

IN THE MATTER OF NORDIC AQUAFARMS INC.

NORDIC AQUAFARMS, INC.)	APPLICATIONS FOR AIR EMISSION,
Belfast, Northport and Searsport)	SITE LOCATION OF DEVELOPMENT,
Waldo County, Maine)	NATURAL RESOURCES PROTECTION ACT, and
)	MAINE POLLUTANT DISCHARGE ELIMINATION
A-1146-71-A-N)	SYSTEM (MEPDES)/WASTE DISCHARGE
L-28319-26-A-N)	LICENSES
L-28319-TG-B-N)	
L-28319-4E-C-N)	BRIEF ON REMAND AND OBJECTIONS
L-28319-L6-D-N)	OF THE LOBSTERING APPELLANTS
L-28319-TW-E-N)	
W-009200-6F-A-N)	Dated: August 21, 2023

This matter is before the Board of Environmental Protection (“Board” or “BEP”) on remand from the Law Court of the 80C appeal (BCD-22-48) of the Board’s 11-19-2020 Orders. This Brief is submitted on behalf of the Maine Lobstering Union and commercial lobster and crab license holders Wayne Canning and David Black (together “the Lobstering Appellants”), who assert that the 2020 Orders should be vacated by the Board based on the judicial determinations made by the Law Court in *Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, 290 A.3d 79 (hereinafter “*Mabee I*”), 5 M.R.S. § 10004(1), and 06-096 C.M.R. ch. 2, §§ 11(D), 26 and 27(B) & (E).

The Lobstering Appellants join, adopt and incorporate the arguments in the MGF and Upstream Watch (“Upstream”) Briefs, and in addition file their separate Brief and Objections. In their separate Brief and Objections, the Lobstering Appellants challenge Nordic’s false claims of title, right or interest (“TRI”) in the intertidal land adjacent to Belfast Tax Map 29, Lots 36 and 35 based on the sham and fraudulent Release Deeds, that were drafted, solicited by coercion, and recorded in the Waldo County Registry of Deeds by Nordic through its counsel.

The determinations in *Mabee I* establish, as a matter of law, that Nordic cannot, *did not, and never could*, meet its burden to show sufficient TRI to *use the property proposed for development in the manner the permits and licenses would allow*; thus, the applications should be “returned” to Nordic, as mandated by 06-096 C.M.R. ch. 2, §§ 11(D) and the 2020 Orders revoked pursuant to Chapter 2, § 27(E).¹ In addition, the determinations in *Mabee I*, the facts in the existing

¹ 06-096 C.M.R. ch. 2, § 11(D) states in relevant part that:

“**Title, Right or Interest.** Prior to acceptance of an application as complete for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the

Administrative Record compiled by BEP counsel in 2021, the record in the prior 80C appeals of the 2020 BEP Orders, and the relevant public records, demonstrate that the 2020 BEP Orders were obtained by Nordic through Nordic’s and its counsel’s misrepresentations and/or failure to fully disclose the facts, in violation of Chapter 2, § 27(B) -- warranting an order by the Board vacating its 2020 Orders.²

The Nordic project is under the mandatory jurisdiction of the Board, as both a project of statewide significance and pursuant to the 2019 request to assume jurisdiction by the Commissioner and application. *See*, 38 M.R.S. § 341-D(2). Accordingly, it is the Board that has the exclusive jurisdiction to suspend or revoke the permits and licenses issued by the Board in 2020, pursuant to Chapter 2, §§ 26 and 27. Here, the Commissioner erred in issuing a Suspension Order on July 26, 2023 – in the absence of jurisdiction to do so. On remand, *the Board* has the responsibility, authority and jurisdiction to determine whether the 2020 Orders should be suspended, revoked or modified, pursuant to Chapter 2, §§ 11(D), 26 and 27(B) & (E). The Commissioner’s Suspension Order should be considered as the Commissioner’s recommendation to the Board, pursuant to Chapter 2, § 26 and 38 M.R.S. § 342(11-A).

On August 14, 2023, Nordic’s registered agent and counsel Joanna Tourangeau, Esq., made new false claims regarding these Release Deeds to the Board in another effort to retain the permits and licenses obtained in 2020 based on false and incomplete information. The Lobstering Appellants, through undersigned counsel, assert Attorney Tourangeau’s 8-14-2023 false and misleading statements regarding the so-called “Release Deeds,” like prior statements made to State agencies regarding these sham instruments, were submitted to the Board in violation of the requirements and responsibilities of applicants and their agents and counsel under Department rules, including 06-096 C.M.R. ch. 2, §§ 11(D) and 27(B).³

entire application processing period. ... The Department may return an application, after it has already been accepted as complete for processing, if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest.”

² Chapter 2, § 27(B) states: “The Department may revoke, suspend, or modify a license or prescribe necessary corrective action only if the Commissioner, pursuant to section 25, or the Board, pursuant to section 26, finds that . . . [t]he licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts.”

38 M.R.S. § 341-A(2) states: “**Composition.** The department shall consist of the Board of Environmental Protection, in the laws administered by the department called "board," and of a Commissioner of Environmental Protection, in the laws administered by the department called ‘commissioner.’”

³ Attorney Tourangeau’s misleading and false statements regarding also violate the duty of candor toward the tribunal expected of, and imposed on, all Maine counsel in Rule 3.3 of the Rules of Professional Conduct.

BACKGROUND

Nordic filed its MEPDES application with the Department in October 2018 (A.R. 0021a).⁴ To demonstrate sufficient “TRI” in the property on the eastern side of Route 1 (i.e. Belfast Tax Map 29, Lot 36 (“Lot 36”) and the adjacent intertidal land), Nordic relied on an “Easement [Option] Purchase and Sale Agreement” obtained from Richard and Janet Eckrote on August 6, 2018 (“8-6-2018 EOA”).⁵ (A.R. 0150, pp. 3-16). The 8-6-2018 EOA, does not define the boundaries of the easement by metes and bounds, but depicts the boundaries using an image incorporated as Exhibit A (A.R. 150, p. 16). The easement depicted in Exhibit A ***terminates at the high-water mark of Penobscot Bay***, pursuant to the express terms in the 8-6-2018 EOA, and, *if exercised*, would not grant Nordic the right to use the intertidal land on which Lot 36 fronts (A.R. 906d). Rather, the 8-6-2018 EOA, *if exercised*,⁶ would grant Nordic a 25-foot wide permanent easement, and a 40-foot wide temporary construction easement, along the southern boundary of Lot 36. *Id.*

On 12-18-2018 and 1-7-2019 (A.R. 0075, 0089 and 0090), Upstream and the Lobstering Petitioners moved to dismiss Nordic’s MEPDES Application for lack of administrative standing because the 8-6-2018 EOA failed to grant Nordic TRI to use the intertidal land on which Lot 36 fronts, based on the plain meaning of Exhibit A (A.R. 0906d). On 1-22-2019, Brian Kavanah, DEP’s Bureau of Water Quality Director, issued a letter to Nordic requesting additional TRI-related information by 2-6-2019, including an 11-14-2018 survey by James Dorsky, P.L.S. The 1-22-2019 DEP letter correctly concluded that the 8-6-2018 EOA was not sufficient to demonstrate TRI, stating: “. . . the Easement Purchase and Sale Agreement submitted by Nordic Aquafarms defines the easement area by reference to an Exhibit A that depicts the easement area as stopping

https://mebaroverseers.org/regulation/bar_rules.html?id=88222

⁴ Documents from the Administrative Record prepared by BEP’s counsel for the 80C appeal in BCD-APP-2021-0009 are referenced as “A.R. followed by the document number and, if applicable, a specific page within that document.

⁵ DEP Major Projects website, 10-19-2018 MEPDES Application, pp. 46-59:
https://www.maine.gov/dep/ftp/projects/nordic/applications/MEPDES%20Permit%20Application_Final_Oct%2019,%202018.pdf

5-17-2019 TRI Supplement, pp. 3-16:
<https://www.maine.gov/dep/ftp/projects/nordic/applications/TRI%20supplement/JBT%20to%20Kavanah%20package.PDF>

⁶ Nordic never exercised the 2018 Easement Option prior to the Eckrotes’ sale of this property on June 27, 2021 to the City of Belfast. The sale had the effect of nullifying the unexercised 8-6-2018 EOA.

at the high-water mark.” (A.R. 0095).⁷

On 1-25-2019, then-AAG Jerry Reid – who had been recently nominated by the Governor to be DEP Commissioner – advised the Governor and other email recipients, that:

I am meeting with Erik Heim this afternoon at 2:00 to try to reassure him that the DEP process will be fair and can work. **There is a non-trivial title, right and interest problem with their application that the opponents have seized on.** It's not clear to me why Nordic hasn't addressed it, because it would seem to be easily resolvable. I'll be talking to him about that too. **It's not in Nordic's interest to move forward with a flawed application that will allow for a successful appeal of the permits they are seeking.** I'm happy to provide people with more details at any time.

(Law Court Appendix: A. 0206 (emphasis supplied)).⁸

On 1-25-2019, Mr. Reid and then-Acting DEP Commissioner Melanie Loyzim – the incoming and current decision-makers for determinations regarding applicant Nordic’s TRI pursuant to 06-096 C.M.R. ch. 2, § 11.D -- had an ex parte⁹ meeting with Nordic, including its then-President Erik Heim (Law Court Appendix: A. 0219-0222). No notice of, or opportunity to participate in, this meeting were provided to Upstream or the Lobstering Appellants, who had pending motions to dismiss Nordic’s MEPDES application based on TRI deficiencies.

By 1-30-2019, Acting Commissioner Loyzim put the Department’s 1-22-2019 request for additional TRI-related information from Nordic in the 1-22-2019 DEP letter – including the 11-14-2018 Dorsky survey -- and consideration of the sufficiency of Nordic’s TRI “*on hold*.” (A.R. 0103, 0104, 0106-0108). Thereafter, Nordic drafted and solicited the Faux Hartley Heirs’ Release Deeds in March through July, 2019, from persons who Nordic and its counsel knew, or should have known, are not heirs or heirs-at-law of Harriet L. Hartley and who never had any title, right or interest in real property in Belfast, Maine once owned by Harriet L. Hartley.

In *Mabee I*, the Law Court stated in footnote 11 that: “Again, although we need not look to extrinsic evidence, we observe that *Hartley’s probate file contains a note indicating that she conveyed all her real property during her life.*” (emphasis supplied). [REDACTED]

⁷ DACF BPL reached the same conclusion in a 1-18-2019 letter to Nordic (A.R.Doc. 0906b; A: 1151).

⁸ Documents in the Superior Court Record from the 80C appeal of the 2020 Orders, that were omitted by BEP counsel from the 2021 Administrative Record but which were part of the Appendix prepared for the Law Court’s consideration of that 80C appeal, are designated herein as “Law Court Appendix:” followed by the Bates Stamped page number referenced in that Law Court Appendix.

⁹ Black’s Law Dictionary online defines “*ex parte*” as: “On one side only; by or for one party; done for, in behalf of, or on the application of, one party only.” <https://thelawdictionary.org/ex-parte/>

[REDACTED]

Despite having knowledge *in December 2018* that Harriet L. Hartley had sold all of her land prior to her death and that no heir or heir-at-law of Harriet L. Hartley had received title to any real property from Harriet L. Hartley’s estate, in March through July 2019, Nordic’s then-President (Erik Heim), then-COO (Brenda Chandler), and its counsel at Drummond Woodsum (Colleen Tucker, Esq.) drafted, solicited, and obtained six (6) Release Deeds from ten (10) out-of-State persons who Nordic identified as “Hartley Heirs.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On 5-17-2019, Nordic filed NRPA and SLODA applications with the Department and supplemental TRI-related information. (A.R. 0148, 0150). Nordic continued to rely on the *unamended*, unexercised 8-6-2018 EOA to support its TRI claim in its 5-17-2019 supplemental-TRI filing (A.R. 0150), which included: (i) a 5-16-2019 surveyor’s opinion letter from James Dorsky, P.L.S., to Erik Heim (A.R. 0935q); and (ii) the 8-31-2012 Good Deeds survey (A.R. 0157; 0176; 0243, Ex. 3; 0935j) that expressly stated that *the Eckrotes do not own the intertidal land on which Lot 36 fronts*.

On 5-20-2019, Upstream, Mabee-Grace and the Lobstering Appellants challenged the sufficiency of Nordic’s TRI submissions in BPL-DEP -- adding ownership claims by Mabee-Grace in the intertidal land on which the Lot 36 fronts and the abutting intertidal land, and Upstream’s claim as holder of a recorded conservation easement dated 4-29-2019 (A.R. 0155).

On 5-29-2019, the Department sent Nordic a letter requesting additional information in support of Nordic’s TRI claims. (A.R. 0170). On 6-10-2019 Nordic filed a 144-page pdf containing documents on which it relied in asserting TRI with the Department (A.R. 0177-0178),

[REDACTED]

[REDACTED]

which included: (i) an unrecorded 2018 Good Deeds survey (A.R. 0178, p. 4) which depicts Lot 36's waterside (eastern) boundary as the high water mark; (ii) an unrecorded survey plan by James Dorsky, P.L.S., dated 6-4-2019, showing that *the Eckrotes' property interest terminates at their high water mark* and that the intertidal property on which Lot 36 fronts is allegedly owned by "Hartley Heirs" with NAF having a "partial interest" in this 7.2-acres of intertidal land pursuant to "Release Deeds from Hartley Heirs" (A.R. 0178, p. 3); (iii) a 5-16-2019 opinion letter from Surveyor Dorsky to Erik Heim stating that the Eckrotes did not own the intertidal land adjacent to lot 36 but opining that "Hartley Heirs" do own it (A.R. 0178, pp. 87-89); (iv) all relevant chains of title and recorded deeds; and (v) five (5) Release Deeds *with all information identifying the Grantors redacted to prevent identification or location of the Grantors* (A.R. 0178, pp. 135-144).¹²

On 6-12-2019 @ 1:23:59 PM, an email was sent by Tom Abello of the Governor's staff, scheduling a meeting on 6-13-2019, regarding "Belfast fish farm communications next steps" (Law Court Appendix: A. 0222). This email was sent to: Melanie Loyzim, David Madore (DEP staff), Amanda Beal (DACF Commissioner), Andy Cutko (DACF-BPL) and Scott Ogden (Governor's staff). *Id.* Deputy Commissioner Loyzim then forwarded the Abello email to DEP Commissioner Reid. (Law Court Appendix: A. 0222). The purpose of the meeting, scheduled to take place in the Governor's Office at 1 p.m. on 6-13-2019, was described by Mr. Abello as:

. . . Based on a few conversations with ACF and DEP, I am hoping we can get together tomorrow at 1 pm (here at the Governor's office) to discuss communications around TRI for Nordic. Prior to Friday's deadline, it would be helpful to get everyone on the same page from a messaging standpoint. Please feel free to invite the right folks from your respective offices.

(emphasis supplied).

At 3:07 p.m. on 6-13-2019, Appellants' counsel and other interested parties received the Commissioner's revised TRI determination, signed by Attorney Kevin Martin, stating:

With respect to the intertidal portion of the property proposed for use, the department finds that the deeds and other submissions, including NAF's option to purchase and easement over the Eckrote property and the succession of deeds in the Eckrote chain of title, when considered in the context of the common law presumption of conveyance of the intertidal area along with an upland conveyance, constitute a sufficient showing o TRI for the Department to process and take action of the pending applications.

¹² DEP major projects website:
<https://www.maine.gov/dep/ftp/projects/nordic/applications/TRI%20supplement/19-06-10%20Tourangeau%20-%20Loyzim.pdf>

(A.R. 0191). In *Mabee I*, the Law Court stated that the “presumption” of conveyance to low water had no application in this case based on the language in the 1946 Hartley-to-Poor deed. *Mabee I*, at ¶ 27.

Appellants appealed the 6-13-2019 TRI determination to the Board and submitted a motion to dismiss Nordic’s applications for lack of TRI on 7-12-2019, supplemented on 7-25-2019. (A.R. 0243, 0268). The Board assumed jurisdiction over the Nordic project on 6-20-2019 and refused to consider Appellants’ appeal of the 6-13-2019 TRI determination on 8-23-2019 (A.R. 0317 (2nd Procedural Order (“P.O.”), § 12). On 8-15-2019, the Board refused to include TRI challenges in the adjudicatory hearing (A.R. 0303 (1st P.O.)).

[REDACTED]

[REDACTED]

Pursuant to Hartley’s Probate File and 1945 Will, none of the Grantors of those Release Deeds was an heir or heir-at-law of Harriet L. Hartley or her actual heirs-at-law, her sisters Genevieve Hargrave Bailey and Esther Hargrave Woods (*Mabee I*, 2023 ME 15, n. 11).

The MGF Appellants challenged the Release Deeds as shams in the Title Claims litigation.

Both the 10-28-2021 trial court Decision and Judgment in RE-2019-18 and the Law Court’s Decision in *Mabee I* have already determined, *as a matter of law*, that ***the Release Deeds*** that

Nordic drafted and solicited in 2019 from ten out-of-state persons, recorded by Nordic on September 23, 2020, *conveyed no title, right, or interest in the disputed intertidal land to Nordic, because the Grantors of those Release Deeds had no title, right on interest in any real property formerly owned by Harriet L. Hartley to convey.* See, e.g., *Mabee v. Nordic Aquafarms Inc.*, No. RE-2019-0018, 2021 WL 6932428, at *27, ¶¶ 13-14 (Me.Super. Oct. 27, 2021)¹³ and *Mabee I*, 2023 ME 15, ¶¶ 10, 17, 45-53 and 61, n. 11.¹⁴ Rather, in *Mabee I*, the Law Court determined that Plaintiffs Mabee and Grace own the intertidal land on which Lots 38, 37, 36 and 35 front, pursuant to the deeds in Mabee-Grace’s chain of title back to the 1950 Hartley-to-Butlers deed (WCRD Book 474, Page 387; A.R. 0178, p. 10). *Mabee I*, 2023 ME 15, ¶¶ 50-52, n. 11.

MEMORANDUM OF LAW AND ARGUMENT

In footnote 2 of Nordic’s 8-14-2023 Response to the Objections filed by Upstream Watch, NVC and the MGLF Appellants, Attorney Tourangeau again seeks to use the sham Release Deeds as a basis for asserting that Nordic had demonstrated “sufficient” TRI in the intertidal land adjacent to Lot 36 based on the Release Deeds. Attorney Tourangeau stated in relevant part:

The “footnote 9” referenced by Attorney Reid, refers to a Law Court observation that Nordic’s surveyor originally “read the Hartley-to-Poor deed as excluding the intertidal land.” See Quiet Title Decision fn 9. The administrative record for the Project Approvals contains the survey referenced in footnote 9, where that surveyor concluded that the intertidal land was retained by the heirs of Harriet Hartley. *The administrative record also contains release deeds from those heirs releasing to Nordic any rights they would have had to the intertidal land or to enforce any upland use restriction had that surveyor’s original opinion been adopted by the Law Court. Of course, the Law Court ultimately adopted a different conclusion, **but Nordic still provided evidence of right, title, and interest consistent with that surveyor’s original (and subsequent) opinions.*** In any case, the offhand comments of counsel to the Governor on this tangential issue are of no relevance to the directive here on remand. This attachment (and all other attachments to the various objections) should be rejected and stricken for lack of relevance to the issue currently before the Board.

(emphasis supplied). In point of fact, nothing could be more relevant to the issue before this Board on remand than the fact that Nordic and its counsel obtained the 2020 Orders granting Nordic permits and licenses to use someone else’s land through chicanery and by providing

¹³ Specifically, the trial court stated in relevant part:

13. At the time of her death on October 18, 1951, Harriet L. Hartley owned no real property in Belfast, Maine and her estate conveyed no real property to her intended heirs or heirs at law.

14. None of the quitclaim deeds executed by the individuals Robert L. Burger, Thomas A. Burger, Robert L. Burger II, David Woods, Marcia L. Woods, David Wesley Bell, Karen L. Stockunas, Constance Daily, Barbara Bell, or Sandra L. Bell conveyed title to the intertidal flats appurtenant to Lots 37, 36, or 35 to Nordic, as these individuals did not have title to convey.

¹⁴ The Law Court stated in footnote 11 of *Mabee I*: “Again, although we need not look to extrinsic evidence, we observe that Hartley’s probate file contains a note indicating that she conveyed all her real property during her life.”

the Board with false and/or incomplete information relating to TRI in contravention of the applicants' obligations in Chapter 2. *See, e.g.*, A.R. 0243, Ex. 4.

First, *Nordic never provided unredacted Release Deeds to the Commissioner or Board.* Second, *Nordic never claimed TRI based on the Release Deeds in any application submitted to the Department.* Third, *neither the Commissioner nor Board based their respective TRI determinations on the Release Deeds;* rather, all TRI determinations were based on Nordic's knowingly-false claim that it had TRI based on the 8-6-2018 easement option from the Eckrotes. Fourth, *both the trial Court in RE-2019-18 and the Law Court in Mabee I, already established that the Release Deeds were sham instruments that conveyed nothing to Nordic,* because the Grantors had nothing to convey. And, Fifth, the Law Court determined in *Mabee I* that: (i) Mabee-Grace and their predecessors in interest back to 1950 obtained title to the intertidal land adjacent to Lots 36 and 35 pursuant to the 1950 Hartley-to-Butlers deed; and (ii) "Hartley's probate file contains a note indicating that she conveyed all her real property during her life." *Mabee I*, ¶¶ 50-52, n. 11.

Nordic knew the intertidal land where they wanted to place their pipes was not owned by the Eckrotes no later than April 2018, based on the 2012 and 2018 Good Deeds surveys (A.R. 0243, Exs. 3 & 6; 0935i and 0935j). Nordic knew the intertidal land where they wanted to place their pipes was not owned by the ten Grantors of the Release deeds Nordic's counsel drafted, solicited and recorded, no later than December 2018 based on the Hartley Probate File. And, Nordic knew the intertidal land where they wanted to place their pipes was owned by Jeffrey R. Mabee and Judith B. Grace and subject to a "residential purposes only" servitude and valid conservation easement held by Upstream Watch and then Friends, no later than May 1, 2019 – and likely much earlier – based on the deeds and surveys in Nordic's counsels' possession and Upstream's and the MGLF submissions to the Department and BPL (A.R. 0178; *see also*, 0187).

Despite this knowledge and the unambiguous ethical responsibilities of its counsel, Nordic, its agents and counsel, have simply misrepresented and/or failed to disclose fully all relevant facts to the Commissioner and Board relating to TRI in violation of Chapter 2, §§ 11(D) and 27(B). The purpose of these material omissions by Nordic and its counsel was to obtain permits and licenses effecting property that Nordic has never had *actual* TRI to use in the manner the permits would allow. Nordic cannot now rely on the *unappealable* suspension decision -- that was erroneously entered, in the absence of jurisdiction, by the Commissioner -- to prove they did not previously get permits and licenses from the Board based on false, misleading and incomplete information, in

contravention of 06-096 C.M.R. ch. 2, § 27(B).

To the extent that the Commissioner’s Suspension Order is being referenced for the purpose of “proof” that Nordic has not violated Chapter 2, § 27(B), or for the proposition that the Commissioner, *and not the Board*, has jurisdiction over whether Nordic’s permits and licenses can be suspended or revoked, the Lobstering Petitioners object to the Board referencing this document on remand as dispositive of anything.¹⁵ Here, the Board – *not the Commissioner* – has mandatory jurisdiction over the Nordic project pursuant to 38 M.R.S. § 341-D(2) – as a project of statewide significance and pursuant to the request of Nordic and the Commissioner in 2019. Consequently, the Commissioner could *recommend* suspension or revocation *to the Board*, but should have referred that decision to the Board for resolution pursuant to Chapter 2, §§ 26 and 27. At best, the Commissioner’s Suspension Order is advisory, pursuant to 38 M.R.S. § 342(11-A) and Chapter 2, § 26. But the Commissioner could not make a dispositive determination regarding suspension or revocation of Nordic’s permits and licenses. Only the Board has had the jurisdiction to grant, suspend or revoke Nordic’s requested permits and licenses since June 20, 2019, pursuant to 38 M.R.S. §§ 341-A(2), 341-D(2), 342(11-A) and Chapter 2, §§ 11(D), 26 and 27(B) on remand.

CONCLUSION

Because the Release Deeds recorded on 9-23-2020 conveyed nothing to Nordic, Nordic obtained no TRI in the intertidal land adjacent to Belfast Tax Map 29, Lots 36 and 35 from the Grantors of the Release Deeds in 2019. Any assertions to the contrary in these proceedings on remand should be both ignored and admonished as a further violation of Chapter 2, § 27(B) by Nordic and its counsel. Based on the prior Administrative Record, the determinations in *Mabee I*, the evidence contained in the Law Court Appendices in BCD-22-48 and WAL-22-19, and the current state of the facts, the 2020 Orders should be vacated by the Board and Nordic’s applications returned to Nordic for lack of sufficient TRI pursuant to Chapter 2, § 11(D) and/or revoked pursuant to Chapter 2, §§ 26 and 27(B) & (E) and 5 M.R.S. § 10004(1) and 38 M.R.S. § 341-D(2).

Dated this 21st day of August, 2023. /s/ Kimberly J. Ervin Tucker
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¹⁵ The MGLF Appellants challenged the Commissioner’s jurisdiction to enter that Order, in the absence of a remand by the Law Court, in their filings relating to Upstream’s Petition to suspend or revoke. 4-10-2023 MGLF Reply, f n.1.