v. Hargrave*, Waldo County Registry of Deeds, Book 683 Page 283.

[8] *Tomasino v. Town of Casco,* 2020 ME 96.

[9] The Bureau's finding that Nordic demonstrated sufficient RTI for the Bureau to process the Application is not premised on any release deeds to Nordic from any heirs of Harriet Hartley.

[10] The conservation easement deed, dated April 29, 2019, was granted by Jeffrey R. Mabee and Judith Grace to Upstream Watch and is recorded in the Waldo County Registry of Deeds, Book 4367, Page 273. The conservation easement, as it purports to apply to the intertidal lands for which the project is proposed, is valid only if a Court determines that Jeffrey Mabee and Judith Grace own those intertidal lands. Ownership of those intertidal lands is disputed and is the subject of litigation pending in Superior Court. *Mabee v. Nordic Aquafarms*, RE-19-18 (Me. Super. Ct., Waldo Cty.).

Except when the Bureau owns intertidal land, the Bureau's submerged lands leasing program does not grant rights to intertidal land; rather, the Bureau determines whether a less than fee conveyance should be issued for the publicly-owned submerged lands.[11] The decision to issue a submerged lands conveyance does not constitute an adjudication of any title disputes among private parties regarding ownership of intertidal lands, which only a court can adjudicate. If the outcome of a title action effectively terminates a lessee's RTI for its submerged lands lease, that lease, pursuant to subsection 1.6(B)(l)(b) of the Bureau's Chapter 53 rules, "shall be invalid and all leasehold interest in the Submerged Lands shall be extinguished."

LITTORAL ZONES AND SETBACK DISTANCES:
Littoral zones and setbacks lines are determined by applying subsection 1.6(B)(11) of the Bureau's Chapter 53 rules. Littoral zones and setback standards delineate the area of submerged lands adjacent to the applicant's upland property and establish adequate separation between structures for navigation and access for both the public and riparian owners. Littoral zones do not delineate areas of public submerged lands for the exclusive use of the applicant or other riparian owners.

Littoral zone boundaries are established by right angle projections from a baseline established along the shoreline at the intersection of the high-water line and the side boundary of each property. The littoral zone sidelines terminate at either the established navigational channel, established anchorage identified as such by the USACE, the midline between opposing shorelines, or 1,000 feet, whichever is less. Setback standards are established from other existing structures and an applicant's littoral zone boundary. When littoral zones overlap, subsection 1.6(B)(l l)(b)(2) requires that structures be set back twenty-five feet from an applicant's littoral sidelines. Per subsection 1.6(B)(11)(b)(5), the Bureau may grant exemptions to these setback requirements if the Bureau determines that such exemptions will otherwise meet the terms, conditions, and standards of the Chapter 53 Rules and the applicant has demonstrated that no reasonable alternative location is available. Subsection 1.6(B)(11)(c) further states that in making the decision to grant an exemption to littoral zone setbacks or setbacks from existing structures, the Bureau may require written notice of no objection from other persons whose ingress and egress or whose future ability to construct a wharf may be adversely affected by the proposed project.

For the purposes of discussing this application, the Bureau refers to the Eckrotes' littoral zone as Nordic's littoral zone, which littoral zone is shown on Exhibit B.

The proposed pipes would be buried with five feet of cover from the high-water mark seaward for approximately 850 feet in the intertidal zone and continue buried with five feet of cover for approximately 1,850 feet on submerged lands to a water depth of 35 feet at low tide before transitioning and extending uncovered to their respective termination points. The buried pipes would cross Nordic's northerly littoral zone sideline near the mean low-water mark, which is approximately 850 feet from the high-water mark. Thus, a 150-foot section of the pipes where it extends on submerged lands is proposed to be located wholly outside Nordic's littoral zone.

Nordic's intertidal portion of the littoral zone is delineated by Nordic on Exhibit A in accordance with subsection 1.6(B)(l l) of the Bureau's Chapter 53 rules; however, the littoral sidelines depicted on the exhibit were not drawn extending to the 1,000-foot termination point of the littoral zone. In its February 2020 submission, Nordic stated that it did not believe an exemption to the 25-foot setback from its littoral sideline was required because the proposed pipes would be buried, not built or placed upon submerged lands, but nevertheless provided an alternatives analysis. The Bureau's Chapter 53 rules regarding littoral zone setbacks do not treat pipes differently if the pipes will be mostly buried, as opposed to resting on top of the submerged lands. As such, the Bureau informed Nordic that the buried pipes are subject to the

[11] Because a submerged lands lease does not grant any property interest in or any permission to use any privately-owned intertidal lands, it is not a taking of private property.

setback criteria in the Chapter 53 Rules and would therefore require that the Bureau grant an exemption per subsection 1.6(B)(11)(b)(5).

Due to natural variations in the shoreline, several abutters' littoral zones overlap with Nordic's littoral zone. Because of overlapping littoral zones and the distance the pipes would extend offshore, the pipes are unable to avoid crossing other riparian owners' littoral zones where those littoral zones overlap with Nordic's littoral zone.

Several shorefront property owners in the immediate area, including the adjacent abutters, have expressed their objection to the placement of Nordic's pipes within their littoral zones. The Bureau received comments during the 2019 reconsideration period from Upstream Watch and Nordic's southerly abutter stating that Nordic's littoral zone is not the same as the Eckrotes' littoral zone and that Nordic's littoral zone must correspond to the 25-foot width of Nordic's easement over the Eckrotes' upland. Upstream Watch and the southerly abutter also commented that the proposed pipes would be located outside of Nordic's littoral zone and would encroach on the 25-foot littoral setback of the Eckrotes' abutters and that the Bureau erred by ignoring the objections of Nordic's abutters. During the 2020 reconsideration period, Petitioners contend that the Bureau's decision to give Nordic an exemption to the setback requirement is an unconstitutional taking of land owned by others. As noted in the RTI section above, the competing claims of ownership cannot be settled by the Bureau and if a title action terminates the applicant's RTI, the submerged lands lease shall be invalid. Also, the exemption to the setback requirement is not a taking of private land because the State owns the submerged lands.

One property owner to the north, whose littoral zone would be crossed by the project approximately 700+ feet from the mean high-water mark, commented that he has no objection to the project.

The Bureau finds that the part of Nordic's littoral zone in the intertidal zone does correspond to the Eckrotes' intertidal littoral zone because Nordic submitted to the Bureau a letter dated March 3, 2019, from Nordic to the Eckrotes, which is countersigned by the Eckrotes on February 28, 2019, and pursuant to which the Eckrotes confirm their understanding that the area subject to the Easement Purchase and Sale Agreement "includes the entirety of [the Eckrotes'] rights in the intertidal zone."

The Bureau finds that the proposed location of the project is substantially within Nordic's littoral zone; however, the buried pipes would cross Nordic's northerly littoral zone sideline at approximately 850 feet from the high-water mark and continue easterly on submerged lands to their termination points. As a result, the pipes would not meet the 25-foot setback from Nordic's littoral zone boundary line for the portion of the littoral zone that extends across submerged lands (the outermost 150 feet) and the Bureau must find that no reasonable alternative location for the pipes is available.

Regarding alternative locations, Nordic stated that the discharge and intake points of the pipes were carefully coordinated to provide favorable and complementary depth, current, distance, and ocean bottom conditions to support construction and to avoid interference between the intake and outfall pipes. Nordic also stated that shifting the pipes further into Nordic's littoral zone would require hundreds more feet of piping. The increase in length before angling toward the discharge points would constrict the bend by several hundred feet, which would lead to more difficult construction, operation, and maintenance of the pipes. Nordic also stated that, based on benthic studies and video analysis it has conducted, extending the pipes further to the south toward the Little River outlet may have more impact to the ocean environment and benthic communities. Based on that information provided by Nordic, the Bureau finds that no reasonable alternative location for the pipes exists.

Additionally, the Bureau finds that there would be adequate distance from abutting property owners' shorefronts to avoid unreasonably impairing their ability to construct docking structures within their littoral

zones. Because the pipes would be buried for approximately 2,250 feet from the high-water mark, the Bureau also finds that the pipes would have no effect on abutting property owners' ability to access to their properties from the water. Therefore, the Bureau is not requiring a letter of no objection from other property owners whose littoral zones the pipes would cross. The Bureau finds that the pipes otherwise meet the terms, conditions, and standards of the Rules as described in these findings.

PUBLIC ACCESS WAYS:
Per subsection 1.7(C)(2) of the Bureau's Chapter 53 rules, a proposed use of submerged lands must not unreasonably interfere with customary or traditional public access ways to submerged lands. The portion of the project landward of the mean low-water mark is not proposed to be sited within, abutting, or near a deeded public access point to the shore. With respect to any public access points that are not deeded, the proposed pipes will not interfere with access because the pipes would be buried with five feet of cover for approximately 850 feet in the intertidal zone and continue buried with five feet of cover for approximately 1,850 feet on submerged lands to a water depth of 35 feet at low tide before transitioning and extending uncovered to their respective termination points. As such, the Bureau finds that due to the distance that the pipes would be buried from the shore, the pipes will not unreasonably interfere with public access ways to submerged lands.

PUBLIC TRUST RIGHTS:
Per 12 M.R.S. § 1862(6)(a) and (b) and subsection 1.7(C)(2) of the Bureau's Chapter 53 rules, a proposed use of submerged lands must not unreasonably interfere with public trust rights. Subsection 1.4(Q) of the Bureau's Chapter 53 rules defines public trust rights as "transitory fishing, fowling, recreation, navigation and other customary or traditional uses whereby the public may use or enjoy the waters, Submerged Lands, and associated natural resources of the State of Maine."

In its comments on the 2019 version of the application, the DMR stated that area fisheries include lobster, crab, and shellfish but the proposed lease area is closed by the DMR to molluscan shellfish harvesting of clams, oysters, and mussels due to pollution. To limit any potential impacts to lobster and crab fisheries in the area, and, therefore, to fishing, the DMR recommended that construction of the proposed pipes take place during the USACE's winter work window of November 6 to April 8. The DMR stated that "it is unlikely that any lobsters or crabs would be present during this time and therefore fishing activity/effort will be low to not present." Because the project requires a permit from the USACE, the work window for laying the pipes, should the project be approved, would be determined through the USACE permitting process.

In response to the 2020 version of the application, the DMR commented that traditional fishing access would be impacted for lobster and crab fishing activity in the area because a portion of the pipes would now be exposed and sit slightly above the sea floor and, further, that the exposed section of the pipes may pose a navigational hazard and entanglement risk to fishing gear if not adequately marked. The DMR recommended that a wider area than the 40-foot lease area be marked in accordance with guidance from the U.S. Coast Guard Division One, Aids to Navigation Section.

The City of Belfast commented on the 2019 submission with a recommendation that marker buoys be installed to locate the pipes, including at the end points, to prevent fouling of fishing gear or anchors.

In July 2019, Bureau staff conferred with the USACE regarding the City of Belfast's recommendations and, although the Bureau is supportive, it understands that the U.S. Coast Guard (the USCG) Aids to Navigation System would determine any physical marker requirements. For the 2020 submission, the USACE confirmed that, if they approve the project, the USACE will require notification of the as-built project

location to the National Oceanographic and Atmospheric Administration (NOAA) for inclusion in its navigation charts and notice to the USCG. [12]

One commenter stated that the area has been an occasional anchorage area for ocean-going ships that do not anchor closer to the port of Searsport. The Bureau finds that the exposed section of the pipes may interfere with anchoring of vessels, and that, as with other hazards on the ocean floor, the risk of entanglement would be minimized provided the pipes are marked in accordance with the USCG Aids to Navigation System. The Bureau also finds that there is adequate unencumbered area outside of the proposed lease area for anchoring.

The Bureau finds that because the proposed pipes would be buried with five feet of cover for approximately 850 feet in the intertidal zone and buried with five feet of cover for approximately 1,850 feet on submerged lands to a water depth of 35 feet at low tide, before transitioning and extending uncovered on the bottom substrate for 3,700 feet to a water depth of 48 feet at low tide, transitory activities such as general navigation, fishing, fowling (waterfowl hunting), and other marine uses could take place over and around the exposed portion of the pipes. Again, as with other hazards on the ocean floor, anchoring entanglement risks in association with these uses would be minimized provided the pipes are marked on NOAA navigation charts. As the USACE informed the Bureau in 2019 and 2020, if the USACE issues Nordic a permit it will require Nordic to submit an as-built drawing with coordinates to the NOAA for inclusion on its navigation charts. Therefore, the Bureau finds that the proposed pipes will not unreasonably interfere with fishing, fowling, navigation, or other existing marine uses of the area provided Nordic obtains the necessary approval from the USACE.

INGRESS AND EGRESS OF RIPARIAN OWNERS:
Per 12 M.R.S. § 1862(6)(d) and subsection 1.7(C)(3) of the Bureau's Chapter 53 rules, a proposed use of submerged lands must not unreasonably interfere with ingress and egress of riparian owners. The pipes would be buried with five feet of cover for approximately 850 feet in the intertidal zone and be buried with five feet of cover for approximately 1,850 feet on submerged lands to a water depth of 35 feet at low tide, before transitioning and extending uncovered to their respective termination points. The subtidal pipe location would be hundreds of feet from other riparian property owners' shorefronts. Because the pipes would be buried in the intertidal zone and on submerged lands to a water depth of 35 feet, and because the proposed lease area is limited to a 40-foot-wide corridor, the Bureau finds that the proposed pipes will not unreasonably interfere with ingress and egress of riparian owners.

SERVICES AND FACILITIES NECESSARY FOR COMMERCIAL MARINE ACTIVITIES:
Regarding 12 M.R.S. § 1862(6)(c) and subsection 1.7(C)(4) of the Bureau's Chapter 53 rules, the Bureau observed that that there are no commercial marine services or facilities in the proposed submerged lands lease area. As such, the Bureau finds that the proposed pipes will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities.

RISK TO LIFE OR PROPERTY:
Regarding subsection 1.7(C)(5) of the Bureau's Chapter 53 rules, the proposed pipes present minimal safety risks to life or property because they would be buried under submerged lands for the majority of the lease area and otherwise rest on the bottom of submerged lands.[13] Additionally, as discussed under Public Trust Rights above, risks to life and property would be further reduced by marking and mapping the pipes, should the USCG determine that marking and mapping are warranted. Accordingly, the Bureau finds that

[12] Nordic's proposed aquaculture project requires a permit from the USACE.
13 The Bureau's Chapter 53 rules contain two subsections numbered 1.7(C)(5), the first of which is applicable only to the installation of underground cables. Because Nordic is proposing to install water intake and discharge pipes, and not underground cables, the first of the two subsections numbered 1.7(C)(5) is not applicable.

the proposed pipes will not result in significantly increased risk to life or property in the vicinity of the lease area under conditions of weather and vessel traffic that are likely to be encountered provided Nordic obtains the necessary approval from the USACE.

REQUIREMENTS OF OTHER AGENCIES:
Regarding subsection 1.7(C)(6) of the Bureau's Chapter 53 rules, the Bureau understands that Nordic is in the process of obtaining all required federal, state, and municipal approvals. Standard language in the submerged lands lease requires that the lessee acquire all federal, state, and local approvals within a limited time frame after the lease is issued, and that the lessee comply with the terms of all such approvals throughout the lease period. Failure to obtain all necessary federal, state, and local approvals invalidates the lease for the portion of the project that does not receive a required permit. The Bureau finds that the proposed project complies with subsection 1.7(C)(6) because the lease is conditional upon receiving all necessary approvals.

SPECIAL PROTECTION AREAS OF SUBMERGED LANDS:
Regarding subsection 1.7(C)(7) of the Bureau's Chapter 53 rules, there is no evidence in the record that any portion of the proposed submerged lands lease area has been designated for special protection by an agency authorized to make such designations. Therefore, the Bureau finds that the proposed pipes will not conflict with established management guidelines designed to protect such designated areas.

COASTAL POLICIES:
Because the Bureau has determined that the proposed pipes otherwise meet the standards described in subsection 1.7(C) of the Bureau's Chapter 53 rules, the Bureau finds, per subsection 1.7(C)(8), that the use does not conflict with those aspects of the Coastal Policies or the Coastal Policy guidelines in 38 M.R.S. § 1801 that relate to the criteria considered by the Bureau.

PUBLIC INTEREST and CONSISTENCY WITH RULES
Based on all the findings above, and because the lease terms require Nordic to obtain all necessary federal, state, and local approvals, the Bureau finds, regarding subsections 1.7(C)(l) and (9) of the Bureau's Chapter 53 rules, that the proposed pipes are not inconsistent with the Bureau's rules and are not otherwise contrary to the public interest, provided Nordic obtains the necessary federal, state, and municipal approvals.

OUTSTANDING FEES:
Nordic has paid the fee required for processing the application when it submitted the application in September 2018. Nordic paid the application processing fee for a dredging lease in January 2020. A lease fee for the dredging lease and a pro-rated rental fee for the submerged lands lease for the pipes will be due when they are executed. Because the leases are not being issued at this time there are no fees that are due. Regarding subsection 1.7(C)(10) of the Bureau's Chapter 53 rules, the Bureau finds that there are no outstanding fees relative to the application.

CONCLUSIONS: Based upon its review of all information in the administrative record, the Bureau of Parks and Lands concludes that the project meets the requirements set forth in 12 M.R.S.A. § 1862 and in the Bureau's Chapter 53 Submerged Lands Rules.

DECISION: In accordance with 12 M.R.S. 1862, the Director of the Bureau has determined that it will grant Submerged Lands Lease No. 2141-L-49 and Submerged Lands Dredging Lease No. 05-22DL to Nordic Aquafarms, Inc. after the Bureau 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. Nordic must provide the recorded easement to the Bureau within 30 days of Nordic's receipt of all necessary

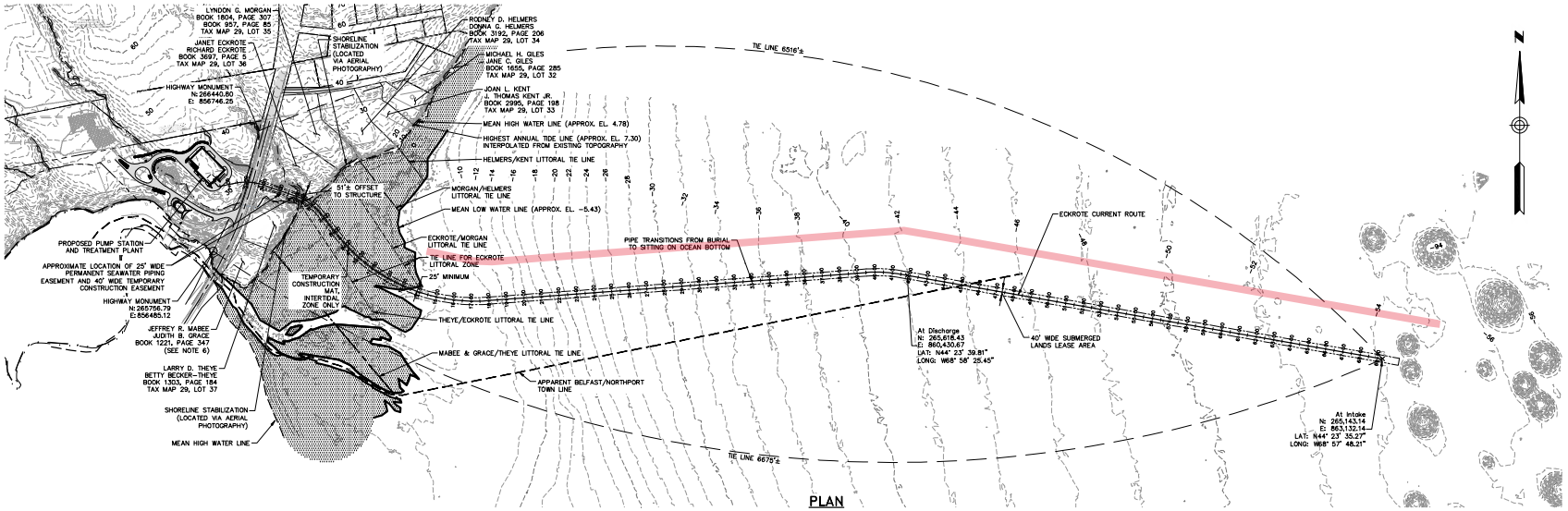
permits and approvals. The lease area of Submerged Lands Lease No. 2141-L-49 will be the forty-foot wide corridor depicted on Exhibit A as "40' wide submerged lands lease area."[14]

APPEAL RIGHTS: In accordance with 5 M.R.S.A. section 11002 and Maine Rule of Civil Procedure 80C, this decision may be appealed to Superior Court within 30 days of receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

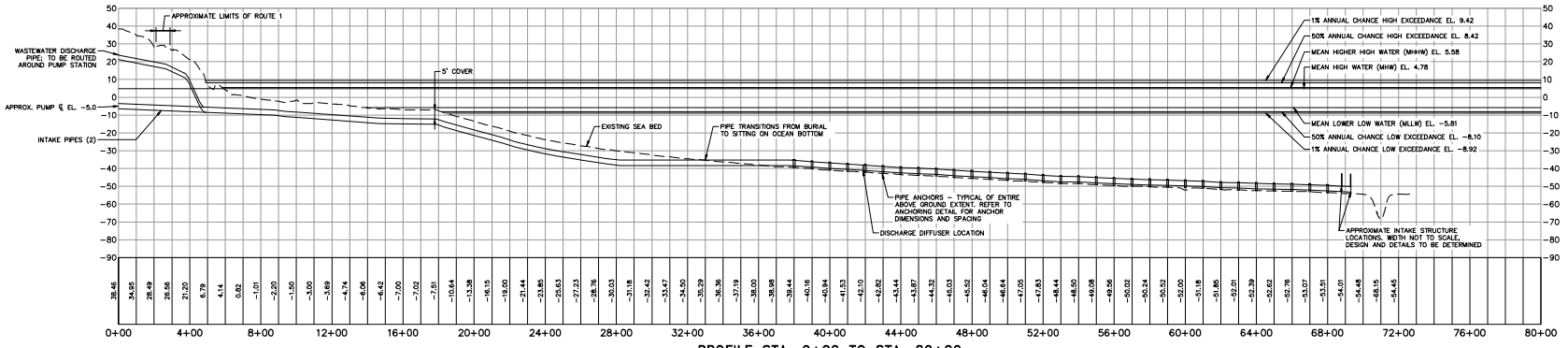
Signed: _____ Date: September 4, 2020
Andrew R. Cutko, Director

[14] The ending digits of the lease numbers have changed from those assigned in 2019 due to the time that has elapsed. These digits represent the years that the conveyances would expire.

EXHIBIT A
Proposed Submerged Lands Lease Area Highlighted in Red



PLAN
SCALE: 1" = 300'



PROFILE STA. 0+00 TO STA. 80+00
HORIZONTAL SCALE: 1" = 100'
VERTICAL SCALE: 1" = 10'

PLAN REFERENCES:

1. BOUNDARY & TOPOGRAPHIC SURVEY DATED 4-2-2018 BY GOOD DEEDS INC., 109 MAIN STREET, BELFAST, ME 04915, (207) 338-5743
2. 2 FOOT LIDAR CONTOURS OBTAINED FROM THE MAINE OFFICE OF GIS. https://www.maine.gov/megis/
3. BATHYMETRY DATA PROVIDED BY NORMANDEAU ASSOCIATES, ENVIRONMENTAL CONSULTANTS IN OCTOBER 2018.
4. LITTORAL ZONE & TOWN LINE IS BASED ON A PLAN BY GARTLEY & DORSKY ENGINEERING SURVEYING, 59 UNION STREET, UNIT 1, P.O. BOX 1031 CAMDEN, ME 04843-1031, DATED NOVEMBER 14, 2018 AND REVISED FEBRUARY 22, 2019.
5. VERTICAL DATUM IS REFERENCED TO NAVD88 (FEET).

NOTES:

- PROPOSED FEATURES ARE APPROXIMATE IN LOCATION AND SCALE.
- PIPE ALIGNMENT IS SETBACK GREATER THAN 25 FEET FROM TIE LINES.
- ANCHORING LOCATIONS ARE SCHEMATIC ONLY. REFER TO ANCHORING DETAILS FOR ANCHOR DIMENSIONS AND SPACING.
- SINGLE PIPE ROUTE SHOWN FOR CLARITY; SYSTEM CONSISTS OF TWO NOMINAL 30" INTAKE PIPES AND ONE NOMINAL 36" DISCHARGE PIPE.

RANSOM Consulting Engineers and Scientists
WOODARD & CURRAN
SMRT Architects and Engineers
144 Fore Street, PO Box 618
Portland, Maine 04104

REV	DESCRIPTION	DATE

REVISED FOR PERMIT
12-30-19

CURRENT ISSUE STATUS:

STATE OF MAINE JAMES D. WILSON No. 8592 REGISTERED PROFESSIONAL ENGINEER

TRUE NORTH:

NORDIC AQUAFARMS

BELFAST, MAINE

INTAKE/DISCHARGE PIPING
PLAN & PROFILE

300' 0 300' 600'
BAR SCALE
1" = 300'
CHECK GRAPHIC SCALE BEFORE USING

PROJECT MANAGER:
PROJECT NO: 18076
JOB CAPTAIN:
CS101

NOT FOR CONSTRUCTION

\\woodardcurran.net\shared\projects\D237114.00 Cianbro - Maine Aquaculture\Wip\Drawings\DWG\D237114.00-CS101.dwg, Jan 02, 2020 - 12:01pm JEVERETT

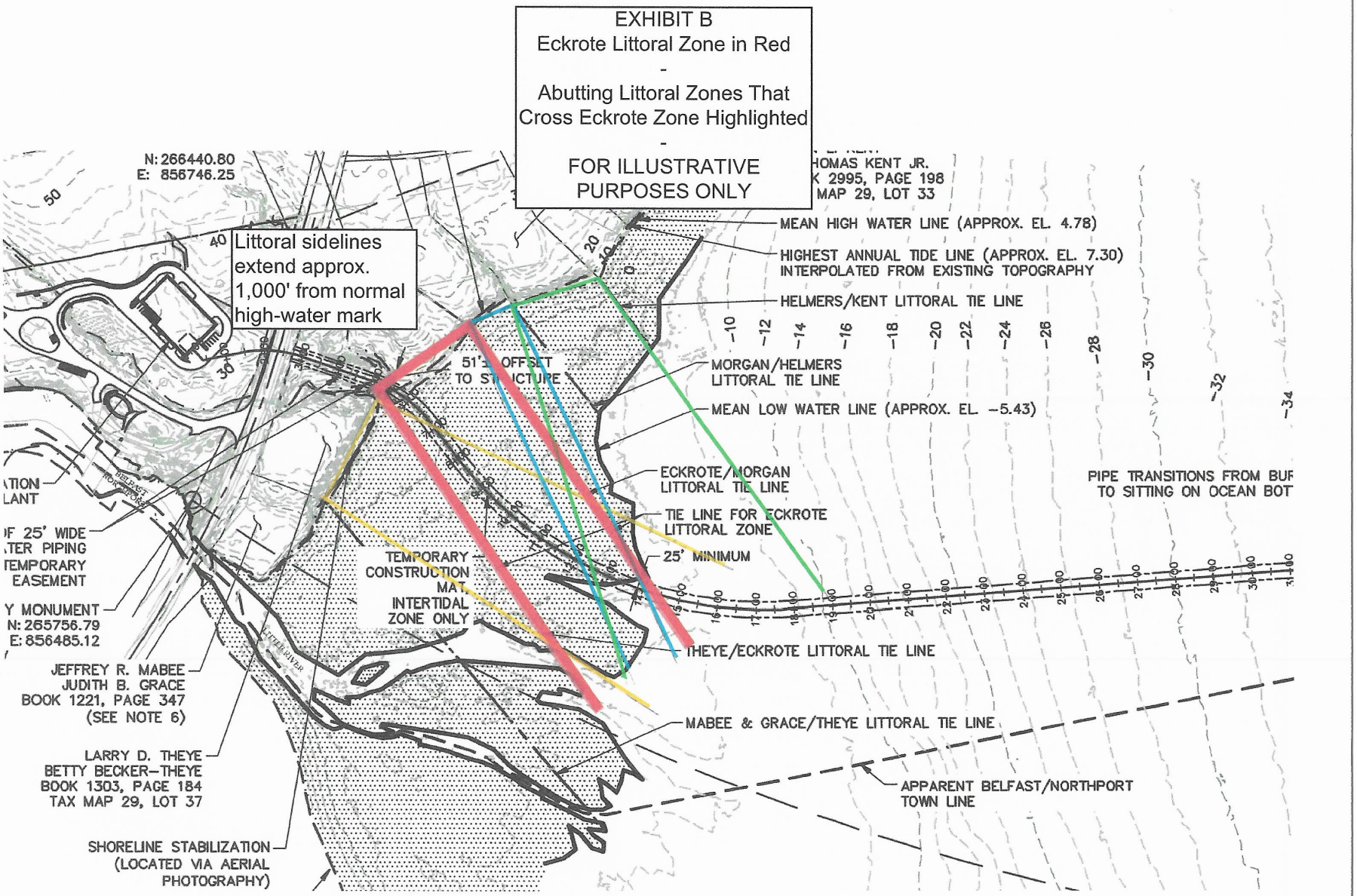


EXHIBIT B
Eckrote Littoral Zone in Red
-
Abutting Littoral Zones That Cross Eckrote Zone Highlighted
-
FOR ILLUSTRATIVE PURPOSES ONLY
N: 266440.80
E: 856746.25
Littoral sidelines extend approx. 1,000' from normal high-water mark
MEAN HIGH WATER LINE (APPROX. EL. 4.78)
HIGHEST ANNUAL TIDE LINE (APPROX. EL. 7.30) INTERPOLATED FROM EXISTING TOPOGRAPHY
HELMERS/KENT LITTORAL TIE LINE
MORGAN/HELMERS LITTORAL TIE LINE
MEAN LOW WATER LINE (APPROX. EL. -5.43)
ECKROTE/MORGAN LITTORAL TIE LINE
TIE LINE FOR ECKROTE LITTORAL ZONE
25' MINIMUM
TEMPORARY CONSTRUCTION MAT, INTERTIDAL ZONE ONLY
THEYE/ECKROTE LITTORAL TIE LINE
MABEE & GRACE/THEYE LITTORAL TIE LINE
APPARENT BELFAST/NORTHPORT TOWN LINE
JEFFREY R. MABEE
JUDITH B. GRACE
BOOK 1221, PAGE 347
(SEE NOTE 6)
LARRY D. THEYE
BETTY BECKER-THEYE
BOOK 1303, PAGE 184
TAX MAP 29, LOT 37
SHORELINE STABILIZATION (LOCATED VIA AERIAL PHOTOGRAPHY)
PIPE TRANSITIONS FROM BUF
TO SITTING ON OCEAN BOT