



From: Kim Ervin Tucker k.ervintucker@gmail.com
Subject: Re: Nordic Aquafarms - Renewed challenge to NAF's TRI
Date: January 8, 2020 at 1:01 PM

To: Bertocci, Cynthia S Cynthia.S.Bertocci@maine.gov, **Bensinger, Peggy** Peggy.Bensinger@maine.gov
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Dear Ms. Bertocci and MS. Bensinger:

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

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

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

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

Accordingly, it is improper for the Board to continue to rely on this March 3 letter to find sufficient TRI in NAF or to assert that this letter has the legal affect of amending the waterside boundary of the easement option granted on 8-6-2018 (the waterside boundary of which terminates at the Eckrotes' high water mark). As legal authority for this assertion, we note the following precedents of the Maine Supreme Judicial Court: *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 28 ("a grantor may not convey more than what he or she owns"), citing, *Eaton v. Town of Wells*, 2000 ME 176, ¶ 19, 760 A.2d 232. See also, *Dorman v. Bates Mfg. Co.*, 82 Me. 428, 448, 10 A. 215, 216 (Me. 1890) ("One can not convey what he does not own. One

ME. 436, 446, 19 A. 913, 916 (ME. 1890) (“One can not convey what he does not own. One can not convey land, nor create an easement in it, unless he owns it.”).

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

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

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

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

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



01-02-20
 Mabee-JDL.pdf



Martin, Kevin -
 DEP.PDF

Dear Parties and Interested Persons:

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

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<Nordic - Nordic Hearing Notice.pdf>