

APPEAL TO THE BUREAU OF ENVIRONMENTAL PROTECTION

SHM ROCKLAND, LLC) NATURAL RESOURCES PROTECTION ACT
Rockland, Knox County) COASTAL WETLAND ALTERATION
MARINA EXPANSION AND DREDGE) WATER QUALITY CERTIFICATION
L-20386-4P-P-N (approval))
L-20386-4E-Q-N (approval)) FINDINGS OF FACT AND ORDER

The undersigned appellants hereby file their appeal of the Department of Environmental Protection (DEP or Department) findings of fact and order dated 09/08/2021 in the above-captioned matter and request that the Bureau of Environmental Protection (BEP) schedule a hearing in this matter so that appellants may be further heard with respect to the objections set forth in this appeal.

1. DESCRIPTION OF PROJECT: SHM Rockland, LLC (SHM) proposes to expand its existing marina in Rockland Harbor by constructing an extended access platform to the fixed pier, adding three new float configurations (Dock A, Dock B, and Dock C), and dredging approximately 138,000 square feet of tidal lands. A proposed access platform designed to provide improved accessway onto the pier will extend along the shoreline south from the landward end of the existing fixed pier with direct and indirect impact within the coastal wetland. The proposed Dock A float system will extend east and north of the existing pier, forming a T-head with a 20-foot-wide by 90-foot-long float extending west and a 20-foot-wide by 150-foot-long float extending east, with a four- to eight-foot draft designed to attenuate wave energy. The marina’s proposed dinghy dock will be located on the southern most float closest to Sandy Beach. The proposed Dock B float system will extend west and north of the existing pier, and will replace a portion of the existing timber floats at the marina. The proposed Dock C float system will consist of a float tree extending west off existing floats to provide slips for more than a dozen “smaller” vessels (30’ to 40’), with the northwest corner closely abutting the City’s public dinghy dock.

2. SUMMARY OF OBJECTIONS: If the proposed expansion is permitted to proceed, the appellants and other Rockland residents and visitors will have an undisclosed number and size of mega yachts as well as numerous other large yachts blocking the scenic view so many now enjoy and even rely on as part of their aesthetic day-to-day life practices. The expansion will also impede enjoyment of and access to the harbor for recreational and navigational purposes. The appellants are concerned about SHM’s plan to be the primary location “north of Boston” providing bunkering, enabling the transfer of enormous amounts of fuel (“10,000 gallons” was a figure used by a consultant for SHM) to boats in the inner harbor. They are concerned about the impacts of the expansion on the public’s access to the portion of the Rockland Harbor Trail boardwalk that passes over SHM property, to which SHM has refused to evidence its commitment to on-going public access in writing. The appellants believe the impact of many additional large yachts, including mega yachts, with increased fuel requirements, along with the

new large dinghy dock to be located near the only public access beach in the area, Sandy Beach, will adversely impact enjoyment of the scenic views available from the beach and pollute the waters the public swims in from that beach. They are concerned about the impact of the expansion on commercial and recreational vessels and the potential for the marina expansion to impede the public channel into and out of the harbor. The appellants also believe the environmental concerns were not adequately considered, particularly the potential harm to wildlife and wildlife habitats. For these, and all the reasons set forth below, the appellants object to the Department's decision in this matter.

3. AGGREIVED PARTIES

1. **Steve Cartwright** is a resident of Tenants Harbor, Maine for whom Rockland harbor, once an industrial area shunned by tourists, is now a beautiful destination, and a source of pleasure and profit for him and other local residents. That's because there is public access - at the breakwater, along shore, and along the Harbor Walk, including the portion of the boardwalk that passes through Safe Harbor Marina property. Mr. Cartwright spends a great deal of time in Rockland, where he shops and volunteers for nonprofit organizations (Good Tern Co-op and the Millay House, birthplace of the poet). He always makes sure to visit the shore and savor the view. He also sails in and out of Rockland harbor, and appreciates the mix of commercial and recreational activity the harbor offers to him and many others. Mr. Cartwright feels the gross expansion of Safe Harbor Marina is all about maximizing corporate profit and is an assault on the intrinsic character and beauty that Rockland harbor offers to him and other visitors. He feels there is no need for this intrusion; that the proposed expansion is for profit and for rich people. Mr. Cartwright believes that this is not representative of the Maine ethic that he supports, nor should it be public policy. In Mr. Cartwright's view, the city of Rockland has long been a diverse place, open to rich and poor, open to all. He strongly urges that the BEP not to slam the door shut on people who want to gaze out to sea, visit a small public beach, watch the gulls and seals. He urges the BEP not to turn Rockland into an elitist club for the super-wealthy, and their mega-yachts. He fully support this appeal of the DEP's order approving this project, and hopes the BEP will listen to those making this appeal and reconsider this decision.

The final agency action Mr. Cartwright seeks to be reviewed will irrevocably harm the ability of Mr. Cartwright to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as he has done for many years.

To the extent Mr. Cartwright's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

2. Nadine Bangerter and Larry Bangerter are residents of Rockland, Maine and have been engaged residents and frequent users of the Rockland harbor waters, including the Rockland Harbor Walk, Buoy Park, Harbor Park, the Public Landing and Sandy Beach, since 2010. They enjoy walking year-round on the Rockland Harbor Trail, including the portion of the boardwalk located on SHM property, all the way to Sandy Beach, where they enjoy the scenic views, exercise, and take photographs. They have also attended functions and festivals held in Harbor Park and Buoy Park, including but not limited to the Thursday Farmers Market, the Blues Festival, the Lobster Festival and the Festival of Lights since 2010, enjoying the scenic views of the harbor while in attendance. Just recently the Bangerter's attended a musical concert of local musicians – a chance to be outside near the harbor, listen to music, take in the view and be safe from COVID. However, they found it very distressing that when a bus pulled up to the harbor to pick up tourists disembarking from a visiting boat, the bus proceeded to idle right in front of the harbor next to the concert, not only drowning out the music, but blocking the view. The bus company had no regard for these local events – just to catering to moored yachts. The Bangerter's fear that these types of adverse impacts on their aesthetic and scenic enjoyment and use of the harbor-based facilities will multiply if Safe Harbor Marina's expansion is permitted to proceed. To the Bangerter's, Rockland is a special community, a hub for the mid coast area. They also know that it is a small town, with a tight budget to meet the needs of residents like them and visitors. For the Bangerter's, Rockland is a gathering place for locals like them to enjoy a beautiful, wide-open harbor with wonderful views of all kinds of boats and marine life. When the Rockland Harbor Trail was built by MBNA, in order to specifically make sure that the harbor's scenic and aesthetic offerings would continue to be enjoyed by all, a strong statement went out from MBNA's management that this town belongs to its residents. The Bangerter's personally re aware of individuals who have moved to Rockland because of this sense that it is a place for the average person. If local needs and opportunities are subjugated to yacht owners, who come in and spend a couple of days and move on to their next stop, the Bangerter's believe this will turn the original community concept they embrace and depend on upon its head – the opposite of what they believe their community stands for. It is the Bangerter's view that the local community should be deciding the fate of its harbor, not the state. The Bangerter's believe that currently, the state does not adequately allocate funds to Rockland to perform its roll as a hub for mid coast, requiring residents like the Bangerter's to pay one of the highest property tax mill rates in the state. The Bangerter's believe that the state does not have the right to additionally add to the burden of Rockland's residents like them, who, if the state approves Safe Harbor Marina's mega yacht expansion, will be forced to deal with the need for extra services, congestion, scenic view obstruction, loss of the current stores/restaurants that cater to the community, and increased noise and environmental pollution. The final agency action Nadine Bangerter and Larry Bangerter seek to be reviewed will irrevocably harm their ability to continue using and enjoying these scenic, aesthetic and recreational resources as they have done for many years.

To the extent Nadine Bangerter and Larry Bangerter's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

3. **Ken Wexler** has been a resident of Owls Head for 22 years and has used a mooring that he owns in Rockland Harbor for twenty years. He is also a member of the Rockland Yacht Club and rents space at the public dinghy dock from the city and pays fees to the city for the mooring. Mr. Wexler sails in the harbor all season long in his small sailboat and feels truly blessed to be part of a great harbor and community of boaters, kayakers and rowers who get to enjoy this very special harbor. Mr. Wexler does not feel the harbor, especially the inner harbor, can safely allow mega yachts and small boaters to share the same space. In addition, Mr. Wexler fears that his mooring spot will be compromised and no longer safe, as a result of having to accept all the small boats and moorings that will have to be relocated in order to accommodate the mega yachts. So far there is no plan that Mr. Wexler has seen that details what is to be done with the dozens of existing moorings that will need to be relocated. In addition, Mr. Wexler cannot fathom how the public docks are going to be safely accessible with the coming and going of mega yachts, including the public dinghy dock he regularly uses and relies on in order to use his dinghy to reach his mooring. The DEP came to Rockland Harbor in late fall, when the harbor was virtually empty. Mr. Wexler urges the BEP to reconsider the DEP's ruling, take all factors into consideration, and especially arrange for a site visit in the summer at the height of the activities in and around the harbor, both commercial and residential, in order to see for itself what those who live and work and visit here are so deeply concerned about. Perhaps even stand on the community's beautiful little beach, look at the marker where the proposed 150' docks are going to be placed, then picture a boat sticking 50' beyond that point, and tell the public that the view from that park and beach will not be impacted.

The final agency action Mr. Wexler seeks to be reviewed will irrevocably harm the ability of Mr. Wexler to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as he has done for many years.

To the extent Mr. Wexler's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns)).

4. **Constance M. Hayes** is a resident of Rockland, Maine who is concerned about the impact the Safe Harbor Marina plans will have on her as a member of the Rockland community and on the community's natural resources that she has long enjoyed and used. The potential impact of the proposed expansion on Rockland's land infrastructure will have a ripple effect she believes should be considered, with the edges of shoreline changing in unanticipated ways. Fuel storage, visitor amenities, and increased development on nearby land are likely to be components requiring city infrastructure and services, all of which will impact Ms. Hayes ability to continue to use and enjoy the resources offered by Rockland harbor and the surrounding areas. Rockland is a county seat and service center with high taxes stretched to cover basic services from untaxed real estate. Deterioration of water, sewer, paving, and access to electricity on which Ms. Hayes relies as a Rockland resident are concerns that are likely to be stressed further if Safe Harbor is permitted to proceed with their plans. Ms. Hayes urges the BEP to require Safe Harbor to take responsibility for the financial and environmental impact of their extensive changes to the harbor

(and in turn shore), by building their responsibility into the requirements of any permitted expansion. The small, highly used, public, clean, sandy beach that Ms. Hayes enjoys visiting is likely to be dwarfed and made unpleasant with obstructed views of the harbor if Safe Harbor's plans are put into effect.

Rockland describes itself as the Art Capital of Maine. Ms. Hayes served as a trustee for the Farnsworth Art Museum for nine years supporting the importance of Rockland's physical beauty and authenticity of a working waterfront in Penobscot Bay. Rockland attracts artists from around the world for our museums, galleries, and workshops. The arts are key to the economic health of the city and the region. Many artists want to explore the landscape and shoreline that belonged to Edward Hopper, Andrew Wyeth, Fairfield Porter, Louise Nevelson, Alex Katz to name just a few. From an aesthetic point of view, Ms. Hayes believes that approval of Safe Harbor's plans would change Rockland's sailing and fishing boat scale to a large scale "parking lot" for yachts, with permanent adverse impact on the local arts and cultural aesthetic community.

The final agency action Ms. Hayes seeks to be reviewed will irrevocably harm the ability of Ms. Hayes to continue using and enjoying these scenic, aesthetic and recreational resources as she has done for many years.

To the extent Ms. Hayes's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

5. **Rebecca Glaser** is a former resident of Rockland, Maine who recently moved to Rockport, Maine. She has been an avid user of the Rockland Harbor waters, and visitor to and user of the Rockland Harbor Walk, Buoy Park, Harbor Park, the Public Landing and Sandy Beach, for her entire life. Since she was a little child, her father's work was working on boats and sailing out of Rockland's North End Shipyard on passenger schooners. She spent countless hours in the harbor, and at the shipyard. As an adult volunteering, she installed the perennial gardens at Sandy Beach over ten years ago, bringing many of her own plants, compost, bulbs, and volunteer labor so that it could be enjoyed by many. She also expanded gardens at the Rockland Harbormaster's Office at Harbor Park, planting many perennials at her own cost. She continues to maintain the perennial gardens at Sandy Beach, as well as containers of annuals, adding plants each year--a new addition that people seem to greatly enjoy is tall sunflowers each summer, helping frame the truly wonderful wide-open view of the ocean, of the moon rising over the water. She waters the gardens, weeds, mulches, puts in new plants, composts, tends plants throughout the growing season. Every time she is at Sandy Beach people thank her and often mention how important Sandy Beach has been for them in their recovery from substance use, or in their grief; it is so clear how much the community loves Sandy Beach, the Harbor Boardwalk, the feeling of wide openness that we all enjoy when looking out over the Harbor. She remembers when Rockland harbor was dirty, more full of oil slicks, fuel, raw sewage, old paint, and loves that Sandy Beach

is finally now clean enough to swim in. When she is taking care of the plants in Rockland, she also often swims at Sandy Beach, and she walks the Boardwalk year round.

Ms. Glaser has looked at Sandy Beach Park, from the sandy beach part, to the green areas, and seen how significant the views of the harbor will be affected from every angle by these large docks and mega yachts. She will find it much less enjoyable to do her work at the park as a gardener with the feeling that the park is not so “public” and open anymore, but now hemmed in by the mega yacht expansion. Because these mega yachts can take thousands of gallons of fuel at a time, and Safe Harbors says they plan to “plumb” the marina for major fueling (“fuel bunkering”), large fuel trucks will be coming in and out right by the park when she am gardening there for the public benefit. Fumes and noise from those trucks will interfere with her own enjoyment of volunteering in the park.

Additionally, when Ms. Glaser swim at Sandy Beach Park, it will also be significantly less pleasant— with those large boats right by where she swims, and their dinghies zipping in and out where she likes to swim as well. Anyone who has ever been near a dinghy dock knows that there is inevitably a very large oil slick surrounding it. The way the harbor works, with this dinghy dock so close to Rockland’s sole sandy ocean swimming beach, it is very likely that oil and gas will affect the water quality for swimmers including Ms. Glaser. The worst outcome would be if people, including Ms. Glaser, simply don’t swim there anymore because it becomes so much less pleasant and clean; a place enjoyed by her and so many children and families, all of whom who need more places to cool down as the Maine summers get hotter and hotter.

Ms. Glaser is also deeply concerned that state so-called “environmental” regulators think it is ok to allow mega yacht infrastructure to be built at a time where one can palpably notice significant climate crisis effects in Maine, and know that it will get only worse if infrastructure that is causing the crisis continues to be invited to locate and/or expand. Mega yachts are among the most environmentally destructive ways to travel—their destruction of the planet accelerates the warming of the Gulf of Maine, contributing to larger storms, coastal erosion, droughts, more major precipitation events, and the eventual demise of shellfish such as lobster in Maine’s water, all of which affect Ms. Glaser (and all Mainers) in deeply personally ways, ultimately affecting our very survival as people.

The final agency action Rebecca Glaser seeks to be reviewed will irrevocably harm the ability of Rebecca Glaser to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as Rebecca Glaser has done for many years.

To the extent Rebecca Glaser’s standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

6. **Eileen Fitzgerald** is a resident of Rockland, Maine who has been an avid visitor to and user of the Rockland Harbor Walk (of which a portion of the boardwalk crosses applicant SHM's property), Buoy Park, Harbor Park, the Public Landing and Sandy Beach, since 2018. Ms. Fitzgerald also has attended functions and festivals held in Harbor Park and Buoy Park, including but not limited to the Thursday Farmers Market, the Blues Festival, the Lobster Festival and the Boat, Home and Harbor Show regularly, enjoying the scenic views of the harbor while in attendance. In January of 2021, Ms. Fitzgerald had a serious accident and currently is handicapped with a spinal cord injury. Without assistance and easy access, her outdoor recreation is severely limited, and Ms. Fitzgerald relies on easy access to the boardwalk for her very limited recreational opportunities. Since many Rockland residents are elderly, Ms. Fitzgerald knows she is not alone in! The very trails and boardwalk whose scenic views will be so adversely impacted by Safe Harbor Marina's proposed expansion are what makes it possible for Ms. Fitzgerald to expand a now limited view of life here. She relies on the aesthetic opportunities these views offer and urges the BEP not to confirm approval of the expansion of Safe Harbor Marina in Rockland so Ms. Fitzgerald and so many other members of the public can safely enjoy our community.

The final agency action Ms. Fitzgerald seeks to be reviewed will irrevocably harm the ability of Ms. Fitzgerald to continue using and enjoying these scenic, aesthetic and recreational resources as she has done for many years.

To the extent Ms. Fitzgerald's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

7. **Kyle MacKenzie Swan** is a resident of Rockland who chose to live here for the beauty of the waterfront and harbor. He has enjoyed the Harbor Park with the harbor views for many years, attending many of the festivals that come here every summer - Lobster festival, North Atlantic Blues festival, etc. – as well as the boardwalk that leads to a beautiful beach that he has enjoyed using for years, swimming, picnicking and just sitting on the beach to enjoy the harbor scene and views beyond. While Mr. Swan has been enjoying the harbor views, he has witnessed many other Rockland residents drive down to the waterfront to sit and enjoy the harbor views from their cars. Mr. Swan also runs the launch for the Rockland Yacht Club, and many of the boat owners the launch services have told him that they are very upset to lose their moorings that are close to shore, and therefore very convenient, and that they have owned for many. Mr. Swan finds it very disturbing that a large private company may be allowed by state agencies to come in and develop a marina serving very large vessels that will obstruct the beautiful views that he and so many others have enjoyed for many years. His concerns about the proposed marina expansion include the potential for significant environmental pollution, traffic, noise, light and water pollution, all caused by a project that would be allowed to profit from its use of public harbor waters and coastlines. Mr. Swan continues to believe that there are other areas that are available that could accommodate the Safe Harbor Marina expansion and that have been commercialized

for many years and designed for this type of purpose; he has previously given information about such alternatives to the DEP together with photos and aerial maps, and would like to know why these options have not been explored. Mr. Swan urges the BEP to protect the little bit of beautiful environment remaining on his city's coastline that Mr. Swan and so many other members of the public rely on for aesthetic enjoyment, recreational opportunities and navigation. Allowing towering mega yachts and 150' extended piers to block the views of the harbor and the islands beyond, and adversely impact the only pristine public beach in his area will cause harm to Mr. Swan for years to come.

The final agency action Mr. Swan seeks to be reviewed will irrevocably harm the ability of Mr. Swan to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as he has done for many years.

To the extent Mr. Swan's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

8. Laurence Coe is a resident of Rockland, Maine and has been an frequent user of the Rockland Harbor waters, and visitor to and user of the Rockland Harbor Walk (of which a portion of the boardwalk crosses applicant SHM's property), Buoy Park, Harbor Park, the Public Landing and Sandy Beach, since 2012. She is an avid recreational kayaker who has enjoyed paddling a kayak in the Rockland harbor waters, including in, through and around all of the areas of SHM's proposed expansion, since 2012. Ms. Coe believes that the proposed Safe Harbor Marina expansion will significantly curtail her ability to safely enjoy use of the harbor in her kayak, and is likely to increase the possibility of navigational dangers to personal watercraft like hers from both the increased number of private yachts using the expanded marina as well as from the mega yachts being serviced there. Ms. Coe also enjoys walking regularly and year round on the Rockland Harbor Trail (often with her dog), including on the portion of the boardwalk located on SHM property, to enjoy the scenic view and take photographs of the beautiful area views, including the personal and commercial watercraft on their moorings, raising sail, and plying the waters, and believes that the proposed SHM marina expansion will significantly reduce the views accessible to her and her camera. She visits Sandy Beach regularly to enjoy the view, walk on the beach and, in season, to swim, and believes the view from the beach will be significantly impacted by 200 foot yachts often 25 feet in height, as well as by the detrimental impact on the waters in which she swims of oil and gasoline from engines of many additional large dinghies, yachts and mega yachts using the facility. Ms. Coe regularly attends functions and festivals held in Harbor Park and Buoy Park, including but not limited to the Thursday Farmers Market, the Blues Festival, the Lobster Festival and the Boat, Home and Harbor Show regularly since for the past decade, choosing to attend these events in significant part in order to also enjoy the scenic views of the harbor while in attendance; she believes these views and her enjoyment of attending like events will be curtailed by the additional large and mega sized yachts. She is also worried about the potential impact on her use (and the public's) of these parks, the boardwalk and the

beach by the numerous additional fuel delivery trucks that will need to come and go in the area in order to serve SHM's expanded marina customers.

The final agency action Ms. Coe seeks to be reviewed will irrevocably harm the ability of Ms. Coe to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as she has done for many years.

To the extent Ms. Coe's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

9. Penobscot Bay Watch (PBW) is a citizens' effort in defense of the ecological integrity and adaptability of Maine's biggest bay, through local oversight and community action. The members of PBW will be aggrieved parties if the Marina expansion in its present form is approved. The members of PBW are active users of Rockland Harbor, Sandy Beach and Harbor Park. For more than 20 years PBW has sought to get federal and state environmental agencies to make decisions that allow for responsible coexistence of our human communities with Penobscot Bay's fishes, shellfish, plankton, seaweeds, seabirds and other bay life, including those in and around its tidal river drainages. Two top PBW concerns are coastal sprawl along West Penobscot Bay's Route 1 corridor and oversight of legacy waste site remediation in that same reach. PBW has been granted standing by Maine Board of Environmental Protection concerning development issues in Northport on the coast of Penobscot Bay. PBW's executive director Ron Huber has twice been granted standing before Maine Superior Court to appeal Penobscot Bay-impacting decisions made by Maine DEP and by the Bureau of Parks and Lands, relating to Sears Island and Monhegan Island respectively. Huber was a resident of Rockland for twenty-five years and still works there. Based on the PBW review of the Safe Harbors application and of the responses by BPL, DEP, DMR, and detailed below PBW and Mr. Huber find that (1) the SHM application is incomplete, and (2) that state agency reviews of the proposal are insufficient. The final agency action Mr. Huber seeks to be reviewed will irrevocably harm the ability of Mr. Huber to continue using and enjoying these scenic, aesthetic and recreational resources as he has done for many years.

To the extent Mr. Huber's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

10. **Judy Pasqualge** is a full-year resident of Rockland. As a senior and retiree, for years Ms. Pasqualge has enjoyed walking down to and along the Rockland harbor just about every day, going by most of the harbor parks, sometimes on the boardwalk, or along the side streets in the area, down to South End Beach (also known as Sandy Beach), and beyond, most often looking out to sea to enjoy the scenic views of the Rockland breakwater, the moored pleasure boats, the commercial fishing boats, as well as the shore birds and seals that frequent the area. It is one of the reasons that Ms. Pasqualge chose to live here (not on the ocean front). In the course of her walks, Ms. Pasqualge has noted that many people in Rockland do the same, and, in addition, many park by the Harbor Masters office and by the beach, early in the morning or during lunch; others bring their children down to the beach, at all hours – it is a much-used area for the people of Rockland, including her. This is not to mention Ms. Pasqualge’s attendance at music and festival events held in Harbor Park, Buoy Park and the surrounding waterfront area, which now will come with the backdrop of very tall and wide yachts. Despite numerous requests, including by Ms. Pasqualge, SHM refused to provide mock-ups/promo drawings that would show parties impacted by the proposed expansion the actual impact and scope of docks servicing 200-foot boats. Especially impacted for Ms. Pasqualge will be use and enjoyment of South End Beach and the views available from there. Supplying the increased number of boats, presumably via vehicles going into the Archers area, will impact the area through which Ms. Pasqualge regularly walks. Having seen other places where ocean side tourism has taken a turn to focus on servicing the very wealthy, Ms. Pasqualge believes that this model has widespread side effects – the servicing for the large and mega yacht owners’ needs being quite extensive, very multiple and high-end – and sometimes impacts not now apparent or considered of due importance. It's not as if Ms. Pasqualge has a great alternative. There is no other beach. There are roads that run by the sea, but often without sidewalks. As it is, trust in SHM to keep its part of the Boardwalk open to the public may prove to be only magical thinking and, if so, the quality of Ms. Pasqualge’s life will be dramatically impacted. There also has been no public comment allowed on SHM's landside plans. When the Rockland harbor commission surveyed people this year, some 87% rated the 'view' as a high priority, Ms. Pasqualge among them. She believes it is impossible to conclude that public recreational use, including by Ms. Pasqualge, of the harbor and surrounding public parks, boardwalk and beach, will not be significantly affected by the proposed SHM expansion. Instead, the recreation of yacht owners has been given priority.

The final agency action Ms. Pasqualge seeks to be reviewed will irrevocably harm the ability of Ms. Pasqualge to continue using and enjoying these scenic, aesthetic and recreational resources as she has done for many years.

To the extent Ms. Pasqualge’s standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

11. **Virginia Noble** is a resident in the South End of Rockland, Maine, who has a long history of living in and visiting Rockland Harbor. She has been a daily walker and avid birder on the Rockland Harbor Trail along Sandy Beach, Harbor Park, and Buoy Park, and a kayaker in the inner Rockland Harbor since 2016 when she moved to Rockland. Before that, she was a resident of Knox County, who had regularly visited Rockland Harbor since 1986. Ms. Noble is involved in the community as a volunteer gardener, having designed and maintained the gardens in the South End's Snow Marine Park with her neighbor since 2017. For the past several years, Ms. Noble has attended meetings of the Rockland Harbor Commission (RHC) as a public commenter to keep informed of activities affecting the waterfront parks and to safeguard the beauty of the area. She learned details of the SHM project to expand the marina in 2021, a year after Safe Harbors Marina bought the subject property in 2020. At the RHC meeting last October, when Ms. Noble asked the SHM representative how this project will benefit the city and people of Rockland, she received little or no response. Therefore, she wrote to the Department of Environmental Protection outlining her concerns. The response was a systematic rejection of all the concerns voiced by community members. Specifically, there was no economic impact study, positive or negative, submitted by the applicant or reviewed by the local government, nor was there an adequate, well-researched environmental impact study. She cannot support an ill-conceived project that does not fit with the times nor meet the needs and desires of the community in which Ms. Noble lives.

The final agency action Ms. Noble seeks to be reviewed will irrevocably harm the ability of Ms. Noble to continue using and enjoying these scenic, aesthetic and recreational resources as she has done for many years.

To the extent Ms. Noble's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns)).

12. **Avis Turner** is a resident of Rockland, Maine and has been an avid user of the Rockland Harbor waters, and visitor to and user of the Rockland Harbor Walk (of which a portion of the boardwalk crosses applicant SHM's property), Buoy Park, Harbor Park, the Public Landing and Sandy Beach, since 2014. She partakes of sailing via a friend who owns a small sail boat which is moored on a Rockland public mooring and who keeps a dinghy at Rockland's public dinghy dock, uses Journey's End Marine for maintenance, and has personal knowledge that both vessels have used the harbor waters, including around the area of SHM's proposed expansion, every year since at least 2011. She enjoys walking daily year round on the Rockland Harbor Trail, including the portion of the boardwalk located on SHM property to enjoy the scenic view and take photographs, becoming peaceful, centered, and calm, and believes the proposed marina expansion threatens her ability to continue to use these public areas for these purposes. Ms. Turner visits Sandy Beach regularly (daily) to enjoy the view, walk on the beach and/or swim, and has attended functions and festivals held in Harbor Park and Buoy Park, including but not limited to the Thursday Farmers Market, the Blues Festival, the Lobster Festival and the Boat,

Home and Harbor Show regularly since 2014, enjoying the scenic views of the harbor while in attendance, and she believes these views and her enjoyment of using Sandy Beach and attending such events would be significantly diminished by the proposed marina expansion's impact on the scenic views and the general environment by added harbor traffic, noise, and pollution.

The final agency action Ms. Turner seeks to be reviewed will irrevocably harm the ability of Ms. Turner to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as she has done for many years.

To the extent Ms. Turner's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns)).

13. **Anne "Pinny" Beebe-Center** is a resident of Rockland, Maine and has been an avid user of the Rockland Harbor waters, and visitor to and user of the Rockland Harbor Walk (of which a portion of the boardwalk crosses applicant SHM's property), Buoy Park, Harbor Park, the Public Landing and Sandy Beach, since 1980 when she bought her house, and of the Harbor Walk since it was built. Ms. Beebe-Center owned a 14 foot Jonesport sailing peapod from 1980 to 1997 and kept it tied up to the public landing and the dinghy dock in the Rockland harbor and would come home from Augusta and more often than not take it for a row or a sail. She would hesitate to own or use any similar sized vessel in the harbor should the proposed expansion proceed as she believes the impact of the additional large and mega yachts would significantly curtail her ability to safely enjoy use of the harbor. Ms. Beebe-Center and her family and friends enjoy walking regularly on the Rockland Harbor Trail year round, including the portion of the boardwalk located on SHM property, to enjoy the scenic view and take photographs, and she believes the planned expansion will undermine her ability to continue to use and enjoy these aesthetic benefits. She visits Sandy Beach regularly to enjoy the view, walk on the beach and/or swim. She has attended functions and festivals held in Harbor Park and Buoy Park, including but not limited to the Thursday Farmers Market, the Blues Festival, the Lobster Festival and the Boat, Home and Harbor Show regularly since 1975 and when each first began at the Harbor Park and Buoy Park, enjoying the scenic views of the harbor while in attendance. Ms. Beebe-Center believes that the proposed marina expansion would seriously diminish the views of beautiful Rockland harbor and have a serious polluting effect on the local waters where she and others swim at Sandy Beach.

The final agency action Ms. Beebe-Center seeks to be reviewed will irrevocably harm the ability of Ms. Beebe-Center to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as she has done for many years.

To the extent Ms. Beebe-Center's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park*

Authority, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

14. **Susan Beebe** is Rockland, Maine resident, who for twelve years has been designing, planting and tending as a volunteer, and largely spending her own money on the gardens at Gilbert and Adams Central Park, which has a magnificent view of Rockland Harbor. Ms. Beebe, as well as many, many people in Rockland, both residents and visitors, make use of this park in all seasons, and the view of the harbor is the biggest draw, with its feeling of peace, freedom and space. Ms. Beebe believes that the proposed marina expansion's blocking of this view with large and mega yachts serving rich people is unfair and terrible and will undermine and harm her own and many other people's ability to use this public space. Ms. Beebe is also aghast that the harbor will be immediately dredged and that the arsenic-contaminated sludge will be foisted on the town of Cushing. She believes the DEP's approval of this project has been far too precipitous and much more study is needed.

The final agency action Ms. Beebe seeks to be reviewed will irrevocably harm the ability of Ms. Beebe to continue using and enjoying these scenic, aesthetic and recreational resources as she has done for many years.

To the extent Ms. Beebe's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns).

15. **Isabella Feracci** has been a resident of Rockland since 2005 and currently rents an apartment within walking distance of the South End boardwalk. In 16 years of living here, she have rented five other apartments in the South End neighborhood. This end of Rockland has always appealed to her for its friendliness to pedestrians; she can walk a good distance -- for pleasure, exercise or commuting -- and be off of the main roads. She has used the boardwalk to commute on foot from home to work. She has used the boardwalk to enjoy a stroll alongside her father with his walker or push him in a wheelchair. Today, with her 3 year old, she uses the Harbor Trail on a weekly basis to get from my apartment to her mother's house. It is a huge relief to have space to walk or run with a child where the danger of cars is not an issue. One of Ms. Feracci's greatest joys of living in this town is to be able to meander along the water, taking in the views and saying hello to neighbors, in a space that is for anyone and everyone.

Ms. Feracci holds that the Harbor Trail and its views make Rockland special, a desirable place to live and visit. She recently spent a long weekend in Southwest Harbor. It is a gorgeous harbor, but it is not possible to access it directly without crossing private property, paying to sit in a restaurant, or observing it from parking lots. This is true of many of the beautiful harbors that make up the Maine coast. But Rockland has the opportunity to do better and be better in providing public access. Rockland has many, albeit disconnected and still private, points to walk along the water and directly access it. Why would Rockland go backwards? Why would

residents of Rockland, including Ms. Feracci, not do whatever they can, at this important juncture, to make sure that business interests do not take precedence over public interest?

In Ms. Feracci's opinion, the built boardwalk is a critical public amenity that should be preserved for the use and enjoyment of all the citizens of Rockland, including her, as well as visitors. If the City of Rockland, as stewards of the City's resources on behalf of its citizens, has the power to protect this amenity that has been used for public access for nearly two decades, it should use that power to ensure unrestricted and permanent access to this important section of the Harbor Trail.

The final agency action Ms. Feracci seeks to be reviewed will irrevocably harm the ability of Ms. Feracci to continue using and enjoying these scenic, aesthetic and recreational resources as she has done for many years.

To the extent Ms. Feracci's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns)).

16. **Paul Rosen** lives in Owls Head on Rockland Harbor at the top of the bay. Mr. Rosen believes that a major negative impact to both "Mainers" and visitors alike is the potential closing off of the Harbor Trail that traverses the SHM Rockland LLC property. For the past 20+ years, the public has had access and right of enjoyment to the entire trail. The hardship created will be significant and problematic. Any permit should be put on hold until a binding document preserves this right of access and enjoyment. There have been vague promises but a clear refusal to commit to anything enforceable.

Mr. Rosen walks daily from his house to Rockland Harbor. Mr. Rosen feels that the view corridor of publicly owned adjoining property will be significantly impaired. The South End Beach (aka "Sandy Beach") will lose most if not all of its harbor view due to the southern dock expansion. The Rockland Harbor Park, with its non-stop calendar of festivals, exhibitions, and the farmers market will be impacted by the northern expansion. Instead of exceptional views of the harbor, lighthouse, breakwater, and the islands beyond visitors will have the excesses of the megawealthy with their mega-yachts in their faces front and center. Mr. Rosen feels that this is an insult both visually and environmentally.

The final agency action Mr. Rosen seeks to be reviewed will irrevocably harm the ability of Mr. Rosen to continue using and enjoying these scenic, aesthetic, recreational and navigational resources as each has done for many years.

To the extent Mr. Rosen's standing in this case is construed as being limited to any person who can demonstrate a particular interest is harmed, it is settled that harm to aesthetic, environmental or recreational interests confers standing. *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189, 196-97 (Me. 1978) (citing *Sierra Club v. Morton*, 405 U.S. 727 (1972) (plaintiffs who were users of State park and who intended to use it in the future had standing to enjoin Park Authority from clearing timber blowdowns)).

4. OBJECTIONS

I. Existing Scenic, Aesthetic, Recreational or Navigational Uses:

A. Scenic and Aesthetic Uses: *“The project site is located adjacent to Sandy Beach (also known as South End Beach), a 200-foot-long municipal beach. The project parcel contains a paved walkway that is part of the Harbor Walk, a system of paths on multiple public and privately-owned, waterfront properties that connects several public spaces and viewpoints along the shoreline including Sandy Beach, Harbor Park, and Buoy Park, all of which are located within 0.2 miles of the project site, and all of which meet the Chapter 315 definition of a scenic resource of local significance. The project site is located approximately 1.35 miles from the Breakwater and the Breakwater Lighthouse, both of which are listed on the National Register of Historic Places as areas of local significance. The harbor is developed with two municipal piers, a coast guard station, and numerous commercial piers and buildings, including the applicant’s existing pier, which are visible from the scenic resources listed above.”*

Objections:

1. Conclusion A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses. **Appellant objects to Conclusion A for each and all of the following reasons relating to scenic, aesthetic and recreational uses:**
 - (1) The Order states that the applicant “redesigned the layout to avoid vessels being berthed broadside to viewpoints to the west, including Buoy Park, a municipal pier (the Public Landing), and the boardwalk portion of the Harbor Walk.” However, the boardwalk portion of the Rockland City Harbor Walk is on the opposite side of SHM’s proposed expansion from Buoy Park and the municipal pier. Accordingly, the so-called “redesign” can’t avoid being broadside to both Buoy Park and the boardwalk and, therefore, Conclusion A is based in part on incorrect or false information.
 - (2) The Order states that “the applicant will work with the City to create a formal agreement for continued public access to the walkway.” Applicant’s agreement to permit continued public access to and use of the portion of the City’s Harbor Trail that utilizes the boardwalk located on the applicant’s property needs to be formalized in writing; without this documented evidence of applicant’s agreement, there is no guarantee that this important scenic resource will continue to be available to the public. Therefore, Conclusion A is based in part on incomplete information.
 - (3) The Order states that the “applicant noted that the proposed project is primarily for transient dockage, defined as a stay no longer than 15 consecutive days, and that the average size vessel at the marina during the summer of 2020 was approximately 56 feet long, and the average stay of a vessel over 70 feet long was only 2.6 days.” Since the proposed expansion of the applicant’s marina has not yet been built, and since the expansion significantly creates new dockage previously unavailable to mega-yachts, the average size and length of stay of vessels using the applicant’s existing facility is not a reasonable basis for determining the impact of the proposed expansion on scenic and aesthetic uses of the harbor. Because the applicant failed to provide data on the average size of vessels and maximum and average length of stay at applicant’s existing facilities

of like size (e.g., number of docks and including similar number of facilities for mega-yachts) or at similarly sized facilities owned by other companies, Conclusion A is based in part on incorrect and incomplete information.

- (4) The Order states that the “applicant pointed out that large vessels already use the harbor, and submitted a photograph dated June 2019, of a 200-foot-long cruise ship berthed at the Public Landing, facing broadside to Harbor Park.” The cruise ship mentioned by applicant docked at most for two nights, and very few such vessels generally visit Rockland over the course of any year. Additionally, to the extent that these “cruise” ships dock at the Public Landing, any impact on the scenic or aesthetic considerations is mitigated by the fact that these vessels bring several or more dozens of visitors to the local area to disembark and visit the town, spending money in local restaurants and businesses, while applicant has made no showing that owners of the large private yachts and mega-yachts using applicant’s expanded facility would bring any similar benefit to the local business economy. Therefore, Conclusion A’s reliance on this information provided by applicant does not accurately reflect the potential adverse scenic and aesthetic impact of the proposed expansion.
- (5) The Order states that the “applicant stated that currently, cruise ships and other large vessels often anchor in the outer harbor, where they can block views of many of the scenic features noted above, such as the Breakwater and Breakwater Lighthouse, whereas vessels berthed at the expanded marina will have a more limited visual impact, primarily only affecting views of existing developed areas in the harbor such as other commercial marinas, the Municipal Fish Pier, and the Dragon Cement pier.” This statement by applicant is at least inaccurate and more likely entirely false. Cruise ships and “large vessels” anchor in the outer harbor very rarely over the course of any year, not “often.” Rockland City Council recently passed ordinance(s) which limit to six (6) the number of large cruise ships permitted to anchor in the outer harbor during each year and sending landing vessels to use the Public Landing. Since the ordinance passed, that number of large cruise ships has not come to Rockland during any year. Therefore, Conclusion A is based in part on inaccurate or actually false information provided by applicant to justify their proposed blocking of protected scenic features.
- (6) The Order states that “During the review, the Department considered views from Rockland Harbor, the Harbor Walk, Sandy Beach, Harbor Park, and Buoy Park, which are located in close proximity to the project site and were of particular concern to the interested persons. The Department took into consideration the developed nature of Rockland Harbor, the size and layout of the proposed marina expansion, and the existing viewsheds from the scenic resources. The Department determined that the viewshed foreground of the Harbor Walk, Harbor Park, and Buoy Park are dominated by existing pier and float systems, some of which currently berth large vessels during the summer. Sandy Beach, which faces northeast, has a viewshed of 120 degrees, bounded to the southeast by the Dragon Cement pier and bounded to the north by the applicant’s existing pier. Department staff determined that the proposed expansion of the marina will affect approximately 17 degrees of the far west extent of the beach viewshed. The blocked views include other commercial marinas to the north as well as a small portion of the harbor mooring field.” The site visit by applicant and state agencies took place in the late fall when it was not possible to determine a majority of the scenic and aesthetic

“viewshed” that would be blocked by the proposed expansion. During the marine season in which Rockland harbor draws residents and visitors to enjoy the “viewshed” -- from roughly May through September -- numerous personal watercraft and small pleasure vessels passing in, through and around the area of the proposed expansion facility’s proposed Dock “A,” Dock “B” and Dock “C” as well as commercial fishing vessels and ferries utilizing the harbor channel to come and go. Local residents and tourists visit Buoy Park, Harbor Park, the Public Landing, restaurants located near or on the water, the boardwalk portion of the Harbor Trail and Sandy Beach where they are able to enjoy the entire 120 degree “viewshed” through which such ferries and fishing vessels travel as well as numerous small watercraft and pleasure vessels as they launch from and return to public docks and moorings, hoist sails, power or sail through the harbor waters. In the late fall, when these types of personal watercraft and vessels are not using the waters of the Rockland Harbor, it is not possible to determine accurately the impact that the applicant’s proposed marina expansion will have on the entire scenic “viewshed” of the harbor. However, because these types of watercraft and vessels launch from and return to and travel throughout the *entire* harbor, including the area in which the proposed expansion is to be located, clearly the portion of the scenic “viewshed” that would be impacted by applicant’s proposed expansion is greater than a 17 degree slice thereof. Therefore, Conclusion A’s determination regarding the potential impact on the viewshed is based on incomplete and incorrect information.

- (7) The Order states that the “Matrix is used to assess the visual impact severity of a proposed project based on the distance and visibility of the project from a natural landmark or other outstanding natural or cultural feature, State, National, or locally-designated park or trail, and on the approximate number of people likely to view the project from the resource or a public way per day. ... The Department determined that the visual impact of the proposed project was acceptable with mitigation. In light of these mitigation measures and based on the information submitted in the application, information submitted during the review, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resources in the project area.” In connection with use of the Matrix, Conclusion A was based on (i) “the information submitted in the application ... [and] during the review”; however, information submitted by applicant in the application and during the review included incomplete or false information as shown above; (ii) the “visual impact rating” determined in the Order; however such rating was based on incomplete information as the number of people likely to view per day during the relevant marine season was not determined or considered; and (iii) the site visit; however, such visit occurred at a time when it was not possible to obtain the accurate information required for use with the Matrix. Therefore, Conclusion A’s reliance on use of the Matrix to assess visual impact severity of the proposed expansion was based on incomplete, inaccurate and/or false information.

B. Recreational and Navigational Uses: *“The proposed project is located in a working harbor used by numerous recreational and commercial vessels. A federal navigation channel and a city channel are located in close proximity to the project site. Several of the interested persons expressed concern that the proposed project will pose a safety risk and navigational obstacle for*

recreationists using kayaks, rowboats, and paddleboards. Some contended that the proposed project will generally increase vessel traffic, including the number of dinghies using the Public Landing, and interfere with the use of the harbor by commercial fishermen. The interested persons also objected that the proposed project will require the relocation of moorings, resulting in financial hardship and inconvenience for the mooring user or the City.”

Objections:

2. Conclusion A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses. **Appellant objects to Conclusion A for each and all of the following reasons relating to recreational and navigational uses:**

- (1) The Order states that “The applicant responded that the expansion of the marina will reduce traffic in the harbor by reducing the number of vessels at anchor, which in turn will reduce tender boat and dinghy traffic.” This statement is false and is based on inaccurate and misleading information. Generally speaking the “number of vessels at anchor” on any day is fewer than ten, and often as few as two. The claim that by moving these few vessels out of the outer harbor into SHM’s proposed expansion will offset the additional traffic in the harbor caused by permitting an 15-20 new docking facilities (including multiple new 150’ docks servicing mega-yachts) is patently ludicrous, and the Department erred in basing Conclusion A even in part on this claim.
- (2) The Order states that “This will also reduce congestion at the public docks, which are currently often crowded with tenders and dinghies in the summer.” This is likewise an inaccurate statement at best. The persons who currently operate tenders and dinghies from public docks cannot be guaranteed to become SHM customers who will use SHM’s expanded marina facility, and instead may reasonably be expected to continue to need to utilize the public docks, including in order to reach their moorings. Therefore, the Department’s reliance on this information to support Conclusion A is inappropriate.
- (3) The Order states that “The applicant also stated that any traffic to and from the marina is and will continue to be within designated channels, and it is incumbent upon small crafts to remain diligent when navigating the marked harbor channels.” Notwithstanding the foregoing claim by applicant, the Order also states that the “applicant agreed to the Harbormaster’s recommendations to not allow vessels wider than 20 feet to berth on the northern side of the Dock A T-head, and to not allow any vessel to berth on the northwest end of Dock C, without prior approval from the Harbormaster.” However, assuming that the Harbormaster ever grants approval for vessels wider than 20 feet to berth in such location, the designated channel within the harbor clearly would be impacted as admitted by applicant’s agreement to require such specific approval. Accordingly, the statement that any “traffic to and from the marina” will be within designated channels is misleading, since SHM may at any time seek approval from the Harbormaster to permit yachts berthed in the marina to intrude into the channel. Berthed yachts may not be “traffic” but they are certainly obstacles to navigation and use of the channel, particularly for small crafts, and therefore Conclusion A is based on inaccurate and misleading information regarding the impact on the channel and its navigational use.

- (4) The Order states that “The applicant stated that the proposed project will require the relocation of approximately 16 moorings, and that the applicant intends to cover the cost of those relocations.” Notwithstanding the applicant’s claim to “intend” to cover the costs of moorings that will need to be eliminated, the applicant has refused to commit in writing with the City to cover these costs despite repeated efforts by the City Manager and others to achieve the same. The potential adverse impact on recreational and navigational use of the harbor by the recreational and commercial public should not and cannot be determined by the Department basing the same on an applicant’s good intentions, particularly when significant cost to public is involved. Accordingly, the Department erred in basing Conclusion A on “intentions” of a non-public applicant rather than ensuring that the interests of the public are protected by requiring applicant to provide actual evidence of such protection.
- (5) The Order states that “The applicant agreed to the Harbormaster’s recommendations to not allow vessels wider than 20 feet to berth on the northern side of the Dock A T-head, and to not allow any vessel to berth on the northwest end of Dock C, without prior approval from the Harbormaster.” Notwithstanding the foregoing, the Order does not include as condition(s) of the Department’s approval of the application specific requirements that (i) vessels berthed at the T-head of Dock A shall not be wider than 20 feet; and (ii) that the applicant shall not allow any vessel to berth on the northwest end of Dock C without prior approval from the Harbormaster. Absent these explicit conditions to Departmental approval, the public and its municipal representatives will be left to the mercy of applicant’s “good intentions” whenever applicant’s financial and commercial interests in complying with such terms are contrary to the public’s recreational and navigational interests.
- (6) The Order states that “Based on the nature of the proposed project and its location, as well as the Harbormaster’s comments and DMR’s review, the Department determined that the proposed project is compatible with continued use of the harbor by small recreational vessels, and that the proposed project will not unreasonably interfere with any other existing recreational or navigational uses of the resource.” Since the site visit by the Submerged Land Bureau and DEP representatives took place in the late fall, outside of the principal seasonal use of the harbor by “small recreational vessels,” the Department erred in relying on an incomplete and inaccurate understanding of the uses that are made by such vessels of the “location” of the proposed project. Appellants, as well as other uses of the harbor who submitted comments to the Department in this matter have demonstrated that there exists regular public use of the waters in the precise location in which the applicant proposes to expand its marina. Dinghy traffic from the public dinghy dock, small boats coming and going from the moorings that would be displaced by expansion, and recreational kayakers, row boats and paddle boarders all travel in, across and near the entire proposed expansion locations of both proposed Dock C and Dock A. Therefore, Conclusion A is based on inaccurate and incomplete information in holding that the proposed project is compatible with continued use of the harbor by small recreational vessels.
- c. Soil Erosion: (pilings)
- d. Habitat Considerations

Conclusion D: “The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that dredging is conducted between November 8 and April 8 as described in Finding 4 and the corresponding condition below.”

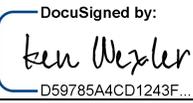
Appellant objects to Conclusion D for the following reasons relating to the potential harm to wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life:

(1) Notwithstanding the fact that many of those who submitted comments to the Department and other concerned agencies in this matter “expressed concern that the proposed project will have adverse impacts to marine wildlife, particularly birds such as the great blue heron and sea duck species, as well as lobster habitats, commercial fisheries, and other marine life due to the dredge, the expanded marina, and underwater noise from vessels using the marina,” the Department’s order fails to address these concerns with respect to marine wildlife in any substantive manner in any manner at all. A consultant involved in this matter apparently observed “Herring and Ring Billed Gulls” and “no other species” in the area of the harbor. In fact, the Rockland harbor is home to or visited regularly by Osprey, Great Blue Herons, Bald Eagles, Common Loons, Harbor Seals, Sea Otters, Common Eiders, and many other marine species and birds. Accordingly, Conclusion D is based on incomplete and incorrect information.

- e. Water Quality Considerations
- f. Wetlands and Waterbodies Protection Rules:
 - a. Avoidance:
 - b. Minimal Alteration:
 - c. Compensation:
- g. Geological Considerations (dredging):
- h. Dredge Material Transportation Considerations
- i. Other Considerations (flow of surface waters; flooding)

5. SIGNATURES

Submitted by the following appellants on January 7, 2022:

By: 
D59785A4CD1243F...

(Signature)

Kenneth N. Wexler
(Print Name)

By: 
C3C2EC4045104BE...

(Signature)

Steve Cartwright
(Print Name)

By: 
66D1AE7DF25E4EB...

(Signature)

Nadine & Larry Bangerter
(Print Name)

By: 
3F1253260D8D492...

(Signature)

Constance M. Hayes
(Print Name)

By: 
07D2453EB770412...

(Signature)

Rebecca Glaser
(Print Name)

DocuSigned by:

By: FB4AB52CA72E4E6...
(Signature)

Eileen Fitzgerald
(Print Name)

DocuSigned by:

By: 32246B9BF7FF428...
(Signature)

Kyle MacKenzie Swan
(Print Name)

DocuSigned by:

By: 9750F7397ACB450...
(Signature)

Lawrence Coe
(Print Name)

DocuSigned by:

By: 5264230BC1C24E3...
(Signature)

Penobscot Bay Watch & Ron Huber
(Print Name)

DocuSigned by:

By: 889D49AC31BB4CE...
(Signature)

Judy Pasqualge
(Print Name)

DocuSigned by:

By: 27EA32ABD01C46C...
(Signature)

Virginia Nobile
(Print Name)

DocuSigned by:
Avis Turner
By: CEADBFEFBD50404...
(Signature)

Avis Turner
(Print Name)

DocuSigned by:
Anne "Pinney" Beebe-Center
By: 1EB20E2A6365428...
(Signature)

Anne "Pinney" Beebe-Center
(Print Name)

DocuSigned by:
Susan Beebe
By: FB4AB52CA72E4E6...
(Signature)

Susan Beebe
(Print Name)

DocuSigned by:
Isabella Feracci
By: 3264F6E236F44E1...
(Signature)

Isabella Feracci
(Print Name)

DocuSigned by:
Paul Rosen
By: FB4AB52CA72E4E6...
(Signature)

Paul Rosen
(Print Name)