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**To:** [Hinkel, Bill](#); [Burke, Ruth A](#); [Loyzim, Melanie](#); [Martin, Kevin](#); [Kennedy, Eric](#); [Gilbert, Jane](#); [Muzzey, Lynn](#); [Ostrowski, Kevin](#); [Kavanah, Brian W](#); [Wood, Gregg](#); [Wood, Robert](#); [Hallowell, Dawn](#); [Green, Robert L](#); [Callahan, Beth](#); [Boak, Scott](#); [Bensinger, Peggy](#); [Akrawi, Emma](#); [Joanna B. Tourangeau](#); [k.ervintucker](#); [ipsofmaine](#); [DPerkins](#); [David Losee](#); [president@nvcmaine.org](#); [Charles Tilburg](#); [Donald W. Perkins, Jr.](#); [Diane Hunt Braybrook](#); [Lawrence Reichard](#); [ellie@greenstore.com](#); [dl\\_broderick@hotmail.com](#); [Paul Bernacky](#)  
**Subject:** RE: Nordic Aquafarms, Inc. - Court Ordered Remands to BEP  
**Date:** Monday, August 21, 2023 4:57:08 PM

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Mr. Hinkel-

The NVC objected to the original BEP Remand Order, and again to this recent ruling from the Board as well. The NVC's mooring field, beaches, parks, wharf, and formal swimming areas directly abut the proposed industrial discharge, in an area that was confirmed via the law court decision as designated legally as residential only. Allowing Nordic to discuss a potential legal pathway for reversing this current residential designation without the information formally being added to the record via the proper permit modification process will create a significant due process problem.

Furthermore, if the eminent domain action is allowed, it still does not change that the record did not consider the legal residential only designation today.

#### Section 1

The NVC objects to this recent ruling for the following reasons:

1. The NVC stated that the NVC would not object to the record being reopened to address our concerns but did not suggest that the only pathway forward was for the record to be reopened. The NVC stressed that the permitting record must be reopened if BEP is going to consider direct compliance correspondences between Nordic and DEP with respect to the license suspensions that are not part of the permitting record.
2. Public input is being directly or indirectly thwarted by requiring legal correspondences only. For example, if the NVC were to follow the BEP's Remand Order and the attached ruling once again verbatim, the NVC would not be "allowed" to even provide public comments herein.
3. During the suspension discussions between Nordic and DEP, there was no mention that there was a formal public comment period, that public input was even allowed and would be considered, or that public comments would be formally addressed. While the NVC knows that the NVC and the public always have an opportunity for comment, unsolicited comments may or may not be considered by BEP. Unsolicited NVC comments are in no way, shape, or form, a substitute for due process that requires formal permitting submissions, testimony, cross examination, and formal response to comments during a permit modification process.
4. The ruling is not correct, as the NVC has not had an opportunity to have our concerns with respect to the new permitting information proposed by Nordic be addressed prior to it being admitted into the permitting record as "facts".

5. The suspension order was a compliance documents that DEP noted did not require public input to implement. The NVC was told that our comments and concerns did not matter at the time of suspension, and so long as the licenses were being suspended indefinitely anyway, our concerns were irrelevant during a suspension. The argument to delay responding to our concerns until such time as the license holder requests them to be lifted, creates a problem now with respect to that proposed information being considered part of the permitting record.
6. It is not reasonable to delay addressing public concerns with Nordic's proposed pathway to keep their licenses valid until such time as the licensee requests the suspension to be lifted, and then refer to the discussions and correspondences between DEP and Nordic without public input or concerns being addressed, as "new permitting facts" without the due process that was delayed.
7. The NVC understands that the court order did not require that the BEP open the record to allow for our concerns to heard with respect to the new information regarding the unreasonable consumption of the natural and manmade resources that were made public by CMP, Nordic, and the City of Belfast, since the permits were issued. But it also did not require that Nordic be allowed to offer their recent and hypothetical TRI cure to the permitting record either.
8. And more importantly, the Remand Order did not provide a pathway for new license permitting information to be added to the original permitting record, without the proper public input and testimony procedures.
9. The NVC can understand why the initial attempt by BEP might be to simply allow Nordic to add their potential TRI cure to the record. Clearly, it would provide the least burden, or added effort today for BEP and DEP, if Nordic simply suggests that Nordic has a possible pathway to curing their licenses after the fact. Then BEP could simply kick the can down the road, so long as no one objects or challenges the documentation provided by Nordic that supposedly provides a cure. But public concerns were expressed and not addressed.
10. Unfortunately, multiple concerned citizens objected to the potential cure as not vetted or accepted information, and as a result BEP has an obligation to fully vet any new information that is proposed to be added to the permitting record as a permit modification that requires the proper public forum before it can be considered. The objections were simple, obvious, and reasonable.
11. There is a reasonable and legal residential use restriction, and this is where the permit modification process is obviously needed before any discussions or information leading up to the suspension order could be considered "facts" as described in the recent ruling.
12. Lastly, by BEP allowing this new information via the rationale in the ruling that BEP has the ability to make up the rules for the remand process as they go, instead of following their

normal permitting process, BEP is admitting de facto that the existing permitting record, without this hypothetical cure by Nordic, cannot possibly rationalize the licenses. The rationale for this de facto conclusion is that there would be no reasonable explanation for the BEP to risk wasting more of the Law Court's and DEP's time on an obvious due process appeal from one or more of the three formal objections, if BEP did not think it is absolutely necessary for continued license justification.

In conclusion with respect to our objection, the NVC objects to the Board's explanation that somehow the NVC, or the public, was provided adequate input to the permitting process simply because the NVC was notified of the DEP's license suspension and discussions via the listserve created. The potential cure offered was devised well after the permitting record was closed, after the findings were posted, and after the licenses were issued. The document provides no definitive pathway to justify TRI, and the NVC reiterates that the BEP must strike it from their consideration today, and until such time as any possible pathway forward can be properly vetted by public due process.

It is simply not reasonable to say that new information that Nordic proposes must be added to the record, but then not allow it to be properly vetted before it is added to the record because of "...the narrow question the Law Court posed on remand: the impact, if any, quiet title decision,..." The BEP must either follow the law court's remand process stated above based solely upon the existing permitting record since the record was closed, or open the record to establish an updated public record to allow the additional information that Nordic wants in it, and then address "...the narrow question the Law Court posed on remand: the impact, if any, quiet title decision,..." with the updated record.

## Section 2

Even with the license suspension and eminent domain action admitted, over the NVC's objection, BEP must revoke the licenses because the permitting record has been proven incompatible with the Law Court's decision:

1. The only allowable use is residential, regardless of ownership.
2. A "residential only" usage requirement is by default, at the very least, a "no industrial" usage.
3. This residential only use is not the use assumed in the permitting record as it stands to date.
4. Therefore, if the law court's decision is to not have effect on the licenses, Nordic would have to argue that the existing record, as of the time it was formally closed and amended, justifies their discharge is equal to or better than a residential use, which they have not done so to date. If they do not, then the licenses must be revoked based upon the permitting record with the eminent domain action included.
5. The brief summation in the suspension order or other undetermined support documents that were alluded to in the ruling offers no definitive cure to their TRI issue.

6. The BEP's Remand Order as written would need to ignore clear and concise language in the Law court's decision present today with respect residential uses.
7. There is nothing in the record that justifies their license discharges will meet a "no industrial" usage requirement.
8. Nordic proposed that the residential restriction could be removed in the future in the suspension discussions. To do so, they will need to argue that their use meets the intent of the residential usage. While Nordic could clear cut the land, lay their pipes, and attempt to make it look like it is the same as a residential use, they have not described how their discharge on the property and tidal area will be analogous to a residential use.
9. If DEP is to eventually entertain a new form of TRI going forward that does not comport with the residential usage that was present but unknown during the entire permitting process, the obvious threshold for requiring a permit modification has been reached, if and when it is time to renew or reinstate the permits. It does not matter if there is a court remand process or not, any new information as important as a license suspension or TRI to attempt to alter a residential only designation, if it is to be used as evidence in permitting, is obviously sufficient grounds for a permit modification, and/or grounds to revoke the licenses at this time.
10. Nordic's hypothetical cure to install their industrial pipes in a residential only area is not in the permitting record, and therefore it is essentially hearsay. It has not been vetted publicly as per the DEP's permitting process, and as a result, it is loaded with potential implementation concerns that have not been evaluated, vetted, or resolved. If it is included in the discussion, the only conclusion is that one cannot determine whether the licenses are not affected by adding this information.
11. Mudding the water with unvetted possibilities is not the same as demonstrating that the licenses are not affected by the Quiet Title Action. As a result, to protect the public's interests, if Nordic does not provide the proper information to explain how their project can meet the residential only requirements with their proposed discharges in the current record, a favorable decision that there is no change in circumstance with the Quiet Title Decision cannot be made.
12. Even with the eminent domain action considered, Nordic cannot cure the residential use requirement simply by discussing ways to do so in the future. And therefore, the licenses must be revoked.

Thank you for considering the NVC concerns and arguments.

-Mike Lannan  
The NVC liaison to Nordic Aquafarms Permitting

**Michael T. Lannan, P.E.**

President

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**From:** Hinkel, Bill <Bill.Hinkel@maine.gov>

**Sent:** Wednesday, August 16, 2023 7:42 AM

**To:** Burke, Ruth A <Ruth.A.Burke@maine.gov>; Hinkel, Bill <Bill.Hinkel@maine.gov>; Loyzim, Melanie <Melanie.Loyzim@maine.gov>; Martin, Kevin <Kevin.Martin@maine.gov>; Kennedy, Eric <Eric.Kennedy@maine.gov>; Gilbert, Jane <Jane.Gilbert@maine.gov>; Muzzey, Lynn <Lynn.Muzzey@maine.gov>; Ostrowski, Kevin <Kevin.Ostrowski@maine.gov>; Kavanah, Brian W <Brian.W.Kavanah@maine.gov>; Wood, Gregg <Gregg.Wood@maine.gov>; Wood, Robert <Robert.Wood@maine.gov>; Hallowell, Dawn <Dawn.Hallowell@maine.gov>; Green, Robert L <Robert.l.Green@maine.gov>; Callahan, Beth <Beth.Callahan@maine.gov>; Boak, Scott <Scott.Boak@maine.gov>; Bensinger, Peggy <Peggy.Bensinger@maine.gov>; Akrawi, Emma <Emma.Akrawi@maine.gov>; Joanna B. Tourangeau <jtourangeau@dwmlaw.com>; k.ervintucker <k.ervintucker@gmail.com>; ipsofmaine <ipsofmaine@gmail.com>; DPerkins <DPerkins@curtisthaxter.com>; David Losee <david@loseelaw.com>; Mike Lannan <mlannan@techenv.com>; president@nvcmaine.org; Charles Tilburg <ctilburg@une.edu>; Donald W. Perkins, Jr. <don@gmri.org>; Diane Hunt Braybrook <dbraybrook@yahoo.com>; Lawrence Reichard <lreichard@gmail.com>; ellie@greenstore.com; dl\_broderick@hotmail.com; Paul Bernacky <waybackhomestead@yahoo.com>

**Subject:** Nordic Aquafarms, Inc. - Court Ordered Remands to BEP

To the Nordic Remand Service List:

Please find attached correspondence from Presiding Officer Duchesne in the above-referenced matter. Please note that a revised service list is enclosed with the letter.

Sincerely,

**William F. Hinkel**

Executive Analyst

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