

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION

IN THE MATTER OF ZONING)
PETITION ZP 779A)
WOLFDEN MT. CHASE, LLC)
APPLICATION FOR ZONE CHANGE,) APPLICANT’S POST-HEARING BRIEF
PICKETT MOUNTAIN MINE)
T6 R6 WELS,)
PENOBSCOT COUNTY, MAINE)

Wolfden Mt. Chase, LLC (“Wolfden” of “Applicant”) proposes rezoning approximately 374 acres in T6 R6 WELS from General Management (“M-GN”) to Planned Development (“D-PD”) to establish the Pickett Mountain Metallic Mine Project (“Project” or “Pickett Project”). The proposed rezone area would be used to develop a small footprint,¹ state-of-the-art underground mining operation to extract metallic ore rich in zinc, copper, lead, silver, and gold. For the reasons discussed below, the Land Use Planning Commission (the “Commission”) should grant Wolfden’s rezoning application.²

I. THE PICKETT PROJECT IS CONSISTENT WITH THE PURPOSE AND INTENT OF THE D-PD

One of the goals of the Comprehensive Land Use Plan (“CLUP”) is to allow environmentally responsible mining of metallic resources where there are not overriding, conflicting values that require protection.³ The Pickett Project is a small footprint,⁴ state-of-the art

¹ The rezone area includes a solar array and a 400-foot buffer. The mining facility occupies only 28 acres. *See* Pre-Filed Test. of J. Ouellette at Ex. C (“Ouellette Test.”).

² This Post-Hearing Brief addresses the topics that were central to the Public Hearing.

³ *Comprehensive Land Use Plan* § 1.2(I)(G) at 15 (“CLUP”) (identified as Ex. 1.8).

⁴ Intervenor Two suggests that because it is small, the deposit is not high-value and is not economic. *E.g.*, Pre-Filed Direct Test. of A. Maest at 4 (“Maest Test.”); Pre-Filed Direct Test. of S. Levit at 5 (“Levit Test.”). Its small size, however, is exactly what Maine Geologic Survey described as most compatible with the Mining Act. Ex. 6.10 at 2 (MGS June 15, 2023 Comments). Moreover, every witness with experience in valuing metallic deposits testified as to its high economic value. *See* Section IV below. Further, because the concentration of the metals is so high, less rock needs to be mined than in a larger, lower grade deposit.

underground mine that will utilize modern water treatment and other technologies to ensure that surrounding environment and water resources are fully protected. It is an opportunity for Maine to showcase modern metallic mining practices that are subject to the most stringent regulations in North America and bring significant economic growth and job opportunities to a region that supports the Project.

First, it is undisputed that the Pickett deposit is a high-value polymetallic deposit with metals that are critical to the economy and clean energy sectors. Ron Little, Don Dudek and Sean Fieler have decades of relevant experience, and each testified to the high-value of the deposit.⁵ The primary metal is zinc, and, as Mr. Dudek testified, in the most metal-rich locations, the orebody is up to 45% zinc equivalent. MGS described the deposit as one of very few significant size and grade mineral deposits in Maine and went on to note that of those few deposits, the Pickett deposit “stands out as most compatible with the objectives of the [Maine Metallic Mineral Mining Act (“MMMMMA”)] which favors small, high-grade deposits that can be mined underground, having less potential environmental impact than large, low-grade, surface mines.”⁶

Additionally, the primary metals in the deposit are essential to modern life and critical for the clean energy transition.⁷ As evidence of their importance, zinc and copper (that make up 65% of the metals for the Project) have both been added to the critical minerals list, which includes “non-fuel mineral or mineral material essential to the economic and national security of the United States security.”⁸ Intervenor Two discounts the significance of these metals, citing existing mines and increased domestic production.⁹ However, zinc was added to the list in 2022 and copper was

⁵ See Tr. 65:20-66:25 (testimony of Sean Fieler explaining that the Pickett deposit has an EBITDA of more than 75% which means the orebody is very high grade); 124:17-126:8.

⁶ Ex. 6.10 at 2 (MGS June 15, 2023 Comments).

⁷ Pre-Filed Direct Test. of R. Little at 7 (“Little Test.”).

⁸ Little Test. at 5, 7.

⁹ Maest Test. at 5-6.

added in 2023 – at the time of the listing the U.S. Government had full knowledge of existing and proposed domestic supplies. Thus, while Intervenor Two may discount the importance of these metals, the U.S. Government has concluded otherwise.¹⁰ Cathy Johnson, a witness for Intervenor Two, recognized the importance of advancing the clean energy economy and testified that projects that do so are important for protecting the principal values of the Jurisdiction and should be taken into account by the Commission.¹¹

Second, the D-PD zone is appropriate for uses that depend on a natural feature or location,¹² and there is no dispute that the mine must be located at the proposed site in T6 R6. At the same time, there is flexibility in locating the ore processing and tailings facilities, and Wolfden has been working with the surrounding communities to finalize a location for those facilities.¹³ The opponents criticize the Applicant for not providing details on the processing facilities as part of its rezoning application. However, limiting the application to a use that is dependent upon the natural feature is more consistent with the language and intent of the D-PD rezoning criteria. Wolfden should be commended for adhering to the D-PD criteria and limiting its re-zoning application to the only use that is entirely dependent on the location of the deposit.

The Chapter 12 rezoning criteria require the Commission to consider the positive and negative impacts upon the areas within and adjacent to the Commission’s jurisdiction resulting from the change in use and development of the rezone area.¹⁴ Consistent with that standard, the Applicant, intervenors, and members of the public have provided substantial evidence on the potential impact of the mine on areas within and adjacent to T6 R6. The Commission, however,

¹⁰ See Little Test. at 5 n.3, 7-8 nn.5-9; Ex. 10.55 (Volume III, Exs. 9-14).

¹¹ Tr. 351:18-352:7.

¹² 06-672 C.M.R. ch.10, § 21(H)(1) (identified as Ex. 1.6).

¹³ Wolfden Mt. Chase LLC Application for Zone Change at 1 (“App.”) (identified as Ex. 2.1); Ouellette Test. at 4.

¹⁴ 01-672 C.M.R. ch. 12, § 4(B) (identified as Ex.1.7).

region; and (3) votes from surrounding towns demonstrating support for the Project and/or metallic mining within their jurisdictions.

As reflected in the map of public comments, the majority of commenters in the economic region are in favor of rezoning the Project area.¹⁸ In addition to receiving significant support directly from members of the public living in the region, several state legislators representing the greater economic region submitted comments in favor of the Project.¹⁹ Senate President Troy Jackson and retired Congressman Mike Michaud both stated that the Project should be allowed to proceed to the DEP permitting phase, in part based on the history and stringency of the Maine Metallic Mineral Mining Act (the “Act”).²⁰ As several legislators noted, including Jonathan Kinney who was a member of the Joint Standing Committee on the Environment and Natural Resources during the 128th Maine Legislature, the Act passed with bipartisan support and the support of environmental organizations, and overcame the Governor’s veto.²¹ Based on this history and the strength of Maine’s metallic mining laws, legislators urged the Commission to grant Wolfden’s rezoning application, because if the Project proceeds to the DEP, it would have to prove “beyond the shadow of a doubt that its processes for protecting the water and ecosystems are rock solid.”²²

The surrounding towns, through their own public meetings, have also indicated their support for the rezoning and to allow the Project to proceed to Chapter 200 process.²³ Five towns in the Project area, including Hersey, Patten, Sherman, Stacyville, and Moro Plantation voted in

¹⁸ *Applicant’s Rebuttal to Public Comments* at 5 & Ex.G.

¹⁹ See Night 1 of 3 Tr. 18:14-21:25 (public comment of Kathy Javner); Night 1 of 3 Tr. 24:9-26:11 (public comment of Joseph Underwood); Night 2 of 3 Tr. 31:3-32:7 (public comment of Donny Ardell); Night 3 of 3 Tr. 19:1-20:23 (public comment of Chad Perkins); Ex. 7.197 (public comment of Brad Farrin); see also Ex. 7.83 (public comment of Troy Jackson, Maine Senate President).

²⁰ Ex. 7.83 (public comment of Troy Jackson, Maine Senate President); Ex. 7.95 (public comment of Michael Michaud)

²¹ Night 1 of 3 Tr. 22:17-23:20 (public comment of Jonathan Kinney); see also Night 1 of 3 Tr. 19:11-23 (public comment of Kathy Javner).

²² Night 1 of 3 Tr. 19:11-23 (public comment of Kathy Javner); see also Ex. 7.83 (public comment of Troy Jackson, Maine Senate President).

²³ See Ex. 11.3 at 19 (presentation of J. Ouellette).

favor of passing resolutions supportive of the Project. Mount Chase also voted and was split 50/50.²⁴ The Project therefore has significant breadth and depth of local support, and the Commission must ensure that it considers the perspectives and values of those closest to the Project area, those who most directly will bear any costs and reap any benefits of the project.

Finally, the request for more data, modeling, and analyses, which is the focus of much of Intervenor Two's opposition, ignores the two-step process (rezoning followed by the DEP Chapter 200 permitting process) recognized by the Commission and reflected in the requirements of Chapter 12. Specifically, during the Chapter 12 rulemaking the Commission rejected requests from environmental groups to require greater and more detailed scientific information at the rezoning stage.²⁵ For example, in its response to comments, the Commission determined the following:²⁶

- Comprehensive scientific information on groundwater and surface water, including flow rates, travel direction, and characterization is *not* required for rezoning because the “DEP is required by statute in the permitting process to ensure that there is no contamination of groundwater beyond the mining area.”
- “[A] map identifying significant natural resources” is sufficient to characterize surface waters for rezoning purposes because “additional surface water information is more appropriate at the permitting phase.” Furthermore, the “DEP is required . . . to ensure that the mining operation will not cause a direct or indirect discharge of pollutants into surface waters or discharge groundwater containing pollutants into surface waters that results in a condition that is in nonattainment of or noncompliance with the standards.”
- Only a low-intensity soil analysis is required for rezoning because the “DEP will be considering more detailed soils information during the permitting phase.”
- Geochemical characterization and/or a contamination assessment is not required for rezoning because “[t]he DEP will be responsible for ensuring there is no contamination of surface or ground water during the permitting phase. Additionally, as specified in the MMMA, the DEP will request ‘a description of the geochemistry of the ore, waste rock, overburden, . . ., including characterization of leachability, reactivity and acid forming characteristics’ as part of the permitting process.

²⁴ Ouellette Test. at 15-16.

²⁵ See LUPC, *Basis Statement and Summary Comments for Proposed Amends. to Ch.12: Land Use District Requirements for Metallic Mineral Mining and Level C Mineral Expl. Activities* (“Ch. 12 Basis Statement”).

²⁶ *Id.* at 20-23, 29.

- “The Commission has not in general asked for highly technical information that will be required by DEP as part of their own technical site review.”

Based on the Commission’s own guidance, Wolfden’s data, modeling, studies, and testimony from experts with decades of experience is sufficient evidence to demonstrate compliance with the rezoning requirements.

II. THE PROJECT WILL RESULT IN POSITIVE SHORT- AND LONG-TERM SOCIOECONOMIC IMPACTS TO THE REGION

Stepwise Data Research, an economic research firm with substantial experience providing quantitative and qualitative economic research and data analysis to Maine businesses, government, and non-profit organizations, prepared a comprehensive socioeconomic analysis of the effects of the Pickett Project on the region’s economy.²⁷ The results of that analysis show that “the Pickett Mountain Project will result in significant economic and fiscal contribution to the region that which currently has limited economic opportunities.”²⁸ Specifically, over the life of the Project, Wolfden will spend approximately \$340 million in the region, resulting in a total regional economic output of \$715 million.²⁹ Of this total economic output, approximately \$248 million will go toward wages and earnings for Wolfden employees, employees of Wolfden’s suppliers, and other individuals working on or servicing the Project.³⁰ The remaining economic output is attributable to business sales through all levels of the supply chain.³¹ Put another way, this Project will create approximately 320 jobs per year for 14 years.³²

²⁷ Pre-Filed Direct Test. of M. LeVert at 2 (“LeVert Test.”); App., Exhibit 10-A (Economic Assessment of the Proposed Pickett Mine Project (“Project Economic Assessment”)).

²⁸ LeVert Test. at 7.

²⁹ Tr. 283:11-18; LeVert Test. at 5-6, 8. Mr. LeVert’s detailed and rigorous analysis projects that Wolfden will spend a total of \$622 million in non-contingency spending, or spending that has been set aside to cover potential costs not accounted for in the financial model. *See* LeVert Test. at 5 n.3. Consistent with a conservative analytical approach, Mr. LeVert excluded 45% of spending of the total project as not being spent within the region. LeVert Test. at 4.

³⁰ Tr. 283:19-22; Project Economic Assessment at 24.

³¹ Tr. 283: 15-18.

³² Tr. 284: 1-4; LeVert Test. at 6.

The Commission retained Rachel Bouvier Consulting to comment on Stepwise Data Research’s analysis conclusions. She concluded that the “data methodology, and region identified” were appropriate and agreed that as presented, the Project “would have a significant positive economic impact on a relatively depressed area.”³³ Although she noted that the assessment presents the “best case scenario,” she commended Stepwise Data Research for acknowledging caveats and limitations of the model by presenting the results within a range.³⁴ No expert testified or provided information that discredits or undermines Stepwise Data Research’s conclusions.

Stepwise Data Research also analyzed the socioeconomic impact of the mine-only components of the Project. This segmented analysis shows that nearly three quarters of all projected socioeconomic benefits of the Project are attributable to the mine-only workings.³⁵ Thus, even when limiting the scope of the socioeconomic analysis to the mine-only, the Project will have significant positive short- and long-term socioeconomic impacts to the region. This includes more than \$232 million in regional spending, a total output of more than \$509 million, and approximately 220 new jobs per year for 14 years.³⁶ Moreover, during the early phases of the Project, including the permitting phase, Wolfden will hire local contractors from Maine for the comprehensive baseline studies, and then mine construction and related service activities.³⁷

To ensure that spending flows to the regional economy, Wolfden will implement a comprehensive 12-week training program to train regional employees to apply their current and new skills to working in an underground environment.³⁸ Wolfden has initiated conversations with Region II and Region III vocational schools, Eastern Maine Community College, and Northern

³³ R. Bouvier Consulting July 10, 2023 Review Comments at 7.

³⁴ *Id.*

³⁵ LeVert Test. at 8.

³⁶ Tr. 284:11-19; LeVert Test. at 8.

³⁷ Tr. 553:16-21.

³⁸ Tr. 57:10-13; Ouellette Test. at 17-18.

Maine Community College.³⁹ Opponents criticized Wolfden because these training programs do not yet exist.⁴⁰ However, as Mr. Ouellette testified, given the long lead time associated with permitting, the earliest that construction would commence is four to five years from a favorable rezoning decision.⁴¹ Nonetheless, at this time, a syllabus and training program already exists and will be further developed and implemented during the next permitting phase of the Project.⁴²

The importance of these benefits to people living and working in Maine are significant and represent critical investment opportunities that do not currently exist. In her testimony Ms. Thurston Hill noted the current limited economic opportunities in the region including few jobs, and low wages, and described that in her area alone there are 20-25 young people who have to travel outside of the state for work when they would love to be home with their families.⁴³ This was also reflected in public comment from individuals in the region who testified that the Project would create new jobs, strengthen the regional economy and enable young people who would otherwise have to leave the region for work or school, to remain closer to home.⁴⁴ As one commenter noted, even if “the value of the jobs provided by Wolfden are only a small part of the picture, [they] might be a big part to the people it will affect.”⁴⁵

Intervenor Two and opposing members of the public suggest that the socioeconomic benefits of the project pale in comparison to the environmental considerations and that the Commission will be forced to choose between the local economy or the environment. This is a false narrative. **The Project will proceed if, and only if, Wolfden demonstrates that it will meet**

³⁹ Tr. 57:14-17; Ouellette Test. at 17.

⁴⁰ Tr. 257:4-10.

⁴¹ Ouellette Test. at 20.

⁴² Tr. 257:11-20.

⁴³ Pre-Filed Direct Test. of T. Thurston-Hill at 5 (“Thurston-Hill Test.”); Tr. 294:13-295:2.

⁴⁴ See, e.g., Night 1 of 3 Tr. 49:12-51:15 (public comment of Dennis Brackett), 51:19-53:16 (public comment of Chuck Loucra) 57:1-58:12 (public comment of Scott Walker), 58:17- 60:17 (public comment of Cody Brackett).

⁴⁵ Night 1 of 3 Tr. 59:8-11.

the most stringent environmental regulations in North America. The Commission can therefore achieve an optimal balance of its mission, both protecting the environment and allowing development with significant economic benefits to proceed. Importantly, the Legislature has directed the Commission to “encourage and facilitate regional economic viability.”⁴⁶ Consistent with this principle, “when interpreting the CLUP and balancing [its] goals and policies . . . the Commission gives more active consideration to the impacts of its interpretations on regional economies.”⁴⁷

III. THE PROJECT WILL BE DESIGNED TO PREVENT, MITIGATE, AND MANAGE POTENTIAL ACID MINE DRAINAGE

All parties recognize that acid mine drainage (“AMD”) is a risk associated with mining that Wolfden must—and will—address prior to and during Project operation and closure. To minimize and eliminate this risk, Wolfden will employ established measures to prevent AMD and use proven technologies to remove and prevent releases of potentially contaminated materials into the environment, measures and technology that will be developed in more detail in the Chapter 200 process. As described below, Wolfden has demonstrated that it can “avoid, minimize, [and] mitigate . . . a potentially adverse impact so that the resulting impact is not an undue adverse impact.”⁴⁸

A. The Pickett Project Will Employ Established Measures for Limiting AMD and Other Potential Adverse Impacts to Natural Resources

It is undisputed that AMD is tied to the disturbance of potentially acid-generating (“PAG”) rock and its exposure to air and water. Dr. Finley and Dr. Maest concur that avoiding disturbance

⁴⁶ 12 M.R.S. § 681

⁴⁷ CLUP Guidance § III(C).

⁴⁸ 01-672 C.M.R. ch. 12, § 4(B)(3).

of PAG and limiting the length of time of PAG rock exposure can prevent or significantly reduce the potential for AMD to occur.⁴⁹

Based on the unique geological formation of the Pickett deposit, the Project can avoid and minimize disturbance of PAG material. Based on his forty years of experience as a geologist and review of more than 165,000 feet of drill core samples and 1800 geochemical samples, Mr. Dudek testified that the Pickett ore deposit is surrounded on each side by two distinct “packages” or types of rocks.⁵⁰ To the left (north) side of the ore deposit, there are quartz-rich rocks that, based on visual observations, are “altered” and would likely be PAG.⁵¹ However, on the right (south) side of the ore deposit there is a completely different set of rocks, that, based on visual observations, are likely non-PAG.⁵² The delineation between the PAG, orebody, and non-PAG rock is sharp, as if a geologic “switch had been thrown.”⁵³ As Dr. Finley noted, these types of unique details about the deposit “dictate and influence” potential AMD.⁵⁴ Here, the sharp delineation between PAG and non-PAG means that Wolfden can access the ore-body with minimal disturbance of PAG rock and place infrastructure (tunnels) in non-PAG rock locations to prevent potential AMD.⁵⁵

For example, the switchback ramps from the surface downward, can be placed in rock that is not acid generating. Similarly, the tunnels extending horizontally from the ramps into the orebody can be placed largely in non-PAG rock. To reach the ore body, the tunnels, will have to extend through a “halo” of PAG rock directly surrounding the ore body, however, due to the variable nature of the halo in this particular deposit, the tunnels can be placed in areas where the

⁴⁹ Tr. 137:7-17, 422:24 to 423:2.

⁵⁰ Pre-Filed Test. of D. Dudek at 3 (“Dudek Test.”); *see also* Tr. 120:11-16, 122:1-6, 127:14-128:13, 167:19-25.

⁵¹ Tr. 120:11-16, 122:1-6, 127:14-128:13.

⁵² *Id.*

⁵³ Tr. 120:15-16.

⁵⁴ Tr. 129:21-25.

⁵⁵ Tr.123:21-124:3, 128:3-13; *see also* Tr. 422:24-423:2.

halo is small to non-existent to further limit exposure of PAG waste rock to water and air.⁵⁶ Finally, Wolfden does not dispute that the ore removed from the orebody, *is* PAG rock.⁵⁷ However, as discussed below, this economically valuable ore will be immediately removed from the mine and temporarily stored on double-lined surface pads prior to processing.

Second, it is undisputed that limiting exposure of PAG rock to air and water can limit or prevent AMD,⁵⁸ and in accordance with this principle, the Project will limit the duration of time that PAG is exposed to air and water. After removing the ore, which is PAG rock, the material will be brought to the surface where it will be temporarily stored on a double-lined storage pad for typically no more than one week before processing. Moreover, once ore is removed, the extracted area is backfilled within a week to a month.⁵⁹ By backfilling this area quickly and removing ore offsite within one week, the Project limits the potential for the acid generating reaction to occur.⁶⁰ The ore access tunnels will be backfilled within four to five months.

During the hearing, the Commission heard uncontroverted testimony that time is not only a factor in AMD generation, but that the acid generating reaction process typically occurs over months and years, not days and weeks. For example, Dr. Finley stated that one month is an extremely short period of time for an acid-generating reaction to occur. Dr. Maest confirmed that a laboratory leaching test may take only weeks because it is artificially accelerated, however, the acid generating process occurs much more slowly in the real world.⁶¹ Ultimately, by segmenting the mining operation into smaller stopes or mine blocks that are excavated and then rapidly backfilled, the Project can limit exposure of PAG rock to air and water thereby preventing

⁵⁶ Tr. 137:2-6.

⁵⁷ Tr. 167:1-3, 425: 10-14, 548:3-9.

⁵⁸ Tr. 130:16 to 131:25, 390-391, 422:24 to 423:9-15; Pre-Filed Test. of J. Finley at 4 (“Finley Test.”).

⁵⁹ Tr. 548:10-15, 551:10-19.

⁶⁰ Tr. 150:22-151, 163:21-164:22 (stating that when backfilled there is no mechanism for driving oxygen into the stope), 548:10-22; Finley Test. at 4.

⁶¹ Tr. 548:21-22; *see also* 424:7-24.

potentially acid generating reactions. The backfill may also contain cement, which is acid neutralizing and further mitigates risks associated with AMD.⁶²

This is not, as Dr. Maest testified, an inherently risky site to mine.⁶³ Her assertion is wholly unsupported and contrary to the evidence and conclusions reached by both Dr. Finley and Mr. Dudek. As Mr. Dudek testified at the hearing, there have been 200 holes drilled at the site to characterize more than 165,000 feet of the deposit area, in addition to 1800 geochemical samples to measure oxides and trace elements.⁶⁴ This characterization has enabled Wolfden to demarcate different types of rocks, between PAG and non-PAG, and create a 3D image of the orebody and surrounding rocks.⁶⁵

Mr. Dudek further explained that this extensive geologic data can be used to further extrapolate the results of the ABA tests. For example, ABA sampling results can be used to see the connection between what is and is not potentially acid generating and match it to the chemistry of the 1800 samples.⁶⁶ While not intended to replace comprehensive geochemical characterization, which will be completed as part of the Chapter 200 DEP permitting process, this wealth of data provides a great deal of information and basic characterization about the types of rocks and geologic structure of the deposit, potential acid generation, and where mine infrastructure should be located. Dr. Maest did not have the benefit of the extensive data, and her assumption regarding acid generation are just that – assumptions, that are at odds with the extensive data and geologic characterization that has already been completed.

⁶² Finley Test. at 5.

⁶³ *See, e.g.*, Maest Test. at 35.

⁶⁴ Tr. 121:6-8, 123:6-11; Dudek Test. at 3.

⁶⁵ Tr. 123:6-17.

⁶⁶ Tr. 169:18 to 170:1.

The majority of Dr. Maest's critique focuses on the need for more information on the ore body and surrounding rock in order to evaluate the potential for and mitigate the risks associated with AMD.⁶⁷ We agree. Additional information is needed *and will be developed as part of the Chapter 200 permitting process*.⁶⁸ Moreover, Dr. Maest agreed that Chapter 200 reflects best practices and probably more, and that as part of the Chapter 200 process the Project would have to complete the work that both she and Dr. Finley agreed was necessary to prevent and minimize adverse effects of mining.⁶⁹ As discussed above, however, the Commission has concluded that this further level of geological characterization and analysis is not required at this stage in project development.⁷⁰ As a result, Wolfden's seven ABA sampling results, in conjunction with 1800 geochemical samples, and 200 drill holes to characterize 165,000 feet of the deposit, from which PAG and non-PAG rock can be identified, is sufficient and appropriate for rezoning.

Finally, as Mr. Little testified at the hearing, a full feasibility study, including all baseline work, hydrogeology, and rock and flora and fauna characterization would cost anywhere from \$15 to \$20 million.⁷¹ Of the full baseline studies, geologic and geochemical characterization alone could cost upwards of several million dollars.⁷² Not only is this level of analysis not required by Chapter 12, but it would be wholly impracticable prior to a decision on rezoning.

B. The Pickett Project Will Employ Proven Technologies to Prevent Releases of Potentially Contaminated Materials into the Environment

Although the Project site is unique in that it can be mined with minimal disturbance of PAG rock, the Project will implement proven technologies to ensure that any water impacted by

⁶⁷ *E.g.*, A. Maest Test. at 8-9 (stating that geochemical characterization is necessary to predict and manage risks of AMD and that number of samples and testing here was inadequate); Tr. 396:6 to 398:11.

⁶⁸ See 06-096 C.M.R. ch. 200, § 9.

⁶⁹ Maest Test. at 8; Tr. 427:13-18.

⁷⁰ See Ch. 12 Basis Statement at 23; see also *supra* Section I.

⁷¹ Tr. 562:21 to 563:3.

⁷² Tr. 438:22 to 439:1.

acid rock drainage is captured and treated before being returned to the environment. In her testimony Dr. Maest repeatedly referenced that the mine walls are likely to be a source of AMD. However, this assertion is unsupported. As previously discussed, the unique geological formation of the deposit will allow Wolfden to place the ramps and most of the tunnels in non-PAG rock. Moreover, the stopes, where the high-value ore is located, will be over-extracted to avoid leaving PAG-rock exposed on the wall surface,⁷³ and will also be backfilled quickly to minimize and prevent continued exposure to air and water, thereby minimizing the potential for acid-producing reaction. Thus, the claim that the walls of the mine are all sources of AMD is simply wrong.

Even assuming that some of the mine walls have PAG rock, during operation impacted water cannot flow out of the mine. As excavation occurs, the mined area becomes atmospheric, creating a pressure differential between the mine and the groundwater.⁷⁴ Because groundwater pressure is higher than atmospheric pressure, water will flow *into* not out of the mine.⁷⁵ Even if there are fissures and faults, which can either act as a barrier or conduit, water will still flow into the mine.⁷⁶ Thus, even assuming some of the mine walls are acid generating, the pressure differential makes it impossible for impacted water to exit the mine via groundwater. Instead, impacted water will be pumped to the water storage pond on the surface, treated to background levels, and discharged in manner that maintains existing hydrology.⁷⁷

Finally, during reclamation and closure, the mine is flooded, which eliminates any PAG-rock exposure to oxygen, thereby stopping the acid generating reaction.⁷⁸ Furthermore, during the period of time in which the mine is being flooded, the chemistry of the water can be measured to

⁷³ Tr. 548:25 to 549:5.

⁷⁴ Tr. 42:7-12; Finley Test. at 5.

⁷⁵ Tr. 42:10-12; Finley Test. at 5.

⁷⁶ Tr. 544:17 to 545:8.

⁷⁷ Tr. 42:13-15.

⁷⁸ Tr. 189:4-5; Finley Test. at 6.

assess potential impacts.⁷⁹ If water tests show AMD occurring, adjustment can be made to the water chemistry, for example, by adding lime to the water to reduce acidity, to prevent and avoid adverse impacts to groundwater.⁸⁰

As mentioned above, water is pumped from the mine and surface collection areas, treated to background water quality, and then discharged back to the environment.⁸¹ In doing so, the proposed water collection and treatment system ensures that no potentially contaminated material leaves the site. At the hearing Mr. Peters testified that all water in the mine, as well as surface runoff from the mine area (a total of 28 acres) will be collected and transported to the pre-treatment pond.⁸² This includes *any* water that comes into contact with the underground mine workings; all storage pad areas; snow storage areas; offices, storage, and rescue facility areas; equipment fueling stations; mine backfill plant areas; mine access areas (the portal); maintenance shop; explosive storage areas; pre-treatment water storage pond areas, and roads within these areas.⁸³ Moreover, traffic in these areas will be limited and any vehicle leaving these mine water collection areas will be required to pass through a washing pad to avoid spreading any potential PAG material outside of the mine workings area.⁸⁴

Following collection, potentially impacted water will be held in a 7.95-million-gallon pre-treatment storage pond. Per the requirements of Maine DEP's Chapter 200 rules for metallic mineral mining, the pre-treatment storage pond is designed to accommodate a 500-year, 24-hour

⁷⁹ Tr. 189:11-13; Finley Test. at 6.

⁸⁰ See Tr. 189:4-6 (Dr. Finley discussing use of lime to neutralize acidity), 446:8-16 (Dr. Maest agreeing that the addition of lime is a "good approach"); Finley Test. at 6.

⁸¹ See Pre-Filed Direct Test. of M. Peters ("Peters Test."); Pre-Filed Direct Test. of B. Danyliw and P. Thoen ("Danyliw/Thoen Test."); Pre-Filed Direct Test. of L. Turner ("Turner Test.")

⁸² Tr. 193:5-194:14; Peters Test. at 3-4.

⁸³ Peters Test. at Ex. B, Attach. 1

⁸⁴ Tr. 194:2-4.

storm event.⁸⁵ The pond is sized not only to meet but *exceed* these minimum design criteria.⁸⁶ Responsive to Intervenor Two's concerns that climate change may result in larger storm events and/or that the projected mine dewatering volume of 30 gallons per minute ("gpm") is too low, Mr. Peters conducted a second analysis to account for these contingencies.⁸⁷ As his updated analysis demonstrates, even in a scenario where mine dewatering is ten times higher than originally projected *and* there is a 500-year 24-hour storm occurring under future climate change conditions, the pre-treatment pond *still* has sufficient capacity.⁸⁸

In addition to being appropriately sized, the pre-treatment storage pond will be double lined with a leak detection system to prevent impacts to surrounding areas.⁸⁹ Intervenor Two asserted that these systems will inevitably fail and lead to contamination. They relied, however, on examples of liner failures that occurred prior to development and implementation of the current highly advanced liner technology and therefore do not reflect the type of technology that would be used at the Project.⁹⁰ At the hearing, Mr. Peters testified that liner materials and leak detection systems have significantly improved in the last twenty years and that stringent construction quality assurance, and implementation of leak and defect detection during and after installation to prevent liner leaks is now standard practice.⁹¹ These types of double liners and leak detection systems are frequently used for landfills, leachate ponds, and process ponds.⁹²

⁸⁵ 06-096 C.M.R. ch. 200, § 20(J)(7). For comparison, Maine's solid waste and stormwater management rules, only require design for storms up to a 25-year, 24-hour frequency. *See* 06-096 C.M.R. ch. 400, § 4(M); *see also* 06-96 C.M.R. ch. 500. The Chapter 200 rules, are therefore significantly more stringent and conservative.

⁸⁶ Tr. 196:5-8; Peters Test. at 406. This scenario also assumes that there is no water being pumped from the pre-treatment storage pond to the water treatment facility. Tr. 196:11-16. Nor does this scenario account for extra storage capacity in the water collection system itself. *Id.*

⁸⁷ Ex. 11.18 at 6-7 (presentation of M. Peters).

⁸⁸ Ex. 11.18 at 6-8 (presentation of M. Peters).

⁸⁹ Tr. 199:1-7; Ex. 11.18 at 9 (presentation of M. Peters).

⁹⁰ *See, e.g.,* Levit Test. at 24 n.48 (relying on Kuipers et al., which was published in 2006).

⁹¹ Tr. 199:1 to 200:25.

⁹² Tr. 200:6-9.

The Commission heard ample and uncontroverted scientific evidence from Mr. Danyliw, that, once impacted mine water is collected, either from the surface or underground mine, the proposed ultrafiltration and reverse osmosis (“UF/RO”) system can be used to effectively treat mine water to background levels. UF/RO systems are effective at removing impurities from water down to the size of atoms, including bacteria, viruses, metals, and minerals that may result in low pH.⁹³ Intervenor Two’s witnesses, Dr. Maest and Mr. Levit, agreed this technology is highly effective at treating impacted water.⁹⁴ Importantly, RO systems are modular, and can be easily expanded to include additional treatment trains to meet even the most stringent water quality standards at only an incremental cost.⁹⁵ Thus, the proposed treatment system is not only effective, but can be scaled up as necessary to treat water to a quality that is equal to or better than the surrounding Class A waters.

In the absence of disagreement on the effectiveness of the proposed water treatment system, Intervenor Two argues that the RO system will produce 20-30% brine, which renders the system financially infeasible based on the high costs associated with brine disposal. In fact, the system proposed here includes both an RO system and a reactor, which results in brine volume of 2.4% of the water influent, not the 20-30% assumed by Intervenor Two witnesses.⁹⁶ Intervenor Two also relies on the Bald Mountain Report (the “Report”) to support their flawed assumption that RO treatment is financially infeasible. This report does not undermine Mr. Danyliw’s analysis that the proposed RO system is feasible, cost effective, and will be fully protective of the environment. For example:

- The Report is more than 30 years old, and therefore not reflective of current technology or market conditions.

⁹³ Tr. 206:19-207:19, 216:18-20.

⁹⁴ See Tr. 433:22-434:1, 478:3-10.

⁹⁵ Tr. 210:19 to 211:5.

⁹⁶ Tr. 214:8-10; Danyliw/Thoen Test. at 8.

- In the last 15 years UF/RO technology has improved, as demonstrated by brine management systems, and have become more mainstream and therefore more affordable.⁹⁷ None of these new developments are reflected in the Report.
- The determination that the RO technology was not feasible for the Bald Mountain mine is a conclusion based on the unique hydrological and economic conditions of Bald Mountain at that time. In fact, Mr. Levit, agreed, stating that “every mine is – is unique . . . and this one is too. I have not seen the data here to demonstrate the actual cost at this site.”⁹⁸

In light of Mr. Danyliw and Dr. Thoen’s testimony and nearly 70 years of combined expertise in water treatment and membrane filtration, Intervenor Two’s reliance on the Bald Mountain report is unavailing.⁹⁹ This is especially true as Mr. Levit, Intervenor Two’s witness on this issue, acknowledged that he has never designed or operated a mine water treatment system, nor has he ever developed cost estimates for such a system.¹⁰⁰ Mr. Levit’s testimony is therefore based on nothing more than personal, rather than expert, opinion.

Finally, following treatment, mine water will be tested, and only if it meets the appropriate standards will be discharged via spray irrigation and snowmaking.¹⁰¹ As Ms. Turner testified at the hearing, this method of putting clean water back into the environment mimics natural precipitation and maintains the current condition of all wetlands.¹⁰²

C. Intervenor Two’s Arguments Regarding Mining Risks Rely Almost Exclusively on Outdated Practices and Mining Activities that Bear no Resemblance to the Proposed Project

⁹⁷ Tr. 218:25-219:9.

⁹⁸ Tr. 478:24-479:2, 480:13-17.

⁹⁹ Tr. 203:14-24.

¹⁰⁰ Tr. 480:23-481:12.

¹⁰¹ See Turner Test. at 4-6.

¹⁰² *Id.* at 6.

Intervenor Two relies on historic mines and outdated mining practices that are not relevant to the proposed Project to suggest that the failures of the past will be repeated here.¹⁰³ As Dr. Finley testified, the mines relied on by Intervenor Two, including those cited by Dr. Maest in the 2006 Kuipers et al. study, were opened and operated prior to the modern era of geochemical characterization.¹⁰⁴ Dr. Finley described how geochemical characterization has changed significantly, and he cited Dr. Maest's efforts to develop standards for geochemical characterization.¹⁰⁵ Wolfden agrees that it is important to characterize the site at the outset, but it is critical to continue to collect data during mine operation and closure and adjust practices as appropriate.¹⁰⁶ Maine Chapter 200 requirements and modern best practices require robust geochemical characterization and continued data collection to avoid the pitfalls described in the 2006 Kuipers study relied on by Dr. Maest. These are the practices that will be followed here; not the failed practices cited by Dr. Maest and Mr. Levit.

Additionally, the majority of the mines cited by Intervenor Two are large open pit mines, often included heap leaching, and wet tailings, all of which are prohibited under Maine law.¹⁰⁷ For example, 18 of the 25 mines in the Kuipers study relied on by both Dr. Maest and Mr. Levit, are open pit mines.¹⁰⁸ The Earthworks study relied on by Dr. Maest to argue that bypass would occur were all large open pit copper mines. As Dr. Finley testified, open pit mines "are facilities that have 100 million ton waste rock dumps sitting next to a pit that's a thousand feet deep or deeper and a tailing impoundment that covers, you know, several hundred acres."¹⁰⁹ Simply stated, the

¹⁰³ *E.g.*, Maest Test. at 6-8 (discussing ancient mines) and 16-18 (relying on a report of mines that operated prior to modern best mining practices); Levit Test. at 19 (citing a mine in operation from 1979 to 1998 to support arguments on clean up costs).

¹⁰⁴ Tr. 139-146; Ex. 11.17 at 9-10 (presentation of J. Finley).

¹⁰⁵ *E.g.*, Tr. 139:13 to 143:13.

¹⁰⁶ Tr. 140-143; Finley Test. at 6-7.

¹⁰⁷ 06-096 C.M.R. ch. 200, § 1(B); Tr. 145:6-8.

¹⁰⁸ Tr. 145:6-9.

¹⁰⁹ Tr. 148:13-149:2.

mines discussed by Intervenor Two are in no way comparable to what is proposed here, nor would they be allowed under Maine’s stringent mining laws.¹¹⁰ Intervenor Two ignores the reality that Chapter 200, which was designed to address past mining failures, requires comprehensive geochemical characterization, a mining operation plan that addresses risks of AMD, and other detailed requirements to ensure that the mine does not adversely impact surrounding resources. **It is telling that no Intervenor Two witness identified a single shortcoming in the Chapter 200 requirements.**¹¹¹

IV. THERE ARE NO OVERRIDING PUBLIC VALUES THAT CONFLICT WITH THE PROPOSED REZONING

The CLUP specifically contemplates the responsible mining of metallic mineral resources when there are no overriding or conflicting public values that require protection.¹¹² Wolfden has demonstrated the compatibility of this Project with the public values in the region that require protection. Specifically, the Project is sited on the edge of the jurisdiction in an area appropriate for development and distant from the jurisdiction’s remote core that requires protection. Additionally, the Project will not result in undue adverse impacts to recreational activities and the regional outdoor economy or nearby Class A waters.

A. The Project is Situated in Mixed Use Area on the Edge of the Jurisdiction

Throughout the hearing, there were repeated reference to the remote, peaceful, and untouched nature of the Project area. While this area is undoubtedly a part of the beautiful north Maine woods, this characterization alone is misleading. The proposed rezone area is located not

¹¹⁰ Examples of successful modern-day mines include the Halfmile mine in New Brunswick, located 2,000 feet from high-value Salmon waters, the Fort Knox mine in Alaska, also proximate to high-value surface waters, and the Louvicourt mine in Quebec. Ouellette Test. at 2; Tr. at 558:16-560:23. All have operated successfully and highlight the difference between modern day best practices and historic mining practices.

¹¹¹ See, e.g., Tr. 428: 5-8 (testimony of Dr. Maest stating that “Chapter 200 has some really good requirements”); see generally, Maest Test.; Levit Test.

¹¹² CLUP at 15.

only in a mixed-use area, but on the edge of the jurisdiction, in close proximity to primary locations, secondary locations, rural hubs, and organized municipalities.¹¹³

The CLUP states that “[h]istorically, development has stayed mainly on the edges of the jurisdiction” which is a “pattern of development [] compatible with the use of the region principally for non-intensive recreation and forestry.”¹¹⁴ Moreover, “[i]n carrying out its mandate, the Commission has always been guided by the premise that most new development should occur in or near areas where development already exists.”¹¹⁵ The Pickett Project is on the edge of the jurisdiction in a location generally appropriate for development. Specifically, the southern boundary of T6 R6 corners with Hersey and is six miles from the northern boundary of Patten, both of which are organized municipalities and, in the case of Patten, is a “rural hub.”¹¹⁶ T6 R6 also abuts Moro Plantation and Mount Chase, which are primary and secondary locations.¹¹⁷

The Project Area is located a mere 4.4 miles from Route 11, described as a “major trucking route,” and, as stated by Mr. Turner in response to question from the Commission, is on the “fringe” of the jurisdiction.¹¹⁸ Although she initially testified that the Project area was in the remote section of the jurisdiction,¹¹⁹ Ms. Johnson, Intervenor Two’s expert on the CLUP, conceded that the Project area is on the edge of the jurisdiction.¹²⁰

In addition to mischaracterizing the location of project area in the jurisdiction, Intervenor Two ignores the mixed-use character of the Project area. This is an area that has historically and recently been used for industry and recreation. As evidenced at the hearing, recreational activities

¹¹³ Ex. 11.1 (expedited wind map); Ex. 10.55 (Wolfden Ex. 15).

¹¹⁴ CLUP at 56.

¹¹⁵ *Id.* at 60.

¹¹⁶ Pre-Filed Direct Test. of Douglas Stewart Test. at 4 (“Stewart Test.”); Ex. 10.55 (Wolfden Ex. 15).

¹¹⁷ Stewart Test. at 4; Ex. 10.55 (Wolfden Ex. 15 showing map of LUPC primary and secondary locations).

¹¹⁸ Tr. 541:7-19.

¹¹⁹ Pre-Filed Direct Test. of C. Johnson at 7 (“Johnson Test.”).

¹²⁰ Tr. 358:2-4.

include both passive recreation, such as hiking and fishing, and is an increasingly popular destination for motorized recreation, including ATV riding and snowmobiling. But this area is not limited to recreational activities. Industry has existed alongside these recreational activities. As Ms. Johnson acknowledged on cross examination, this area and the surrounding roads have historically been and continue to be used for the commercial harvesting and transport of timber for production of paper products.¹²¹

Additionally, T6 R6, as well as the adjacent Mount Chase, Moro Plantation, and T7 R6 are all zoned in their entirety for grid-scale wind energy development.¹²² The impact of grid-scale wind energy would have a far greater impact on the recreational activities described by Intervenor Two than the small underground mine proposed here. Thus, the Project area is not, nor has it ever been, a single-use area. Any assertion to the contrary ignores the rich history of multi-uses that occur in the jurisdiction generally, and the Project area specifically.

B. The Project Will Not Result in Undue Adverse Impacts to Recreational Resources

Chapter 12 requires consideration of project impacts on recreational and scenic resources within only a three-mile study area.¹²³ This makes practical sense because there are not generally impacts beyond that distance. The primary recreational activities that occur within the three-mile study area include hiking, fishing, hunting, and ATV and snowmobile riding.¹²⁴ As relevant here, the Project has a small footprint, with only 374 acres rezoned out of a larger 7,135 acre Wolfden parcel.¹²⁵ Wolfden has committed to keeping its remaining acreage open to the public for hiking, fishing, snowmobiling and ATVing.¹²⁶ There are existing ATV and snowmobile trails on

¹²¹ Tr. 371:13-18; 373:5 to 374.

¹²² 01-672 C.M.R. Chapter 10, Appendix F.

¹²³ See, e.g., 01-672 C.M.R. ch. 12, § 4(C)(1)

¹²⁴ App., Exhibit 10.8; Thurston-Hill Test. at 3.

¹²⁵ Thurston-Hill Test. at 4.

¹²⁶ Tr. 364:6-9, 21-24; Thurston-Hill Test. at 4. Intervenor's Two's witness, Ms. Johnson, in fact testified that she had taken advantage of this public access to visit the property. Tr. 364:10-12.

Wolfden's property outside of the rezone area, which will continue to remain open for recreational use via agreements with local clubs.¹²⁷ If a trail needs to be closed as a result of the Project, Wolfden is committed to working with local recreational clubs to establish an alternative trail.¹²⁸

There will similarly be no undue adverse impact to hunting and fishing. Wolfden has shown it will collect and treat impacted water to better than or equal to Class A water standards, and discharge it back to the environment in a manner that maintains existing hydrology. Nearby fish and wildlife, and associated guiding industries, will therefore remain unchanged.¹²⁹

Based on two viewshed analyses, Project visibility in the three-mile radius surrounding the Project is limited to visibility of the headframe¹³⁰ from four locations: spots on the snowmobile/ATV trail immediately south of the Project Area, Pickett Mountain Pond, the northern shore of Pleasant Lake, and the summit of Mount Chase.¹³¹

Intervenor Two cites the presence of Baxter State Park (its nearest border more than 15 miles from the Project and Baxter Peak over 25-miles distant) and Katahdin Woods and Waters National Monument (KWW) (more than 5 miles at its closest point) as fundamentally incompatible with the proposal to rezone a small area in T6 R6 for an underground mine.¹³² In response to concerns raised about potential impacts on these more distant resources, Wolfden also evaluated visual impacts to key recreational areas *outside* 3-mile study area. That analysis shows that the Project will not be visible from Baxter State Park, including Mount Katahdin, KWW, the KWW

¹²⁷ Thurston-Hill Test. at 4; *see Applicant's Rebuttal to Comments* at 3 & Ex. C.

¹²⁸ *Id.*

¹²⁹ *See* Ex. 7.70 (public comment of Jared Bornstein).

¹³⁰ The headframe, the Project's tallest feature, is approximately 120 feet tall. Stewart Test. at 6-7.

¹³¹ *See* Stewart Test. at 7.

¹³² These areas are also not located in the Mattawamkeag River Watershed. *See* Ex. 11.31 at 4.

Scenic Byway, the Seboeis River Trail, or the International Appalachian Trail.¹³³ Nor will the Project be heard from those locations.¹³⁴

Intervenor Two's opposition is premised on the wholly unsupported assumption that the presence of the mine will "damage the perception of the region."¹³⁵ Ms. Thurston-Hill, who has run Shin Pond Village for 38 years, has in-depth experience with the outdoor recreational business in the region, was instrumental in creating the scenic byway, has expertise in the business opportunities associated with regional outdoor recreation, is on the Board of Directors for Friends of Katahdin Woods and Waters, and is deeply invested in the long-term success of her community, testified to the contrary.¹³⁶ Based on her substantial and relevant experience in the region, Ms. Thurston-Hill testified that the Project "will fit our region" and "we need to have industry along with tourism."¹³⁷ She concluded that the Project is compatible and will not negatively impact recreation in the region.¹³⁸

Ms. Thurston-Hill testified that the motorized recreational industry has boomed and is now the primary economic driver in the regional outdoor recreation economy due to the decline in hunting and fishing.¹³⁹ She is familiar with and is now supportive of the KWW, but she, and others, noted that at the time they were told that the existence of the Monument would not be used to limit future development.¹⁴⁰ Finally, Stepwise Data Research also concluded that the Project would not

¹³³ Tr. 274:11 to 275:11.

¹³⁴ See Stewart Test. at 7-8; Tr. 276:9-21.

¹³⁵ Johnson Test. at 340:14-17.

¹³⁶ Thurston-Hill Test. at 1-2.

¹³⁷ Tr. 286:6-8; Thurston-Hill Test. at 4.

¹³⁸ Thurston-Hill Test. at 4.

¹³⁹ Thurston-Hill Test. at 3.

¹⁴⁰ See Tr. 288:10-289:10; Night 1 of 3 Tr; 58:17-60:17 (public comment of Cody Brackett).

adversely impact the region's primary tourism attractions and would have little to no negative effect on the regional tourism industry.¹⁴¹

Intervenor Two and members of the public also raised concerns regarding the impact of nighttime lighting on Dark Sky areas. Any potential impacts of required nighttime lighting, however, will be minimized. First, Wolfden will follow the five lighting principles developed by Dark Sky International to ensure responsible and dark-sky compliant lighting practices thereby minimizing any dark-sky impacts.¹⁴² Notably, these are the same guiding principles used by KWW in its "Lighting Management Plan," which it submitted as part of its 2019 application for its Dark Sky Sanctuary Designation¹⁴³ Although members of the public seemed to believe that the Project includes significant nighttime lighting, that is not the case. Mining occurs underground, and only the immediate above-ground facilities will be lit. Because of apparent confusion, Wolfden provided a map showing the preliminary locations of fixed lighting for the Project, all of which will be dark-sky compliant.¹⁴⁴ Additionally, transportation of ore from the site will occur during daylight hours to minimize lights associated with truck traffic.

C. Class A Waters Will be Fully Protected

Finally, throughout the public hearing and in public comment there were repeated references to the quality and purity of the nearby Class A surface and Heritage waters. Wolfden does not dispute this characterization and agrees that these waters must be protected and maintained. However, the mere presence of Class A waters does not, and should not, automatically

¹⁴¹ Project Economic Assessment at 30-31. Mr. LeVert did caveat that this conclusion assumes the Project did not harm the environmental quality of the larger region. The stringent requirements of Chapter 200 and the measures described in Section III above ensure that there will not be an undue adverse impact to the environmental quality of the region.

¹⁴² See Tr. 275:21-276:8; Ex. 11.31 at 12 (D. Stewart Presentation).

¹⁴³ Ex. 11.41 at 21 (KWW Dark Sky International application). KWW applied for and was granted designation as an International Dark Sky Sanctuary by the non-profit organization Dark Sky International. This designation only applies to the discrete parcel owned by KWW.

¹⁴⁴ *Applicant's Rebuttal to Public Comments* at 2-3 & Ex. B.

bar metallic mineral mining. First, as set forth above, it is undisputed that the UF/RO water treatment system is able to effectively treat mine-impacted water. Moreover, the system is modular, which means that additional treatment trains can be added to reach the high-quality water standards required under Maine law. The pre-treatment storage pond is also appropriately sized and lined to avoid and eliminate bypass. As part of the Chapter 200 permitting process Wolfden will have to demonstrate that the technologies it is proposing will ensure that surrounding resources will not be adversely impacted.

Second, according to Maine's current water classification map, 94% of all waters in LUPC's 10.6-million-acre jurisdiction are rated Class A or AA.¹⁴⁵ If a mine cannot be located anywhere near Class A waters, this would be a de facto ban on mining anywhere in LUPC jurisdiction. Mining is not prohibited under Maine Law and, as set forth in both the CLUP and regulations, the Commission expressly allows for metallic mineral mining. The issue is therefore not whether a metallic mineral mine is located near Class A waters, it is whether the project is designed and will be implemented in a manner to ensure no adverse impact to those resources. Wolfden has demonstrated that its water treatment proposal can successfully treat mine-impacted water and that surrounding resources will be protected. The Chapter 200 permitting process is the forum for more detailed and site-specific information to further substantiate that conclusion.

V. THE PROJECT IS FINANCIALLY FEASIBLE AND WOLF DEN EMPLOYEES HAVE DECADES OF EXPERIENCE IN MINING

Although Wolfden as a legal entity has never operated a mine before, its employees have decades of experience in the industry and have contracted with consultants who are experts in their respective fields. Wolfden was formed in 2012, and prior to that Ron Little, Wolfden's President, CEO and Director; Jeremy Ouellette, Wolfden's Vice President of Project Development; and Don

¹⁴⁵ *Applicant's Rebuttal to Public Comments* at 4 & Ex. D.

Dudek, Wolfden’s Vice President of Exploration, all had significant experience working for other mining companies.¹⁴⁶ Mr. Little has been in the industry for more than 30 years and has successfully developed two mines that have generated hundreds of millions of dollars of revenue annually.¹⁴⁷ Mr. Fieler, whose company, Equinox Partners, routinely invests in mines globally, described both projects as “life long assets, highly economic assets,” noting that Mr. Little has “an incredibly enviable and unique track record as an entrepreneur in this space.”¹⁴⁸

In addition to Mr. Little’s experience, Mr. Ouellette has worked in the mining industry for more than 15 years.¹⁴⁹ Prior to joining Wolfden he worked for Trevali¹⁵⁰ for eight years as Senior Mine/Project Engineer, Operations and Technical Superintendent, and the Superintendent of Projects.¹⁵¹ Importantly, the Trevali mines that Mr. Ouellette was employed at are part of the same geological rock formation as the Pickett Project.¹⁵² Through these prior positions, Mr. Ouellette has extensive experience in mine permitting compliance, workforce training programs, and mine operations.¹⁵³ Finally, Mr. Dudek, Wolfden’s Vice President of exploration is an experienced professional geologist with expertise in volcanogenic massive sulfide (“VMS”) deposits, the type of geologic deposit at the Pickett Project.¹⁵⁴

Far from being inexperienced, Wolfden has a seasoned management team with expertise in mine design financing, permitting, development, and operations.¹⁵⁵ It is disingenuous to assert

¹⁴⁶ Tr. 100:3-11; Little Test. at 1-2.

¹⁴⁷ Tr. 102:24-103:15; Little Test. at 2.

¹⁴⁸ Tr. 103:22-24.

¹⁴⁹ Tr. 35:4-6; Ouellette Test. at 1-2.

¹⁵⁰ Mr. Ouellette’s tenure with the company ended in 2018, well before Trevali declared bankruptcy. Tr. 249:13-15; Ouellette Test. at 1. Moreover, in Maine, the DEP may not issue a permit for metallic mineral mining until an applicant has provided in a trust account sufficient funds to cover the cost of closure, reclamation, and investigating and remediating a catastrophic event. *See* 06-096 C.M.R. ch. 200, § 17.

¹⁵¹ Ouellette Test. at 1.

¹⁵² Tr. 104:7-11; Ouellette Test. at 2.

¹⁵³ Ouellette Test. at 1-2.

¹⁵⁴ Tr. 34:19-23; Dudek Test. at 1-2.

¹⁵⁵ In addition to Equinox Partners, key investors in Wolfden include Altius Minerals, a Canadian mineral royalty, renewable energy royalty and mineral resource project generator company with a market capitalization of

that Wolfden, has never built or operated a mine before without considering the decades of experience that its management team has in the mining industry as well as the depth of experience and capital of its key investors.

Finally, Intervenor Two seeks to discredit Wolfden based on its alleged poor balance sheet and low market capitalization.¹⁵⁶ Wolfden's current balance sheet and market capitalization are typical of junior mining companies and, importantly, are not evidence of whether the Pickett Project is practicable or economic.¹⁵⁷ Mr. Fieler, who has more than 23 years of experience investing in revenue and pre-revenue mining companies, testified that pre-revenue mining companies cannot be properly evaluated based on their cash flows or balance sheets, and that to do so would mischaracterize both their financial capacity and a project's economic viability.¹⁵⁸ As he explained, capital is currently committed at low valuations, not because the Project is not financially feasible or viable, but because investors do not know when the Project will be permitted and become a mine. This is particularly the case for a project in Maine, where there is no history of permitting under Maine's Mining Act, which contributes to the low valuation.¹⁵⁹

Instead, of relying on cashflow to determine financial feasibility, economic viability is based on the grade, size, and geometry of the ore body and management's proven track record of developing mines. Mr. Fieler emphasized that the Pickett Project has a very high-quality orebody, and that Mr. Little has a proven track record of bringing mining projects into production.¹⁶⁰ These are the key to success. Additionally, the Preliminary Economic Assessment ("PEA"), which is

approximately \$1 billion, and Kinross, a major international gold producer with a market capitalization of approximately \$8.3 billion. Little Test. at 4.

¹⁵⁶ See, e.g., Levit Test. at 24-27.

¹⁵⁷ Tr. 67:8-14, 69:11-14; see also Ex. 8.1 at 2 (phone notes from conversation with Alaska Dept. of Natural Resources explaining that it is consistent for junior mining companies to not have significant resources).

¹⁵⁸ Tr. 61:16-24.

¹⁵⁹ Tr. 69:15-24.

¹⁶⁰ Tr. 63:24-64:8, 65:20-66:25.

prepared by a third-party in accordance with rigorous Canadian regulatory standards, evaluates the technical feasibility and economic viability of a project. Here, the PEA concluded that the Project economics are strong and it “is one of the more financially viable projects that [the PEA author] has worked on.”¹⁶¹ It is notable that every person with relevant expertise has concluded that the economics of the Pickett Project are strong.¹⁶² While Intervenor Two focuses on Wolfden’s balance sheet and market valuation, it ignores the relevant and overwhelming evidence that the Pickett Project is a highly economic and financially viable Project.¹⁶³

VI. CONCLUSION

For the foregoing reasons, Wolfden Mt. Chase, LLC respectfully requests that the Commission approve ZP 779A and allow the Project to proceed to the next phase of development. If, and only if, the stringent requirements of Chapter 200 are met will there be a mine in T6 R6. If the requirements of Chapter 200 are not met, the area reverts to the prior subdistrict designation.

Dated: November 21, 2023



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¹⁶¹ Pre-Filed Direct Test. of B. LeBlanc at 8 (“LeBlanc Test.”); *see* App. Attach. 14-A (Preliminary Economic Assessment).

¹⁶² *E.g.*, Tr. 65:20-66:25; 124:17-126:8; Preliminary Economic Assessment; LeBlanc Test. at 8 (“It is one of the more financially viable projects that AMPL has worked on and has been strengthened based on current metal prices”); Little Test. at 8 (high-potential profit margins support the increased costs of meeting more stringent environmental standards). SWCA Environmental Consultants, which conducted a third-party peer review for the Commission on financial practicability, similarly concluded that the Project was economically viable, that Wolfden had demonstrated the ability to raise financing for development of the Project, and the involvement of Kinross Gold, a major mining company, can be considered a third-party endorsement of the Project and a demonstration of the ability of management to attract investment. *See* Ex. 8.4 at 7-8 (SWCA January 29, 2021 Comments).

¹⁶³ Although Mr. Levit testified that the Project is not financially viable, he does not have the expertise to evaluate the economics of the Project. Specifically, he conceded on cross examination that he is not an economist, he has never invested in a mine, or owned, developed, or operated a mine, nor does he have an understanding of the rate of return that would be required for a mine to be an attractive investment, and therefore he could not provide an expert opinion on the economic value or financial viability of the mine. Tr. 491:9-492:18; *see also* Tr. 491:25-492:3 (testimony of Stu Levit stating that he is not a qualified person under N43-101, which governs the PEA).

**STATE OF MAINE
LAND USE PLANNING COMMISSION**

IN RE: PICKETT MOUNTAIN MINE REZONING APPLICATION

Applicant: Wolfden Mt. Chase LLC

Location: T6R6 WELS

Commission Application Number: ZP 779A

POST-HEARING BRIEF

Submitted by

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¹ This glossary provides the description and LUPC exhibit number for record materials that are cited in the brief by a descriptive shorthand reference.

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INTRODUCTION

Wolfden brings to this rezoning proceeding a long list of promises but little evidence that it can fulfill them. It promises to build a mine to standards no mine in the world has met before, but it has never developed or operated *any* mine, and its financials are so weak that its auditor notes significant doubt about Wolfden's ability to continue as a going concern. Wolfden promises the project is a sure financial bet, but its economic justification relies on mineral estimates that are too speculative for making economic projections and was not updated to account for rampant inflation in the cost of building a mine. Wolfden promises to create hundreds of local jobs, but it plans to bring in outside contractors and has no concrete plans or adequate budget allocated to train local workers. Wolfden promises to build a mine that does not pollute the area's pristine waters, but it has identified no comparable mine that achieves such results. Wolfden promises that the project will not impact the region's natural character and outdoor economy, but its rezoning application omits the mine's environmentally dangerous concentrator and tailings facility—except when it comes to touting that facility's purported economic benefits.

Wolfden's empty promises threaten to exact a significant cost. The area Wolfden proposes to mine is surrounded by spectacular lakes and streams that provide some of the best native brook trout habitat in the state and serve as critical habitat for endangered Atlantic salmon. These resources are emblematic of a region that boasts a burgeoning, sustainable outdoor recreation economy, anchored by the Katahdin Woods and Waters National Monument, Baxter State Park, top-rate fishing, and miles of trails for hiking, ATViing, and snowmobiling in a scenic, biodiverse, and largely undeveloped setting. Wolfden's empty promises of at best short-term benefits do not outweigh the long-term damage that this project threatens to cause to these outstanding natural resources, the outdoor economy they support, and the Tribal Nations that rely on them. This is no place for a mine. The Commission should deny Wolfden's rezoning petition.

LEGAL STANDARDS

Maine’s Legislature vested the LUPC with the vital role of ensuring that “principles of sound planning, zoning and development” are applied to the unorganized and deorganized areas of the State. 12 M.R.S. § 681. In doing so, the LUPC must “support and encourage Maine’s natural resource-based economy and strong environmental protections;” “honor the rights and participation of residents and property owners in the unorganized and deorganized areas while recognizing the unique value of these lands and waters to the State;” encourage appropriate uses while preventing uses “detrimental to the long-term health, use and value of these areas and to Maine’s natural resource-based economy;” “prevent the despoliation, pollution and detrimental uses of the water in these areas;” and “conserve ecological and natural values.” *Id.* This is the unique mandate of the LUPC, not the Maine Department of Environmental Protection (DEP).

To implement this mandate, the LUPC’s regulations provide that a petition for rezoning to allow metallic mineral mining may not be approved unless there is “substantial evidence” that “(a) The change would be consistent with the standards for D-PD Development Subdistrict boundaries in effect at the time; the Comprehensive Land Use Plan [(CLUP)]; and the purpose, intent and provisions of 12 M.R.S.A. Chapter 206-A,” and “(b) The change in districting will have no undue adverse impact on existing uses or resources.” Chapter 12 § 4(B)(1)²; *see also* 12 M.R.S. § 685-A(8-A). The LUPC’s regulations and the CLUP describe the necessary considerations for each of these requirements, as discussed in more detail below. Substantial evidence “exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion.” *Ouellette v. Saco River Corridor Comm’n*, 278 A.3d 1183, 1191 (Me. 2022) (internal citations omitted). The burden of proof is on the applicant. Chapter 4 § 4.05(A)(6).

² LUPC’s regulations, found at 01-672 Code Me. R., are referenced here by Chapter number.

REASONS TO DENY THE PETITION

I. Wolfden has not demonstrated that the project is technically feasible and financially practicable.

The LUPC should deny Wolfden’s rezoning application because the company has not demonstrated it has the ability—technically or financially—to fulfill its promise to build an unprecedented, state-of-the-art, cleanest-in-the-world mine at Pickett Mountain. The D-PD subdistrict standards allow only for “well-planned development” that is “shown to be of high quality and not detrimental to other values established in the Comprehensive Land Use Plan.” Chapter 10 § 10.21(H)(1). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Wolfden failed to meet its burden of proving by substantial evidence that it meets these requirements.

Wolfden has made grandiose promises to the LUPC and the people of the Katahdin region about the quality of the mine it says it will build. “Nobody has built a mine to this standard anywhere in the world, but we will.” Tr. 87 (Little); *accord* Tr. 106–107 (Little).⁴ “[T]he project is designed to be state of the art according to mining standards.” Tr. 87 (Little); *accord* Tr. 38

[REDACTED]

⁴ The record will be cited as follows. The daytime hearing transcript will be cited as Tr., while evening hearing transcripts will be cited as [date] Evening Tr. The Rezoning Application will be cited as App., followed by the pdf page number (not internal pagination). Pre-filed testimony will be cited by the witness’s last name, *e.g.*, Levit Pre-filed. Pre-filed exhibits will be cited by the witness’s last name, *e.g.*, Levit Ex. A table identifying the LUPC Exhibit numbers for each of these items is included after the Table of Contents. All other material will be cited by the LUPC’s designated exhibit number, *e.g.*, LUPC Ex.

(Ouellette). Wolfden was repeatedly pressed to identify a *similar* mine that could serve as a model for its high-flying promises in this case, and it failed to do so. Levit Ex. 14 p.1 (Maine Geological Survey 2020 comment); Levit Ex. 12 p.3 (Beyer February 2021 Letter); Tr. 51–52 (Ouellette); Tr. 87 (Little); *accord* Tr. 450 (Levit). Indeed, when Wolfden was pressed to identify “successful” mines, it could only come up with concededly dissimilar examples. Tr. 558, 561 (Finley); Tr. 596 (Browne). It is easy to make promises, but Wolfden has not shown by substantial evidence that it can deliver.

In assessing Wolfden’s assurances, the LUPC should begin with Wolfden’s nonexistent track record. Although Wolfden was incorporated in 2009, Levit Ex. 26 p.7, in its 14 years of existence, Wolfden has never built or operated a mine anywhere. Tr. 87, 98–99 (Little).

When pressed on the company’s lack of any mining experience, Wolfden’s officers fell back on their personal experience prior to joining Wolfden and the experience of their strategic partners, such as Kinross. *See* Ouellette Pre-filed p.1–2 (Ouellette part of the Trevali team that “designed and operated the Caribou mine”); LUPC Ex. 11.12 (Kinross a “strategic partner”); Tr. 599 (Little) (“my simple thought on Kinross is they are the same or — as we are the same, kind of commitment”). But the record of those partners and prior employers contradicts Wolfden’s claims to be a good corporate citizen and steward of the environment and provides cold comfort that Wolfden will keep its promise to build the best mine in the history of the world. Trevali was an undercapitalized mining company that went bankrupt and shuttered all operations, leaving taxpayers with \$49 million in remediation costs at the Caribou mine in Canada, while its Burkina Faso mine was shut down after killing eight miners. *See* Tr. 247–50 (Ouellette); LUPC Exs. 11.21–11.26. And Kinross committed over 3,000 Clean Water Act violations at its Washington mine, was assessed \$45 million for Superfund violations at its Colorado mine and paid a \$950,000 penalty

for Foreign Corrupt Practices Act violations in its West African mining operations. *See* Tr. 599–600 (Little); Maest Ex. 34; LUPC Exs. 11.52, 11.53.

In assessing the credibility of Wolfden’s assurances, the LUPC should also contrast Wolfden’s statements in these proceedings with its statements to investors. Contrary to its mantra in these proceedings that the LUPC should just kick the can down the road and let the DEP evaluate the project under Chapter 200, Wolfden suggested to investors that if rezoning were granted, a mining permit would simply follow. Wolfden told investors that these proceedings were a “mini mining permit” hearing, Tr. 90 (Little); LUPC Ex. 11.10, and that the DEP was “pre-vetting the science,” Tr. 93–94 (Little); LUPC Ex. 11.10. Similarly, while Wolfden repeatedly assured the LUPC that Chapter 200 imposes the strictest mining regulations in North America, it has told investors that these are “streamlined” procedures with no rights for Indigenous people, that Maine has “supportive state regulators,” and that if Wolfden just “ticks the boxes,” it will get its permit. Tr. 91–92 (Little); LUPC Exs. 11.11–14. Wolfden’s contradictory messages suggest that it is merely telling each audience what it thinks they want to hear, further undermining any reliance on its promises.

Even if Wolfden had every intention of building the best mine in the world, it lacks the financial capacity to do so. In its last audited financial statement for the year ending December 31, 2022, the major auditing firm Grant Thornton issued the following warning about Wolfden:

Material Uncertainty Related to Going Concern

We draw attention to Note 1 in the consolidated financial statements, which indicates that the Company has no source of operating cash flows, has not yet achieved profitable production, and has accumulated losses of \$40,834,518 as at [sic] December 31, 2022. This condition, along with the matters set forth in Note 1, indicate the existence of a *material uncertainty that may cast significant doubt about the Company’s ability to continue as a going concern*. Our opinion is not modified in respect of this matter.

Levit Ex. 26, p.1 (emphasis added); *see* Tr. 94–95 (Little).

Things have only gone downhill since then. As of March 31, 2023, Wolfden had C\$2.6 million cash on hand (about \$2 million at the current exchange rate). Levit Ex. 27 p.5; Tr. 95 (Little). Wolfden’s stock lost 55% of its value in the last year, dropping into penny stock territory. LUPC Ex. 11.6; Tr. 79–80 (Fieler); Tr. 106 (Little). The company lacks the financial resources to build or operate a well-planned, high-quality mine. Even Wolfden’s hedge fund investor recognized, “it’s clear that they can’t self-fund the development of this project.” Tr. 67 (Fieler).⁵

Wolfden’s financial shortcomings undermine its many promises. Wolfden’s consultant who prepared the Preliminary Economic Assessment (“PEA”) stated unequivocally that “Wolfden’s market capitalization will be an important factor for its ability to fully finance the construction of the Project.” App. 502; Tr. 317–18 (LeBlanc). The PEA (under)estimates the project’s pre-production capital expenses at \$153 million and the sustaining capital expenses at \$100 million. App. 691–92. Wolfden’s market capitalization, however, was only C\$14.8 million (approximately \$11 million at the current exchange rate), LUPC Ex. 11.35, which is about 4% of the projected capital costs of this project. Wolfden’s consultant never even looked at these financials before opining that Wolfden had the financial wherewithal to proceed with this project. Tr. 323 (LeBlanc). Given that Wolfden’s market capitalization is “infinitesimal,” Tr. 72 (Fieler), the LUPC can and should conclude that Wolfden cannot underwrite even these lowball estimates of the costs of building and operating this mine. The bottom line is that “at this time this company does not have the ability to do what it is proposing to do.” Tr. 469–70 (Levit).

Moreover, the hearing exposed that even Wolfden does not believe that it will ever build

⁵ Although Wolfden posted its second quarter financials to its website only after the public hearing was over in this matter, its hedge fund investor had seen them and noted that Wolfden’s cash on hand at the end of June 30, 2023 (prior to this hearing with Wolfden’s many paid consultants), had shrunk to C\$2.1 million, and that Wolfden still had no revenue. *See* Tr. 67 (Fieler); *see also* <https://www.wolfdenresources.com/investors/financials/>.

or operate this mine—rendering its promises worthless. *See, e.g.* Tr. 105 (Little) (“Very few junior mining companies make it all the way through to production”). The apparent point of the rezoning application then is not to build and operate a mine, but rather to obtain the rezoning in order to boost Wolfden’s stock price and be able to cash out. Wolfden freely admits that rezoning would put the company into play, and that Wolfden would be willing to sell out if shareholders so chose. Tr. 88–89, 100–02, 104–05, 574–75, 598 (Little); LUPC Exs. 11.10, 11.11. Wolfden’s CEO couched this as doing the right thing for shareholders, while denying that he was one of the largest individual shareholders. Tr. 89 (Little). That, however, is untrue. He proudly told investors that management (Little and the board chair) own 8.4% of the company. LUPC Exs. 11.4 p.4, 11.12. Like Wolfden’s hedge fund investor, Wolfden’s CEO has millions of dollars at stake in this rezoning application. *See* Tr. 79–80 (Fieler); LUPC Exs. 11.4 p.4, 11.6.

If Wolfden obtains rezoning, boosts its share price, and cashes out, its glittering promises are empty rhetoric that will never be fulfilled by Wolfden. Without binding commitments from some absent and anonymous white knight, there is no guarantee that any of Wolfden’s promises of local jobs, building the world’s greenest mine, etc., will ever be realized. *See* Tr. 474-75 (Levit); Levit Pre-filed 28. To take just one example, multi-billion-dollar mining companies that employ thousands of miners would have no need to hire local, inexperienced personnel who would have to be trained to operate a mine safely. The LUPC is being asked to take it on good faith alone in granting the rezoning application that some unnamed major mining company will satisfy Wolfden’s promises to build a state-of-the-art mine that will employ hundreds of local people.

Although Wolfden’s CEO initially suggested that the LUPC might be “more comfortable” if a company with a “bigger balance sheet” took over Wolfden, Tr. 577 (Little), when confronted with the numerous multi-million-dollar environmental and corporate governance violations of its

“strategic partner” Kinross, he immediately retreated, asking “what does their record have to do with us?” Tr. 600 (Little). It should be apparent that Wolfden cannot and will not build and operate this mine, that the major mining companies which could take over Wolfden are no white knights, and that not only might they never appear, but if they did, they should not be expected to build and operate the world’s greenest mine—the likes of which has never before existed—based on their sorry records.

The conclusion that this project is financially untenable becomes inescapable when one considers the shortcomings of the PEA used to justify the economics of this project. To start, the stated limitations of the PEA provide: “The overall level of accuracy of this study is approximately $\pm 40\%$.” App. 701. Further, the mineral resource estimate on which the PEA’s revenue projections are based consists of 50% “inferred” mineral resources. But the PEA notes:

Inferred Mineral Resources are considered too speculative geologically to have economic considerations applied to them that would enable them to be categorised as Mineral Reserves. Metallurgical and cost projections are to PEA level of accuracy. Therefore, there is no guarantee that the economic projections contained in this Preliminary Economic Assessment would be realized.

App. 517. Wolfden’s CEO mentioned none of this when he relied on the PEA to claim that “the high potential profit margins support the increased costs of meeting more stringent environmental standards.” Little Pre-filed p.8.

Wolfden’s overstatement of and overreliance on the results of the PEA ignore the limitations identified by the Canadian securities regulators that a PEA “[u]nderestimates the costs and complexities of the project;” “[o]ften uses overly optimistic metal recoveries and metal price assumptions;” “[t]ends to be overly reliant on converting inferred resources to indicated resources;” and leads to a “[h]igh risk of project failure if the PEA is used as a basis for making a production decision,” among other things. LUPC Ex. 11.36 p.38.

In this case, the PEA errors are even more palpable. Although Wolfden repeatedly claims

that it is going to take additional measures—to be named later—to make this the greenest mine in the world, there is no suggestion in the 200-page PEA that any of these numerous, unexplained “state-of-the-art” features will add anything to the cost of this project. *See, e.g.*, Tr. 450–51, 453, 459–61, 467 (Levit); Levit Pre-filed 3–6, 12, 15–17 (describing expensive features and omitted necessary pollution monitoring, prevention, and treatment plans). The suggestion that it costs nothing more to build an unprecedented environmental showcase of a mine is not credible.

In addition, the 2020 PEA dramatically underestimates the project’s costs by failing to account for recent inflation. Wolfden’s hedge fund investor explained in 2022 that inflation has been “horrible” for junior mining companies, especially those—like Wolfden hopes soon to be—that are in construction, with capital budgets getting “blow[n] out[.]” by 40–50%. Tr. 82 (Fieler); LUPC Ex. 11.9.⁶ Wolfden, however, did not update the capital costs in the 2020 PEA to account for inflation. Tr. 84–85 (Wolfden stipulation). Wolfden relies on the 2020 PEA’s projected rate of return to promise it can cover the “increased costs of meeting more stringent environmental standards,” Little Pre-filed p.8, but that claim would crumble if the PEA’s estimate of \$150 million or \$250 million in capital costs were increased 40–50% to account for inflation.

Yet another drastically underestimated cost in the 2020 PEA is the \$13.7 million allocated for the Financial Assurance Trust, App. 693, which is required by law to be sufficient to cover all closure costs, monitoring, 100 years of treatment, and the cost to respond to and remediate “a worst-case catastrophic mining event or failure.” 06-096 Code Me. R. Ch. 200 § 17(B)(1); *see* App. 524. In response to Wolfden’s initial application, which included this same \$13.7 million

⁶ Indeed, for years, the only place in the world where mines have been built on time and on budget has been West Africa, according to Wolfden’s witness. Tr. 85 (Fieler); LUPC Ex. 11.9. Given the record of environmental harm and corruption discussed above, that is scarcely a role model for Maine. Besides, the Sahara of West Africa has nothing in common with the pristine waters of the Katahdin region. *See* Tr. 108 (Little) (“no wetlands to speak of over there”).

allocation, LUPC staff observed that it “appears low,” and asked for further explanation of how it was calculated and why it was sufficient. Levit Ex. 12 p.3. But Wolfden’s resubmitted application does not increase the \$13.7 allocation or provide the requested explanation. These omissions are unsurprising, given that Wolfden’s CEO told investors that little monitoring would be necessary three years after the mine closes, Tr. 93 (Little); LUPC Ex. 11.14, and when questioned about the PEA’s lack of explanation of the funds necessary to respond to a worst-case catastrophic mining event or failure, Wolfden’s consultant responsible for the PEA testified revealingly that “I can’t foresee any kind of catastrophic event with this type of deposit.” Tr. 321 (LeBlanc).

The unrebutted evidence in the record confirms that the consultant’s confidence was unwarranted and that the proposed trust fund is inadequate. Wolfden has not pointed to a single worst-case catastrophic mining event that cost less than \$13.7 million to remediate, and our expert is not aware of any such examples anywhere. Tr. 462 (Levit). Indeed, the record is replete with examples of such events costing far more. *See, e.g.*, Tr. 247 (Ouellette) (\$49 million at Caribou mine); Levit Pre-filed p.19 (\$100 million); LUPC Ex. 11.52 (\$165 million at Colorado multi-mine Superfund site, including \$45 million from Kinross). If the trust fund is increased to a more realistic number, that puts this project even further out of financial reach for Wolfden.

Wolfden’s approach to the PEA underscores the fundamental failing of this application. Numbers that are considered favorable are treated as certain, such as the “inferred” ore, even if they are inherently speculative. Numbers that are considered unfavorable, such as the costs of a state-of-the-art mine or of a worst-case catastrophic mining failure, are underestimated or omitted. Only by applying such magical realism can Wolfden ignore its non-existent balance sheet, mine construction cost inflation, and the like, to argue that this project is financially viable.

Members of the LUPC are right to view the numerous projections in this matter with

skepticism. *See* Tr. 302 (Worcester) (“my confidence level” on predictive models “isn’t real high” ... “it makes me nervous when you take a bunch of numbers and extrapolate into the future”); Tr. 322 (Trudel) (predictive models “are nothing more than ... best guesstimates forward”). As Wolfden’s consultant quipped, “Yogi [Berra] said it best ... prediction is hard, especially about the future.” Tr. 567 (Finley). Developers, dreamers, and hucksters have descended on rural Maine since at least the 1960s when Freddie Vahlsing vowed to turn Aroostook into the sugar beet capital of the world, promising sure-fire, no-risk, development schemes. When the cold hard facts here are considered, the LUPC will see instead an undercapitalized company with no track record baldly promising that it will build and operate the greenest mine in the world without any cost overruns or environmental damage. In sum, Wolfden has failed to meet its burden of proving by substantial evidence that its project is technically feasible and financially practicable to justify a rezoning.

II. Wolfden has not demonstrated that the project avoids undue adverse impacts on existing uses and resources and is consistent with 12 M.R.S.A. Chapter 206-A.

By relying on skewed and unsupported socioeconomic projections and failing to demonstrate how it will avoid significant adverse impacts to water and wildlife from its proposed mine, Wolfden has not met its burden of proving by substantial evidence that the project will cause no “undue adverse impact on existing uses or resources,” and will be consistent with 12 M.R.S.A. Chapter 206-A. Chapter 12 § 4(B)(1). In making these determinations, the LUPC must consider “[p]otential short and long term socioeconomic impacts, both positive and negative;” “[p]otential impacts to existing uses and natural resources” including water, wildlife habitat, and recreation; and “[p]ositive and negative impacts upon the areas within and adjacent to the Commission’s jurisdiction,” including impacts to “regional economic viability, Maine’s natural resource-based economy, local residents and property owners, ecological and natural values, recreation, and public health, safety, and general welfare.” Chapter 12 § 4(B)(2)(a), (3).

A. Wolfden overestimates the project's socioeconomic benefits while ignoring its socioeconomic harms.

Although the LUPC's regulations require consideration of "positive *and* negative" impacts, Chapter 12 § 4(B)(2)(a), Wolfden applies the same skewed approach to the alleged socioeconomic impacts of the project as it does to the project's finances and feasibility, emphasizing speculative benefits while downplaying likely harms. Wolfden thus fails to demonstrate with substantial evidence that socioeconomic factors favor granting the petition.

In calculating the alleged economic benefit of the project, Wolfden's consultant took Wolfden's projections at face value, and did nothing to analyze whether they were reliable. Tr. 282–83, 292–93, 311 (LeVert). Further, the consultant projected jobs and economic benefits from the ore processing and tailings facility, even though Wolfden removed that facility from its application. App. 316. On the other side of the ledger, the consultant's "analysis assumes that no unforeseen environmental damage occurs as a result of the Project." App. 344. And since Wolfden foresees no such damage, none is contemplated in the analysis. Thus, Wolfden's consultant acknowledged, with considerable understatement, that "[i]f environmental damage did occur that exceeded the level that could be mitigated by the reclamation fund or other means, negative economic impacts could occur that could offset the positive impacts." *Id.*

As a result, the analysis does not consider the potential negative effect of the proposed mine on the neighboring Katahdin Woods and Waters National Monument (KWW), even though a federal study concluded that in 2020 alone the monument added \$3.3 million to the local economy and supported 38 local jobs. LUPC Ex. 11.33. Nor does it analyze the possible economic effects on the area's growing outdoor recreation economy—or the regional economy as a whole—from potential significant environmental damage, or from a change in the natural character and reputation of the area. App. 346 (analysis assumes no regional environmental impact); *see also*,

e.g., App. 301 (tourism economy in the region increased 30-40% from 2010 to 2021); Tr. 339–40 (Johnson) (monument established, Seboeis River trail upgraded, lodges expanded, and new businesses opened); Tr. 538–39 (Fitzpatrick) (increased activity in Patten in past five years).

As the Baxter State Park Authority commented, but Wolfden’s analysis ignores, “this mining project runs counter to the economic plan that the Katahdin region has been developing.” LUPC Ex. 7.273. Also ignored is the Maine Wilderness Guides Organization’s reasonable concern that “the project could cause significant ecological harm to the forests and waterways that our members use for guiding” and “degrade water quality and the scenic beauty of places we have taken clients to recreate and fish for many years.” LUPC Ex. 7.93; *see* 10/17/23 Evening Tr. 21. These concerns are equally shared by Tribal guides. *See* Tr. 526 (Kusnierz); Kusnierz Pre-filed p.17. Once again, Wolfden’s analysis assumes that every benefit Wolfden predicts will occur, and that nothing the opponents fear will come to pass.

Although Wolfden’s consultants accepted Wolfden’s projections uncritically, the LUPC should not. When originally proposed, Wolfden projected that the mine would employ “>60” workers. Tr. 603 (Little); LUPC Ex. 11.54 p.5; Levit Ex. 12 p.2. In the effort to build grass roots support, Wolfden’s number of promised jobs increased four-fold to 233 (or 272 including off-site facilities), App. 6, 275, even as the scope of the rezoning application shrunk when Wolfden removed the ore processing and tailings facility from it to facilitate approval.

Wolfden is telling the neighboring communities that these jobs will be filled by local residents, but its application tells a different tale:

The underground workforce is anticipated to be initially contracted then move to an owner operated workforce in year 3 of operation. Significant training will be required throughout the entire project life due to lack of local experience.

App. 651; *see* Tr. 251–54 (Ouellette). Moreover, the mine’s seven-days-on, seven-days-off work

schedule is designed to be conducive to a remote workforce and the “fly-in, fly-out type of operations or commuting type of operations” the “mining industry has heavily gone towards.” Tr. 58, 259 (Ouellette); Levit Pre-filed p.28; App. 301. The idea that Wolfden will fire its experienced, outside contractors after three years to hire local untrained personnel cannot be taken seriously.

Wolfden concedes in the application that hiring local residents as miners “will require training for that workforce since many unique skills are required of miners working underground.” App. 275. But Wolfden has done almost nothing to set up such training beyond a handful of meetings with educational institutions mostly several years ago. Tr. 256 (Ouellette); *see* Ouellette Pre-filed p.46. And Wolfden is not planning to spend the money needed for the concededly necessary “[s]ignificant training.” App. 651. Of the annual \$3.3 million general and administrative operating budget in the application, Wolfden has allocated only \$10,000 a year to training:

TABLE 21.11
GENERAL AND ADMINISTRATIVE OPERATING COST COMPONENTS

| Component | Annual Cost (\$US) |
|--------------------------|--------------------|
| Salaries & Overhead | \$ 2,166,000 |
| Training | \$ 10,000 |
| Safety Equipment | \$ 5,000 |
| Medical, Health & Safety | \$ 50,000 |
| Government Relations | \$ 20,000 |

App. 696. Confronted with this chart, Wolfden’s VP in charge of drumming up local support for this project by promising local jobs, immediately pivoted to assert that the \$2.166 million in salaries “includes the salaries for trainers,” and “includes salaries of the trainees.” Tr. 255–56 (Ouellette). That assertion is false. On the very next page of the application is the breakdown of the \$2,166,000 in salaries, and not a dime is allocated to trainers or trainees:

TABLE 21.12
G&A MANPOWER COSTS

| Position | Complement | Annual | Fringe | Total |
|-----------------------------------|------------|------------|----------|--------------------|
| | | Salary | Benefits | Cost |
| | | (\$US) | 35% | (\$US) |
| Mine Manager | 1 | \$ 200,000 | 35% | \$ 270,000 |
| Mine Superintendent | 1 | \$ 175,000 | 35% | \$ 236,000 |
| Mill Superintendent | 1 | \$ 160,000 | 35% | \$ 216,000 |
| Technical Services Superintendent | 1 | \$ 160,000 | 35% | \$ 216,000 |
| Senior Engineer | 1 | \$ 135,000 | 35% | \$ 182,000 |
| Accountant | 1 | \$ 75,000 | 35% | \$ 101,000 |
| Eng/Geo technicians | 2 | \$ 90,000 | 35% | \$ 243,000 |
| Purchasing/Warehouse Manager | 1 | \$ 140,000 | 35% | \$ 189,000 |
| Environmental Coordinator | 1 | \$ 80,000 | 35% | \$ 108,000 |
| Medical Contract | 1 | \$ 60,000 | 35% | \$ 81,000 |
| Security Guard | 4 | \$ 45,000 | 35% | \$ 243,000 |
| Site Services | 1 | \$ 60,000 | 35% | \$ 81,000 |
| Total | 16 | | | \$2,166,000 |

App. 697. When Wolfden’s central hearing testimony is flatly contradicted by its own rezoning application, one has to question all of its rosy predictions and promises. In short, Wolfden fails to meet its burden of proving, by substantial evidence, that socioeconomic factors favor rezoning.

B. Wolfden has failed to demonstrate how it will avoid or minimize the severe risk the project poses to the area’s natural resources.

Wolfden has also failed to meet its burden of demonstrating with substantial evidence that the project will “will have no undue adverse impact on existing uses or resources,” including water and wildlife habitat. Chapter 12 §§ 4(B)(1)(b), (4)(B)(3). Wolfden contends that its showing on this point need only be minimal because it will provide further information and plans to the DEP during the mine permitting process. But DEP’s process does not erase the LUPC’s rezoning requirements or Wolfden’s burden to meet them with substantial evidence.

Indeed, LUPC’s regulations require that in the *rezoning* application—not just the DEP process—the applicant must show how it will “assure that mining in the specified location will not have undue adverse impacts on existing uses and resources” and set forth the measures the applicant may take “to avoid, minimize or mitigate any adverse impacts.” Chapter 12 § 4(C)(1)(m). And the LUPC has recognized that “part of the rezoning process is determining if there are places

that may not be appropriate to rezone [for metallic mineral mining] as the risks to various resources may be too great.” LUPC Ex. 11.40 p.28–29. Moreover, D-PD rezoning may be granted only to “well-planned,” “well-designed,” “high quality” projects—a requirement that cannot be met by a project in which key plans for preventing environmental damage are left for later. Chapter 10 § 10.21(H)(1). These zoning requirements are critical because, as the former Director of DEP’s Division of Environmental Assessment commented, the LUPC has an important role, not replicated by DEP, to safeguard the unique character and natural resources of the areas within its jurisdiction. LUPC Ex. 7.310; *see also* Tr. 576 (Hilton) (noting importance of LUPC’s zoning standards).

Thus, contrary to Wolfden’s suggestion, Maine law and the LUPC’s regulations do not allow, much less require, the Commission simply to accept Wolfden’s unsupported promise that it will build the cleanest mine in the world and nothing will go wrong. Instead, Wolfden must present realistic plans with sufficient information to show how potential adverse impacts will be avoided. For example, the LUPC’s current Executive Director informed Wolfden in 2021 that the company must “[p]rovide a report including a comparative analysis that addresses the recommendations of the Maine Geological Survey in their memo dated 10/15/2020 to demonstrate that the proposed approach for development, operation, and closure of the site can be done with no undue adverse impact to Maine’s ground and surface waters.” Levit Ex. 12 p.5; *see also id.* at 1–9 (requiring additional information to demonstrate lack of undue adverse impacts). Indeed, LUPC staff recommended denying Wolfden’s initial application, even after multiple revisions, because it lacked sufficient information to “meet [Wolfden’s] burden of proving that the Petition meets the statutory and regulatory criteria for a zone change, and particularly those criteria related

to, among other things, “no undue adverse impact to water resources and fisheries.” Levit Ex. 17 p.3. Wolfden’s current rezoning petition suffers from the same flaw.

The project area and its surroundings are home to spectacular natural resources, including pristine waters and vital fish and wildlife habitats. Johnson Pre-filed p.10-14; LUPC Ex. 11.37. Three State Heritage Fish Waters—Pleasant Lake, Mud Lake, and Grass Pond—along with high-quality streams that flow into and out of them, are within one-to-two miles of the project area. Kusnierz Pre-filed p.15; App. 732. Water from the project site—including any contaminated discharges or bypass flows—drains into these waters, whether directly or via Pickett Mountain Pond which flows into them. App. 1068–69. Maine’s Department of Inland Fisheries and Wildlife (IFW) considers “Pleasant Lake and Mud Lake to be some of the best brook trout and landlock[ed] salmon waters available in the Region” and notes that “it is vitally important to protect the tributaries as well as the lakes since they contain an abundance of spawning and rearing habitat.” LUPC Ex. 6.12 p.3; App. 1159; *see* Kusnierz Pre-filed p.15. These waters, which include the headwaters of the West Branch Mattawamkeag River, also are part of the federally designated critical habitat for endangered Atlantic salmon, which means that they contain “the physical and/or biological features that are essential to the conservation and restoration” of this imperiled species. Kusnierz Pre-filed p.11; Kusnierz Ex. 1.

The aquatic species that rely on these waters are very sensitive to acidic conditions and heavy metals. And because the waters are so clean, with low alkalinity and low hardness, they have very little buffering capacity against contamination from acid mine drainage (AMD) and metal leaching. Maest Pre-filed p.33; Kusnierz Pre-filed p.16; Tr. 528 (Kusnierz). These waters have an average pH of 6.7, Tr. 556–57 (Stewart)—at the low end of the range (6.5 to 8) within which Atlantic salmon thrive. Kusnierz Pre-filed p.13. A small influx of acidity could bring the

waters below that preferred range, and even brief exposure to moderately acidic conditions “can be fatal for young salmon,” with one week’s exposure to pH 5 water killing 70% of smolting salmon in a laboratory test. Kusnierz Pre-filed p.13. Similarly, while brook trout can tolerate waters with pH 5 to 9.5, they become stressed at the extremes of that range. Kusnierz Pre-filed p.17. Moreover, the metals that the proposed mine threatens to leach into the environment—including zinc, copper, lead, and mercury—are toxic to aquatic life, including salmon and trout, even in small quantities. Maest Pre-filed p.13; Kusnierz Pre-filed p.9–11, 13, 16–17. And acidic conditions can cause additional metals to leach out of sediments, further harming fish and other aquatic organisms. Kusnierz Pre-filed p.9–11.

Although Wolfden’s application cursorily dismisses AMD, App. 289, it is “nearly certain” that mining the Pickett Mountain deposit will generate AMD. Tr. 392 (Maest). The ore Wolfden seeks to mine contains 45–60% pyrite—the primary source of AMD—and the valuable minerals “are typically finely laminated and are overlain and in sharp contact with massive pyrite.” App. 544; *see* Tr. 167 (Finley) (“there’s no doubt that the orebody itself will be acid generating”). This means that not only the ore, but the mine walls, waste rock, and tailings will contain pyrite and thus pose a significant risk of AMD. Maest Pre-filed p.3. Although Wolfden’s application omits all but surface-stored waste rock as a potential source of AMD, App. 289, Wolfden’s own expert conceded that the mine walls would be a potential source, Tr. 161–162 (Finley), and LUPC consultant Linkan Engineering described the deteriorating quality of the water seeping into the mine workings as “inevitable,” Levit Ex. 16 p.2. As Wolfden’s consultant admitted at the hearing “there’s going to have to be a plan to manage that wall rock because you’re exactly right, the entire period of time that the mine’s open ... there can be reaction,” and if that occurs, “[t]he products of that reaction are sitting there. And as the water comes back up, it will leach it up.” Tr. 158 (Finley).

The risk of AMD and metal leaching from mine walls, backfilled waste rock, and ore crushing remnants exists not only as water refills the mine workings after mining ends, but also while mining is ongoing. Tr. 395, 403–05, 415, 426 (Maest). Further, while the application ignores the likelihood of metal leaching, Dr. Maest revealed that even the limited testing of seven samples included in the application showed elevated levels of antimony, arsenic, cadmium, cobalt, mercury, lead, thallium, and zinc, all of which are toxic to people, aquatic life, or both. *See* Maest Pre-filed p.13–14; Tr. 399–400 (Maest). Mining at Pickett Mountain threatens to release these dangerous toxins into the environment even under non-acidic conditions. *See id.* Water contaminated with AMD or leached toxic metals could escape capture via faults, fissures, and fractures, whether pre-existing or created by blasting. Maest Pre-filed 31–32; Tr. 411, 431–32, 438 (Maest); *see also* Tr. 154 (Finley) (agreeing fissures “can give you trouble”).

Yet despite this demonstrated threat to some of the region’s most valuable waters and fisheries, Wolfden’s application includes no plans to prevent AMD or metal leaching from arising in the mine workings and walls, backfilled waste rock, ore transportation to the off-site concentrator, or tailings, nor any plans to detect and treat contaminated flows that escape capture. Levit Pre-filed p.11–18; Maest Pre-filed 7–8, 24–28; Tr. 459–61 (Levit). Instead, the company has largely relied on promises to create plans during the Chapter 200 process or later as mining proceeds. Tr. 14–15, 17 (Wolfden opening statement); Tr. 157–59 (Finley). But as discussed above, Wolfden’s pledge to create plans to address AMD in the future cannot satisfy its *present* burden to fulfill the LUPC’s rezoning criteria with substantial evidence, nor does it meet the requirement that Wolfden present, *within this application*, measures to assure that mining will not have undue adverse impacts on natural resources, and measures to avoid, minimize, or mitigate any adverse impacts. Wolfden seemed belatedly to recognize these omissions at the hearing, orally

floating off-hand suggestions of potential methods for preventing AMD and placing heavy reliance on visual observations and other information not included in its application. *See, e.g.*, Tr. 169–73 (Dudek); 586–88 (Finley). But the LUPC, the intervenors, and the public could not adequately consider and assess, much less rely upon, such sketchy, last-minute oral suggestions and justifications even if an experienced, responsible mining company were presenting them. Here, they come from a financially precarious company that has never developed or operated a mine.

Wolfden claims that AMD is not a concern, despite the acknowledged acid-generating nature of the deposit, because it will capture all contaminated water and treat it to pristine background water quality levels, as required by Maine law, *see* LUPC Ex. 6.13 p.6–7. But the company has provided no example of a comparable mine that has done so, despite requests by LUPC and the Maine Geological Survey dating back three years. Levit Ex. 12 p.3; Levit Ex. 14 p.1. Wolfden’s CEO tried to put a positive spin on the lack of a comparable example, telling the LUPC “Nobody has built a mine to this standard anywhere in the world, but we will.” Tr. 87 (Little). But Wolfden’s inability to point to any comparable example, despite the existence of hundreds of mines operated by companies with far more experience and resources than Wolfden, stands as a rebuttal to such glib promises. Indeed, as shown by Dr. Maest—whom Wolfden acknowledged as a leader in her field, Tr. 140 (Finley)—the vast majority of mines overpromise and underdeliver on their environmental claims. Maest Pre-filed p.16–18; Tr. 407–09 (Maest). And as discussed above, Wolfden has not demonstrated that it will be financially practicable or technically feasible to do what “nobody ... in the world” has done, Tr. 87 (Little)—at a mine with unproven minerals, unpredictable mineral prices, and underestimated costs.

In the absence of a concrete example, Wolfden relies on general efficacy rates and computer modeling to support its water treatment claims. But as Dr. Maest explained, the modeling

study is fundamentally flawed due to the lack of input values for key parameters including sulfate, nitrate, mercury, chloride, fluoride, and ammonia. Maest Pre-filed p.19–20; Tr. 402 (Maest). Moreover, Wolfden fails to acknowledge and plan for the likelihood that it will not be able to capture (and thus treat) all mine-influenced water, whether those “bypass flows” arise underground via faults and fissures or above ground via spills, overflows, or liner tears and leaks. Maest Pre-filed p.28; Tr. 406, 432–33 (Maest). Ninety-three percent of large copper mines failed to capture and control mine wastewater, resulting in adverse water quality impacts, and similar problems occur at smaller, underground mines as well, including Kinross’s Buckhorn mine, where 3,000 water quality violations were issued. Tr. 406 (Maest); Maest Pre-filed p.28; Maest Exs. 33, 34. Wolfden does not explain why it would succeed when its multi-billion-dollar strategic partner, Kinross, failed.

In addition, heavy metal leaching could result from Wolfden’s plan to dispose of the water treatment plant’s concentrated wastewater, or brine. Tr. 403–404 (Maest); Maest Pre-filed p.24–26; Levit Pre-filed p.3–5. Wolfden says it will use the brine to make cement, add that cement to waste rock from the mine, and then backfill that concoction into the mine workings. App. 464; Tr. 403-04 (Maest). This is a risky proposition. Cemented waste rock backfill from the Buckhorn mine leached increasing levels of arsenic over time, even without the addition of a toxic brine. Tr. 404–05 (Maest); Maest Pre-filed p.25–26. Yet, Wolfden has provided no examples or evidence showing that this brine disposal method would be environmentally safe, nor has Wolfden explained what it would do with the brine if such disposal were not allowed.

While Wolfden tries to downplay the AMD risk by claiming that access tunnels could be built in rock with little likelihood for acid generation, that claim is not supported by the evidence. Wolfden hinges this claim on acid-base accounting results of just seven rock samples. App. 401;

Tr. 165 (Finley); Tr.170 (Dudek); Tr.396–397 (Maest). But these results cannot support *any* claims regarding the acid generating potential of rock in the project area because (a) far too few samples were taken; (b) the locations of the samples were not supplied; (c) none of the samples was from the orebody itself; and (d) even the few results that were supplied were equivocal and require further analysis, which has not been completed. Maest Pre-filed p.7–12; Tr. 166 (Finley), Tr. 397–98 (Maest). Further, the limited testing demonstrated a potential for metal leaching, which Wolfden also concedes could occur. Tr. 151 (Finley); Tr. 399–400 (Maest). Belying any claim by Wolfden that additional testing would be premature or cost-prohibitive, Wolfden conceded that it analyzed *more than 7,000* rock samples to develop its mineral resource estimate to tout the project to investors, while devoting just *seven* samples for acid-base accounting to evaluate potential environmental harms. Tr. 165 (Finley), Tr. 170 (Dudek). That thousand-fold difference between profit-motivated and environmentally focused testing speaks volumes. Just as investors would not rely on seven samples to determine the economic viability of a proposed mine, the LUPC should not rely on seven samples to determine the environmental impact of this proposed mine.

III. Wolfden has not demonstrated that the project is consistent with the Comprehensive Land Use Plan.

Unsurprisingly, a project that threatens serious harm to the area’s natural resources and its growing outdoor recreation economy is not one that is consistent with the LUPC’s Comprehensive Land Use Plan. The CLUP’s four principal values are: (1) economic value “derived from working forests and farmlands;” (2) “diverse and abundant recreational opportunities;” (3) “diverse, abundant, and unique high-value natural resources and features;” and (4) “natural character,” including “the uniqueness of a vast forested area that is largely undeveloped and remote from population centers.” CLUP § 1.1 p.2. The CLUP charges the LUPC to evaluate metallic mining rezoning proposals with “particular care” due to their “potential to cause serious environmental

problems,” especially water contamination. CLUP § 5.7.D p.221. Contrary to Wolfden’s suggestion, the LUPC’s 2012 CLUP Guidance does not alter these values. Rather, it recognizes that the CLUP should be interpreted with an increased focus on long-term regional economic viability and honoring the rights of residents and property owners of the unorganized areas, along with a continued emphasis on “strong environmental protection” and the “unique value of the lands and water in these areas to the State as a whole,” resulting in an overall approach in which “[s]ustainability is the goal.” LUPC, Guidance for Interpreting the 2010 Comprehensive Land Use Plan (2012), p.3–6 (“2012 CLUP Guidance”). Wolfden has failed to bear its burden of demonstrating by substantial evidence that the project is consistent with the CLUP.

First, the project threatens the region’s “diverse, abundant, and unique high-value natural resources and features.” CLUP § 1.1 p.2. As discussed above, the project area is closely surrounded by three State Heritage Fish Waters and cool, clean, Class A streams, which are recognized by IFW as providing some of the best brook trout and landlocked salmon habitat in the state. These resources are unique and vital. Maine is the only state with extensive, intact, self-reproducing Eastern brook trout populations in lakes and ponds and is recognized by IFW as “the last true stronghold for stream dwelling populations of wild brook trout.” Kusnierz Pre-filed p.14. Similarly, the project area is situated among the pristine, Class A streams that are federally designated critical habitat for endangered Atlantic Salmon—deemed essential for species survival and recovery. Kusnierz Pre-filed p.11. The Penobscot River and its tributaries, including the West Branch Mattawamkeag River, host the largest remaining population of the species, even though the adult population is now only 1,000–1,500 strong, down from 75,000–100,000 historically. Kusnierz Pre-filed p.5. The project area is also within the designated critical habitat essential for the threatened Canada lynx. *See* App. 1177 (U.S. Fish and Wildlife Service).

These high-value resources and habitats within and immediately surrounding the project area are a crucial part of the diversity of ecosystems, intact natural processes, and sustainable wildlife populations that are unique to Maine’s North Woods—the largest relatively undeveloped forest in the United States east of the Mississippi—and are essential for preserving biodiversity. Johnson Pre-filed p.4. As described above, the proposed project threatens significant harm to these resources, and Wolfden has not demonstrated that it will avoid those harms.

Similarly, the project threatens the Katahdin region’s “diverse and abundant recreational opportunities” and its “natural character” including “the uniqueness of a vast forested area that is largely undeveloped and remote from population centers”—another two of the CLUP’s four principal values. CLUP § 1.1 p.2. The region includes Katahdin Woods and Waters National Monument, Baxter State Park, Mount Chase, popular snowmobile, ATV, and hiking trails, as well as off-trail backcountry hunting, fishing, paddling, and nature exploration areas. Johnson Pre-filed p.6. Patten, a town nearby the proposed site, is the gateway community for the north end of KWW—virtually every visitor to that end of the monument will pass through Patten. *Id.* p.9. KWW is also a Dark Sky Sanctuary, recognized as one of the most remote and darkest places in the world. *Id.*; LUPC Ex. 7.66; LUPC Ex. 7.117. Visitors come to KWW and the Katahdin region for dispersed recreational opportunities, a chance to see iconic wildlife such as moose, bears, and a variety of birds, its clean air and waters, and its dark skies. Johnson Pre-filed p.8–9.

Wolfden’s proposal not only threatens to despoil the area’s waters and wildlife habitat but also to introduce noise, light, and visual pollution from blasting, 24/7 mining operations with associated vehicles and facilities lit up at night, 55 daily round trips of 80,000-pound ore transport trucks, and a headframe that is visible from Mount Chase and Pleasant Lake. The Baxter State Park Authority commented that Wolfden’s visual impacts study is incomplete and that project

elements may be visible from various popular high-elevation viewpoints in the park. LUPC Ex. 7.273. The project is fundamentally inconsistent with the area's natural character and uniqueness as a vast, undeveloped forested area and it makes the area less appealing for hikers, anglers, hunters, naturalists, ATVers, and snowmobilers alike. Johnson Pre-filed p.6, 10–12, 15–16; LUPC Ex. 11.37.

With regard to economic value, while Wolfden promises that the mine will be a short-term (10–14 year) boon to the region, the actual socioeconomic impacts are gossamer at best, and non-existent at worst. Moreover, the CLUP prioritizes “sustainable” economic opportunities that are compatible with the CLUP's other principal values, such as “working forests and farmlands.” CLUP § 1.1 p.2; 2012 CLUP Guidance p.6. By contrast, the economic opportunities generated by this project, if ever realized, would not only be short-lived, but would impair the area's growing and sustainable outdoor recreation economy, and be detrimental to the region's natural character and high-value natural resources.

IV. The project impairs Tribal rights and interests.

The project's impairment of Tribal rights and interests provides additional grounds for denying rezoning. Contrary to Wolfden CEO Ron Little's statements to shareholders, LUPC Exs. 11.13, 11.14, Tribal Nations do have rights in the State of Maine, including in these proceedings. The Penobscot Nation and the Houlton Band of Maliseet Indians include local residents and property owners, have a significant interest in cultural and historic resources, hold sustenance fishing rights, and are concerned about culturally important water resources, wildlife, and plant habitats. Kusnierz Pre-filed p.3–8; St. John Pre-filed p.5–6. People of the Wabanaki Confederacy, consisting of Penobscot, Maliseet, Passamaquoddy, and Mi'kmaq, have lived in the project area and surrounding region since time immemorial and have a close relationship with the natural world. Tr. 511 (Kusnierz). The CLUP recognizes that Maine's Tribes contribute to the cultural

resources of the state and the LUPC's jurisdiction, and impacts to Tribal interests and rights must be considered. CLUP § 5.4(C) p.178.

The proposed project impairs these Tribal interests and rights. The Penobscot Nation and the Houlton Band of Maliseet Indians are riverine people, with water figuring prominently in both Tribes' cultures, traditions, and way of life—both past and present. Tr. 343–44 (St. John); Tr. 513–15 (Kusnierz); St. John Pre-filed p.2, 5–6; Kusnierz Pre-filed p.4–5. Tribal members gather medicinal plants, hunt, and fish in the Penobscot watershed, including near the project area, and the consumption of fish is culturally important to Wabanaki people. Tr. 345–46 (St. John); Tr. 514–15 (Kusnierz); St. John Pre-filed p.5–6; Kusnierz Pre-filed p.4–5, 7–8. Moreover, the West Branch Mattawamkeag River—the headwaters of which abut the project area—is designated for sustenance fishing and is used by Tribal citizens for this purpose. Tr. 513 (Kusnierz).

Atlantic salmon are culturally important to the Wabanaki people. Tr. 515 (Kusnierz). The Penobscot Nation has partnered with Federal, State, and private entities in a decades-long project to remove dams and restore salmon to the Penobscot watershed and has engaged in stocking salmon fry and monitoring water quality in the watershed. Tr. 510, 521-22 (Kusnierz); Kusnierz Pre-filed p.5–8, 12–13. However, AMD and metal leaching from the proposed mine would undermine these efforts and set back salmon recovery. The mine would also threaten key habitat for brook trout, which serve as an important sustenance fish for Tribal members and a revenue source for Tribal guides. Tr. 518, 524–29 (Kusnierz); Kusnierz Pre-filed p.16–17.

In addition, while Wolfden's preliminary archaeological model identifies five archaeologically sensitive areas within the rezoning area, App. 1059, this "Phase 0" study is "superficial" and it is likely that more archeological resources will be discovered in future phases of archeological studies at the project area, which could reveal additional cultural resources

significant to Wabanaki Tribes. St. John Pre-filed p.4. In sum, Wolfden’s proposed mine threatens Tribal rights and interests to which Wolfden has given short shrift.

V. Wolfden’s omission of the concentrator and tailings facility precludes a finding that rezoning is warranted.

By selectively omitting from its rezoning application two integral and environmentally dangerous project elements—the ore processing facility (or concentrator) and tailings facility—Wolfden makes it impossible for the LUPC to adequately assess the project’s financial practicability, feasibility, or impacts to natural resources. When Wolfden withdrew its prior rezoning application, numerous LUPC concerns regarding these facilities remained unaddressed. Levit Ex. 17 p.1–8 of Table. Instead of resolving those concerns, Wolfden simply removed the concentrator and tailings facility from the Application, informing the LUPC that they will be built in a yet-to-be-determined location, probably in or near Patten, Hersey, or Stacyville—all towns adjacent to the LUPC’s jurisdiction. App. 843; *see* Tr. 112–14 (Ouellette).

But while Wolfden removed these facilities from its application when discussing environmental threats, it uses them to bolster projections of supposed socioeconomic benefits. App. 6, 316; LUPC Ex. 2.3 p.3. As a result, while Wolfden’s one-sided application touts the jobs and other benefits modeled to be generated by the concentrator and tailings facility, it omits any consideration of how those facilities could adversely impact water, wildlife, and other resources, and includes no plans for avoiding, minimizing, or mitigating those impacts. As noted by Commissioner Hilton, Wolfden assumes that the location and impacts of these facilities are “not important to our decision,” but “it seems like we need to know that.” Tr. 114.

Commissioner Hilton was right. The LUPC’s regulations do not permit such evasion. Rather, they require the Commission to consider the “[p]ositive and negative impacts upon the areas within *and adjacent* to the Commission’s jurisdiction.” Chapter 12 § 4(B)(2)(a) (emphasis

added). In addition, the LUPC cannot ensure that the project is “well-planned” and “well-designed” if two integral elements are left out of the application—except where Wolfden wishes to tout them for their purported socioeconomic benefits. Chapter 10 § 10.21(H)(1).

Ore concentrating and tailings disposal pose significant environmental dangers. Concentrating involves toxic chemicals that can spill or leak into the environment during transportation, storage, and operation, and the wastewater resulting from concentrating the ore will contain those chemicals as well as heavy metals. Levit Pre-filed p.21–22; Tr. 468-69 (Levit). Disposal of the finely ground solid waste product from ore concentrating—the tailings—poses serious environmental risk as well. *Id.* p.23–24. As Linkan Engineering observed, the tailings from this project “will likely be very geochemically reactive and prone to produce acid rock drainage.” *Id.* p.23; Levit Ex. 16 p.5. In addition, transporting 55 truckloads of ore per day to this undisclosed facility threatens to produce a roadside trail of ore dust with high AMD and metal-leaching potential that could contaminate surrounding ground and surface waters. Levit Pre-filed p.16. Yet Wolfden provides no plans or information about how it will avoid, minimize, and mitigate these adverse environmental impacts. Levit Pre-filed 21-24.

This is a significant omission given the serious challenges that such avoidance, minimization, and mitigation efforts would present. If the facility is located in Patten, Hersey, or Stacyville, the facility’s water discharges would be required to meet pristine background water quality levels, just as at the mine site, due to those areas’ clean waters and small streams. Kusnierz Pre-filed p.9; Tr. 519–520 (Kusnierz). But, as with the mine itself, Wolfden provides no example of a comparable facility that achieved these results, nor has it presented any discussion of its feasibility. It is also impossible to adequately evaluate the overall feasibility of, and costs associated with, the concentrator and tailings facility—including constructing, operating,

transporting ore to, and mitigating environmental risks from it—without knowing its location, design, and plans. Levit Pre-filed p.19–24; Tr. 464–465 (Levit). Further, Wolfden fails to acknowledge the harm that locating this facility in Patten, Hersey, or Stacyville would have on the area’s outdoor recreation economy. *See* Johnson Pre-filed p.9-10 (Patten is gateway to northern KWW); App. 301 (Patten tourism economy up 30% since 2010).

The near-complete lack of information regarding the concentrator and tailings facility makes it impossible for LUPC to conclude that the project will not cause undue adverse environmental impacts on areas “within and adjacent” to the LUPC’s jurisdiction and that it is well-planned, technically feasible, and financially practicable. Chapter 10 § 10.21(H)(1); Chapter 12 §§ 4(B)(1), 4(B)(2)(a). For this reason too, the LUPC should reject Wolfden’s petition.

In addition, we reassert our objection that the rezoning application is incomplete on these grounds. *See* Second Procedural Order p.5–6. Wolfden’s omission of the concentrator and tailings disposal facility from the application violates numerous rezoning application requirements.⁷ The incompleteness of Wolfden’s application provides still further reason for its denial.

VI. The public is overwhelmingly opposed to the project.

The public has spoken and it is overwhelmingly opposed to rezoning. This opposition came during three nights of public hearings and in hundreds of written comments from Mainers throughout the state—all of whom would be left holding the bag if this undercapitalized company

⁷ *See* Chapter 12 § 4(C)(1)(d), (j), (m), (o), (p), (q) (requiring application to include “the general location and timing of project elements;” an “explanation of how this proposal is consistent with the standards and purpose of the D-PD Development Subdistrict;” measures to assure that mining “will not have undue adverse impacts on existing uses and resources and measures that a permittee may take to avoid, minimize or mitigate any adverse impacts;” transportation routes and impacts to infrastructure; examinations of the sufficiency of, and burdens on communities and government to provide, utilities and services; and “anticipated site conditions following closure and the potential for future reclamation and beneficial use of the affected area”).

goes bankrupt and leaves a multi-million-dollar environmental disaster in its wake—including from many near the proposed mine. For example, a 50-year Patten resident and doctor commented:

“The persistent asset of the Katahdin region is its natural resources.... [T]he short term presence of a mine, not to mention the potential long term environmental risks, are the antithesis of continued support for the area’s future well being. What remains of the mining operation after its decade or so of production will discourage visitation, impeding development of an outdoor recreational tourist economy.”

LUPC Ex. 7.121. An owner of Mount Chase Lodge, who returned to the Katahdin region to join the area’s growing outdoor economy, opposes putting that at risk for the promise of short-term jobs that likely will not even go to local people. LUPC Ex. 7.168.

An 80-year-old, lifelong Millinocket-area and current unorganized territories resident explained that she had lived through the area’s economic downturn when businesses were “nibbled away at by outside investors with shiny shoes and empty promises.” LUPC Ex. 7.347. “[T]he negative environmental impact inherent in mineral extraction,” she noted, “would directly put at risk the attraction for a high-quality outdoor experience and slam the door on that particular path to economic growth.” *Id.* “Yes, we need jobs here, but not the kinds of jobs that destroy wildlife habitat and poison our waters, not now and definitely not for our future generations to have to clean up.” *Id.*; *see also* 10/16/23 Evening Tr. 68–69. And a Patten resident and Penobscot Nation member summed up many local residents’ sentiments: “We have everything to lose and nothing to gain. Water is life. Without clean water there is no life.” 10/17/23 Evening Tr. 12.⁸

CONCLUSION

The LUPC should deny the petition.

⁸ It is impossible to summarize here the voices of all who spoke or wrote in against rezoning, but those voices deserve to be heard. To that end, we call particular attention to the following additional thoughtful comments: LUPC Exs. 7.31, 7.53, 7.57, 7.91, 7.140, 7.270, 7.283, 7.285, 7.288, 7.328, 7.332, and 7.337; 10/16/23 Evening Tr. 60 (Bodin); 10/23/23 Evening Tr. 28, 66, 83, 86 (Reed, Altvater, Wesseley, Carson).

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Respectfully Submitted,



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2023-11-21-Haynes-Post Hearing Brief

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION

| | | |
|-------------------------|---|----------------------|
| IN THE MATTER OF |) | |
| PETITION ZP 779A |) | POST HEARING BRIEF |
| WOLF DEN MT. CHASE, LLC |) | OF H.C. HAYNES, INC. |

A. INTRODUCTION

As the first metallic mining rezoning application since the Legislature revised 12 MRSA Section 681 and the Commission adopted its Chapters 12 and 13 to implement the legislative changes to LUPC's mandate, it is critically important that the Commission follow the Legislative direction to consider the interests of local residents and landowners in making its decision.

This proceeding is for the Commission to determine whether Wolfden has met the criteria of Section 12.B of Chapter 12 of the Commission's rules, Exhibit 1.7. While the analysis under the rule is whether a change from current zoning to a D-PD Development Subdistrict will result in any undue adverse impacts on existing uses or resources, the analysis needs to consider that this application is for only one type of D-DPD allowed use – a metallic mine. Section 12.9 of Chapter 12 provides that the Department of Environmental Protection is responsible for permitting metallic mines and that proceeding will be based on a much more comprehensive application as required by DEP's Chapter 200.

The Maine Metallic Mineral Mining Act (Title 38 MRSA Section 490-LL et seq.) provides the context for evaluating the impact of the zone change as compared to current zoning because only a metallic mine permitted under DEP's Chapter 200 (06-096) can be constructed and operated on the rezoned parcel.

It is also important to note that a zone change is the first step in a long process and a zone change will not change the environment one iota, it will do no more than allow Wolden to file an application with DEP under its Chapter 200 rule for a permit, which can be subject to special terms and conditions – DEP Chapter 200, Subchapter 3, Section 12.B, and an application with this Commission under LUPC Chapter 13 for a mining certification, which can be subject to terms and conditions – LUPC Chapter 13, Section 12.03.A.3. Chapter 12 Section 4.D provides that the zoning automatically reverts to its previous designation if no mining occurs within ten years of the zone change, see also Chapter 10.21,H(D-PD) Section 8.c(3) and (4).

In addition, the application is to rezone less than 400 acres of industrial timberlands from a parcel in excess of 7,000 acres. The adverse impacts alleged by project opponents from this minor zone change are astounding and not supported by the record.

Ultimately, any zone change involves the Commission balancing a number of competing interests and the Commission's statute directs the Commission to consider local impacts and especially socioeconomic

impacts, 12 MRSA Section 681, LUPC Chapter 12 and the Commission's October 5, 2012 Guidance for Interpreting the 2010 Comprehensive Land Use Plan. In light of the massive population and economic losses in the project area and the greater Katahdin Region over the last 20 years, the Commission should approve a zone change to allow this much needed project to go forward with the next steps – an application to DEP for a mining permit and an application to the Commission for certification.

Wolfden submitted a comprehensive application appropriate for this stage of the proceedings, see Exhibits 6.13 (DEP Comments) and 8.1 (Comments of K. Moselle of the Alaska Department of Natural Resources), with extensive expert testimony to address the issues before the Commission.

The Intervenor 2's case amply demonstrates that they do not want metallic mineral mining in Maine under any circumstances and despite Maine's Metallic Mineral Mining Act (Title 38 MRSA Section 490LL et seq.) and the rules promulgated pursuant to that statute by DEP and the Commission. The motivation of these parties need to be considered in assessing the credibility of their witnesses and the weight to be given to their exhibits and testimony. A good example is the testimony of Cathy Johnson during which she admitted that after a zone change the adverse impact would be an application by Wolfden under Chapter 200 and the zone change would result in "an adverse impact potentially." See Exhibit 11.73 (10/17/23 Public Hearing Transcript of Technical Session), Pages

377 and 378. Another example is Isaac St. John who could not identify a single adverse impact from granting the zone change on the interests of the Penobscot Nation. See Exhibit 11.73 (10/17/23 Public Hearing Transcript of Technical Session), Pages 369 and 370.

The testimony of Dr. Ann Maest is also tainted because of her participation in a multi billion dollar fraud against Chevron in the Ecuadorian courts. See Exhibit 11.43 (10/17/23 Witness Statement of Ann Maest) paragraphs 43 through 50. Dr. Maest participated in the fraud from 2007 (Exhibit 11.73 (10/17/23 Public Hearing Transcript of Technical Session), Pages 439 through 442) until at least 2010 (Exhibit 11.43 paragraph 49). At no time did Dr. Maest bring the fraud to the attention of Chevron or her employer. Exhibit 11.73 (10/17/23 Public Hearing Transcript of Technical Session), Page 442. A detailed account of the fraud on Ecuadorian and United States Courts in which she participated is found in Judge Kaplan's decision in the matter of Chevron v Donziger et al, United States District Court for the Southern District of New York, Case 1:11-cv-00691-LAK-JCF dated March 4, 2014.

B. MAINE METALLIC MINERAL MINING ACT

Maine's Metallic Mineral Mining Act has a number of provisions relevant to this proceeding that Wofden must meet in order for a mining permit to be ultimately issued by DEP if this zone change is approved:

1. The applicant has the financial capacity and technical ability to develop the project – Title 38 Section 490-OO.4.A and Title 38 Section 490-RR;
2. “The applicant has made adequate provision for fitting the operation harmoniously into the existing natural environment and the development will not unreasonably adversely affect existing uses, scenic character, air quality, water quality or other natural resources.” - Title 38 Section 490-OO.4.B;
3. There is reasonable assurance that discharges of pollutants from the mining operation will not violate applicable water quality standards with very limited exceptions in the mining area - Title 38 Section 490-OO.4.D;
4. The mining operation will not cause a direct or indirect discharge of pollutants into surface waters - Title 38 Section 490-OO.4.E;
5. “The mining operation will use dry stack tailings management and will not use wet mine waste units or tailings impoundments for the management of mine waste and tailings, except that the mining operation may involve the placement into a mine shaft of waste rock that is neutralized or otherwise treated to prevent contamination of groundwater or surface water.” - Title 38 Section 490-OO.4.N;
6. Any permit can be terminated if the applicant has not commenced construction or mine operation within 4 years of issuance - Title 38 Section 490-PP.2.A;

7. Following completion of mining operations, the area must be reclaimed - Title 38 Section 490-QQ.4 and Title 38 Section 490-SS;

The foregoing requirements were all addressed by opponents as reasons not to grant the zone change but it is DEP's task to evaluate those issues based on the application to be filed with DEP and its record as developed in that proceeding.

C. LUPC CHAPTER 12 – LAND USE DISTRICT REQUIREMENTS FOR METALLIC MINERAL MINING

1. 12.4.B Criteria

Neither residents of the project area nor of the Katahdin Region consider themselves to be part of the wilderness. The project area is on the fringe of the jurisdiction. Patten was incorporated April 16, 1841, Island Falls on February 27, 1872, Hersey on January 25, 1873, and Medway on February 8, 1875. While East Millinocket was established on February 21, 1907, and Millinocket on March 16, 1901, those communities were settled in the 1830s when the area was the wilderness.

It is most disconcerting to learn that the project opponents believe the Katahdin Region, which once had a population of over 15,000 people and a number of manufacturing facilities, including two paper mills consuming almost a million cords of wood a year, is the wilderness and development in the area needs to be restricted for that reason. The region is also not part of the great north woods held in reverence by the opponents. The area is in central Maine, not the

headwaters of the Kennebec, Penobscot or St. John Rivers. The Interstate 95 exit in Medway is at mile 244 of the Interstate. It is well over 100 miles from Medway to Fort Kent. The Great North Woods, to the extent it exists at all, is north and west of Millinocket.

As noted earlier, the population and economic losses endured by the project area and the entire Katahdin Region are well known and documented in the application. See also Exhibits 10.33 (Pre-Filed Testimony of Elgin Turner, PLS), 10.34 (Pre-Filed Testimony of Joel Fitzpatrick) and Exhibit 11.76 (10/18/23 Public Hearing Transcript of Technical Session), Pages 536 through 542.

The economic and socioeconomic benefits of the project are essentially undisputed. Intervenor 2 witness Stuart Levit questioned the economics of the project and whether jobs would be filled from the local area or from elsewhere but did not offer any competing analysis and, as usual for Intervenor 2 witnesses, said more information was needed which would occur, of course, as part of a DEP chapter 200 application and hearing process.

The Economic Assessment portion of the Application, Exhibit 2.1 (Wolfdon Mt. Chase LLC Application for Zone Change) Section 10.10 of Exhibit 10.0 and Attachments 14-A and B, documents the significant economic and socioeconomic benefits from construction and operation of the project. Key points to consider are:

- 1- “Local wages trail the state average by 20-30% and poverty rates exceed the state average, particularly among children. In a place that once led Maine’s manufacturing sector, the percentage of jobs in this field now trails the state average”. Exhibit 2.1 ZP779A Pickett Mtn Zone Change - Pickett Project Rezoning Application, PDF Page 316 Section 1, Sub Section Key Findings.
- 2- “The population of the Pickett region has declined steadily since the 1970s and 1980s, mirroring changes in the forest products industry that once dominated the region”. Exhibit 2.1 ZP779A Pickett Mtn Zone Change - Pickett Project Rezoning Application, PDF Page 318, Section 1, Sub Section Population Growth.
- 3- “Recent employment statistics suggest a labor market with limited employment opportunities (Table 5). In 2021, average employment was 6,876 in Houlton LMA and 3,033 in Millinocket LMA. Unemployment exceeded the state average (6.2% and 7.6%, respectively, compared to 4.6% statewide) and labor force participation rates suggest that unemployment could have been even higher if more residents had been actively seeking employment” Exhibit 2.1 ZP779A Pickett Mtn Zone Change – Pickett Project Rezoning Application,.PDF Page 323, Section 1, Sub Section Employment.
- 4- “In 2021, average wages in the Pickett region were 25%-35% lower than elsewhere in Maine. The average weekly pay of a Maine job

was \$1,051, compared to \$798 in Houlton LMA and \$720 in Millinocket LMA”. Exhibit 2.1 ZP779A Pickett Mtn Zone Change - Pickett Project Rezoning Application,PDF Page 326, Section 1, Sub Section Wages.

- 5- “In total, the Project expects to spend \$622 million dollars during fourteen years of planning and operations of the Project (excluding contingency spending), of which \$340 million is expected to be spent with businesses located within the economic region of Aroostook and Penobscot Counties. As that spending ripples through the regional economy, a total impact of \$715 million in output (business sales), \$248 million in earnings, and 4,540 job-years (roughly 324 jobs per year for 14 years”. Exhibit 2.1 ZP779A Pickett Mtn Zone Change - Pickett Project Rezoning Application, PDF Page 332, Section 2, Sub Section Key Findings.
- 6- “Embedded in the projections above are the hiring of 230 full-time employees who are expected to live within the economic region (Tables 17 and 18). In terms of administrative staff, 16 hires are projected, 10 of whom are expected to be hired within the economic region. Projected annual salaries range from \$48,000 and \$198,000 with an estimated average salary (weighted by hires) of \$73,000, one and a half times the average wage in the economic region (Table 17)”. Exhibit 2.1 ZP779A Pickett Mtn Zone Change -

Pickett Project Rezoning Application, PDF Page 336, Section 2, Sub Section Employment and Wages.

7- “The Maine Office of Tourism researched the most popular attractions for overnight visitors in the Maine Highlands Region, which includes the Pickett region. Table 29 lists those attractions and their approximate distance by road to the Pickett Project. With the exception of the Patten Lumberman’s Museum, all are located at a considerable distance from the Project (more than an hour’s drive away) and none are expected to be negatively affected by the Project’s operations, noise, or infrastructure. It is reasonable to assume that the Pickett Project will have no impact on visits to the region’s primary tourism attractions”. Exhibit 2.1 ZP779A Pickett Mtn Zone Change - Pickett Project Rezoning Application, PDF Page 345, Section 2, Sub Section Impact on the Tourism Industry.

8- “The Maine Office of Tourism researched the most popular attractions for overnight visitors in the Maine Highlands Region, which includes the Pickett region. Table 29 lists those attractions and their approximate distance by road to the Pickett Project. With the exception of the Patten Lumberman’s Museum, all are located at a considerable distance from the Project (more than an hour’s drive away) and none are expected to be negatively affected by the Project’s operations, noise, or infrastructure. It is reasonable to assume that the Pickett Project will have no impact on visits to the

assume that the Pickett Project will have no impact on visits to the region's primary tourism attractions". Exhibit 2.1 ZP779A Pickett Mtn Zone Change - Pickett Project Rezoning Application, PDF Page 345, Section 2, Sub Section Impact on the Tourism Industry.

The Commission needs to give great weight in balancing the competing interests to the depressed economy of the project area and the greater Katahdin Region which needs economic development to create jobs, and especially well paying jobs with benefits, in order to retain its population, attract new residents to the area and rebuild its decimated economy. Great Northern Paper Company employed approximately 4,000 people, while this project cannot replace thousands of lost jobs, it is a step in the right direction and the zone change should be approved to allow Wolfden to apply for a permit under DEP's Chapter 200 and certification under the Commission's Chapter 13.

D. CONCLUSION

Wolfden's comprehensive application supplemented with its public hearing presentations provides ample support for the requested zone change especially when the socioeconomic benefits of \$622,000,000 of spending on construction and operation over 14 years and the creation of several hundred local jobs are added to the balance.

Local residents and communities support approving the application. The Applicant deserves the opportunity to make its case to DEP under Chapter 200.

Dated November 21, 2023



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