

**Northport Village Corporation's Comments on DMR's Assessment**

## Bertocci, Cynthia S

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**From:** Mike Lannan <mlannan@techenv.com>  
**Sent:** Thursday, April 23, 2020 4:58 PM  
**To:** Bertocci, Cynthia S; Kim Ervin Tucker; Barry A. Costa-Pierce; Bensinger, Peggy; Boak, Scott; Brewer, Angela D; 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); Kristin M. Racine; Lawrence Reichard; Marianne Naess; Martin, Kevin; Northport Village Corporation; Peter Tischbein; Wood, Gregg  
**Subject:** RE: Nordic Proceeding  
**Categories:** Red Category

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Cindy-

Based upon your email, which quotes the following from the thirteenth procedural order "...not to receive additional evidence or exhibits from the parties.", DEP must simply reject DMR's comments as-is because it includes new evidence introduced by a "party", THE party, the Applicant. The Applicant's haul route is the only figure in DMR's short comment letter. It had to be included in its entirety, instead of referenced, because it is not in the DEP record. All other parties have not, and will not have an opportunity to provide testimony on this updated hearing topic, as the hearing record is closed to new information.

There is no mention in their application(s) that any sediment was going to be removed, transfer to barges, and hauled across the bay and then transferred again to trucks. The new evidence suggests storing dredge materials in the tidal area during construction and then loading these dredge spoils on a barge, and then the waterlogged sediment, that will be silty and unstable and/or contaminated, will be hauled across the bay over 100 times in their best case scenario considered, or many, many hundreds of times more, in a another reasonable scenario if more the dredge materials are considered unsuitable for backfilling over pipes or contain mercury, on a flat bottom barge, from a dredging area known to contain mercury and where they have little to no actual boring data.

Any Applicant can expect the best, but they must plan for, and demonstrate compliance for, the reasonable worst-case scenario. The Applicant should have presented to DMR a plan for ALL dredged spoils to be removed, hauled, and disposed, and also a plan for another way to cover the pipes if there is insufficient good-quality replacement spoils available after physical evaluation and chemical testing. The Applicant will likely object to any discussion of hauling evaluations or conditions that considered significant contamination a possibility, but unfortunately the Applicant did not collect or provided boring data from the pipeline pathway to justify that the reasonable worst-case scenario should not be all or a majority of the spoils would be insufficient for replacement in the dredged trench after pipeline placement. Proper data collection was not only completely in their control, but required as part of the no adverse impact demonstration.

With no actual evidence of this haul route in the record prior the hearing, the DMR comments cannot be introduced without reopening the hearing, collecting more testimony, and addressing concerns, or any permit application cannot be properly conditioned. Unfortunately, based upon this email alone, "...the intervenors may file written comment on DMR's assessment, not new evidence or exhibits, if INTERVENORS provide evidence for required studies for the very first time, related to this new evidence submitted by the Applicant on this hearing topic after the hearing, the evidence must be rejected based upon this email. For example, a simple comment that the Applicant must apply for a

water discharge permit, because it is impossible to move water-logged soils on a flat bottom barge without physically dewatering, treating and discharging the hydrolyzed or suspended water, cannot be formally defended. Even though the water will be discharged to the bay one way or another. Either it will be purposely dewatered, treated, and discharged via a permit that the Applicant has not filed, or the suspended and hydrolyzed water will be naturally dewatered and discharged into the bay anyway, with no treatment, simply by the natural forces from the sea rocking the barge during transport, and also from the tugboat forces applied to the barge. One way or another water will be “squeezed out” and discharged, and evidence justifying the new concern, cannot be provided based upon this email, as it is new information (i.e. “new evidence or exhibits”). How can this be?

The NVC is concerned about the potential environmental impacts from pathogens, viruses, mercury, nitrogen, and other contaminants that have not been adequately addressed to date. DMR has not finalized its preliminary reports, especially the draft one on pathogens and virus discharges, which is paramount to everyone during this current pandemic. That concern alone requires more evaluation, but they all do.

The NVC has always been concerned about the potential for mercury to accumulate first from stirring up mercury that is currently buried deep in the existing sediment through dredging, and then from continually discharging residual mercury in the same area, steadily 24/7, 365 days a year at 7.7 million gallons a day, from its food source that has not yet been identified. The application(s) simply cannot be conditioned without specified feed (“or equal”) composition information. Without it DMR had to at least consider that the normal feed for larger salmon is fish, and since all fish contain some bio-accumulated mercury, daily mercury discharges will occur directly from uneaten food and waste discharge from the salmon. The mercury discharge feed assumption simply must be made, and the accumulation from construction and operations must be evaluated as such with whatever conservative reasonable worst-case data DMR deems appropriate, unless the food source is otherwise specified by the Applicant that demonstrates that mercury levels are lower or not included. Mercury discharge accumulation has never been evaluated, but must be part of any DMR environmental impact assessment on the natural fish and sea life in the wastewater discharge area in the bay. Now, based upon the storage, dewatering, and hauling of dredge materials, there is a third cumulative mercury source to add to this review that also has not been evaluated, but this new concern by itself and its cumulative concern, cannot even be contested, as this hauling information was introduced after the hearing closed.

Based on the historical mercury data known to be in the bay, mercury will be excavated during dredging. That fact cannot be denied. Silt fences that are applicable to areas with tidal activity do not contain mercury baseline mercury level will rise. That fact cannot be denied. Any water discharged from dewatering must contain some mercury as a result and must be considered in a cumulative manner with the discharge. That fact cannot be denied. Furthermore, any elevated mercury levels must be considered in conjunction with residual mercury that will be discharged from operations, assuming normal fish food is consumed, or unless other fish food is proposed. That fact cannot be denied. Therefore, an Environmental Impact Statement or assessment must be included that considers the potential cumulative effects of increased mercury and whether it will be harmful to a portion of the Penobscot Bay located directly off of the Northport Village Corporation (NVC) mooring field, beach, and swim dock. The three DMR review products to date do not provide this analysis, and therefore cannot be considered adequate to demonstrate that there will be no adverse impact to health, safety, or the environment for the bay or the NVC resident, visitors, and guests.

- As stated repeatedly, the NVC is not in favor of this project, or in opposition to this project, but without further input from the Applicant and a complete DMR environmental impact assessment review, it is impossible to properly condition this project, and the permit application(s) must be denied without opinion on support or opposition.

Thank you.

-Mike Lannan

Overseer, Northport Village Corporation

**From:** Bertocci, Cynthia S [mailto:Cynthia.S.Bertocci@maine.gov]

**Sent:** Friday, April 10, 2020 4:13 PM

**To:** Kim Ervin Tucker <k.ervintucker@gmail.com>; Barry A. Costa-Pierce <bcostapierce@une.edu>; Bensinger, Peggy <Peggy.Bensinger@maine.gov>; Bertocci, Cynthia S <Cynthia.S.Bertocci@maine.gov>; Boak, Scott <Scott.Boak@maine.gov>; Brewer, Angela D <angela.d.brewer@maine.gov>; Burke, Ruth A <Ruth.A.Burke@maine.gov>; Carrie Byron <cbyron@une.edu>; Charles Tilburg <ctilburg@une.edu>; David Losee <david@loseelaw.com>; DEP, Nordic Aqua Farms <NordicAquaFarms.DEP@maine.gov>; Diane Hunt Braybrook <dbraybrook@yahoo.com>; Donald W. Perkins, Jr. <don@gmri.org>; Donna Broderick <dl\_broderick@hotmail.com>; Ed Cotter <ec@nordicaquafarms.com>; Eleanor Daniels <ellie@greenstore.com>; Elizabeth M. Ransom <elizabeth.ransom@ransomenv.com>; Erik Heim <Erik.heim@nordicaquafarms.com>; Jacki Cassida <jc@nordicaquafarms.com>; Jensen, Laura <Laura.Jensen@maine.gov>; Joanna B. Tourangeau (JTourangeau@dwmlaw.com) <JTourangeau@dwmlaw.com>; Kristin M. Racine <kracine@curtisthaxter.com>; Lawrence Reichard <lreichard@gmail.com>; Marianne Naess <mn@nordicaquafarms.com>; Martin, Kevin <Kevin.Martin@maine.gov>; Mike Lannan <mlannan@techenv.com>; Northport Village Corporation <nvcmaine@gmail.com>; Peter Tischbein <peter.tischbein@usace.army.mil>; Wood, Gregg <Gregg.Wood@maine.gov>

**Subject:** Nordic Proceeding

All:

This email responds to the following filings regarding the Nordic proceeding:

- Ms. Tucker's April 9, 2020 email (on behalf of intervenors Jeffrey Mabee, Judith Grace, and Lobstering Representatives (MGL)) commenting on DMR's April 7, 2020 assessment of impacts from Nordic's proposed pipeline construction and haul route for dredge materials;
- Mr. Lannan's April 9, 2020 email (on behalf of intervenor Northport Village Corporation) regarding the scope of DMR's assessment; and
- David Perkins letter of April 10, 2020 (on behalf of intervenor Upstream Watch) requesting additional time to comment on DMR's filing.

Presiding Officer Duchesne has reviewed these filings and requests and is not going to request that DMR expand or amend its assessment, and is not going to reopen the Board's record to receive additional evidence from the parties on Nordic's proposed pipeline construction and associated dredging. DMR's assessment was prepared in fulfillment of DMR's statutory obligation to review proposed dredging projects, and the Board does not direct DMR in this regard.

The Presiding Officer ruled on related requests in the Thirteenth Procedural Order which states: "With respect to the information presented at DMR's hearing, the Board's hearing record was left open for the limited purpose of receiving DMR's assessment of potential impacts of Nordic's proposed dredging in the coastal wetland, not to receive additional evidence or exhibits from the parties." As set forth in the Eleventh and Thirteenth Procedural Order, the intervenors may file written comment on DMR's assessment, not new evidence or exhibits.

Given the delay in distribution of the attachments to DMR's assessment, the deadline for intervenors to comment on DMR's assessment is Thursday, April 23, 2020 at 5:00 pm.

With respect to the remainder of the schedule, the deadline for filing of post hearing briefs is Monday, May 4, 2020 at 5:00 p.m. Post hearing briefs are limited to 50 pages, double spaced. The date for Board deliberations is under consideration.

Thank you for your attention to this matter.

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