

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

Susan M. Lessard, Chair

William F. Hinkel  
Executive Analyst

Ruth Ann Burke  
Board Clerk

October 17, 2023

**SENT VIA ELECTRONIC MAIL ONLY**

Kimberly J. Ervin Tucker, Esq.  
48 Harbour Pointe Drive  
Lincolntonville, ME 04849  
[k.ervintucker@gmail.com](mailto:k.ervintucker@gmail.com)

**Re: Motion to recuse Board member Steve Pelletier**

Dear Ms. Tucker:

I have reviewed your October 16, 2023, email requesting that the Board decide your motion regarding the participation of Board member Steve Pelletier in the Board's consideration of the Nordic remand and requesting oral argument on your motion.

Your motion for Mr. Pelletier's recusal is improperly before the Board for the reasons stated below and will not be before the Board at the upcoming meeting. First, the Board's statute governing recusals, 38 M.R.S. § 341-C(7), does not provide for a motion to the full Board for a recusal. It establishes a process in which an individual Board member determines whether they believe they may have a conflict requiring abstention and a vote of the Board only occurs if the Board member does believe there is a conflict that may require abstention. Mr. Pelletier has not identified a conflict of interest that may require his abstention here and therefore a vote of the Board is neither required nor appropriate. Further, your motion is untimely; it was filed three and a half years after Mr. Pelletier started participating in this matter, and over four years after the event you reference. Also, your motion to recuse with attachments, a 248-page filing, contains additional evidence regarding the matter before the Board despite the fact that the record is now closed, and additional argument despite the Board communications dated July 26, 2023, and August 16, 2023, which state that "no reply briefs or other filings are permitted." Since the directive that no further filings were permitted, you have sent multiple unauthorized filings to the Board.

For the reasons outlined above, the Board will not consider or hear oral argument on the motion that Mr. Pelletier recuse himself. While your motion to the Board is rejected and will not be circulated to or considered by the Board, this matter will be addressed by Mr. Pelletier at the time the Board takes up the Nordic Remand agenda item. The Nordic matter on the agenda is scheduled to begin after lunch.

As I stated at the September 21<sup>st</sup> Board meeting, any objections regarding the Board staff's briefing or Presiding Officer decisions on the course of this proceeding must be made during the time allotted to each party for oral argument.

As a reminder to the parties, the order of argument will be:

1. Oral argument by Ms. Tucker on behalf of Jeffrey Mabee and Judith Grace; Friends of the Harriet L. Hartley Conservation Area; the Maine Lobstering Union, and David Black and Wayne Canning (20 mins total);
2. Oral argument by Mr. Perkins, Mr. Silk or Mr. Losee on behalf of Upstream Watch (20 mins total);
3. Oral argument by Mr. Lannan on behalf of Northport Village Corporation (20 mins total); and
4. Oral argument by Ms. Tourangeau or Mr. Kallin on behalf of Nordic Aquafarms, Inc. (20 mins total).

If you have any questions, you may contact Board Executive Analyst William F. Hinkel at [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov) or (207) 314-1458 or Assistant Attorney General Peggy Bensinger at [peggy.bensinger@maine.gov](mailto:peggy.bensinger@maine.gov) (207) 626-8578.

Sincerely,



Robert Duchesne  
Presiding Officer  
Board of Environmental Protection

cc: Service List (August 16, 2023)