



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
18 ELKINS LANE, 22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
EXECUTIVE DIRECTOR

Second Procedural Order

In the Matter of

Zoning Petition ZP 779A

Wolfden Mt. Chase, LLC.

Application for Zone Change, Picket Mountain Mine

T6 R6 WELS, Penobscot County, Maine

Commissioner Everett Worcester, Chair and Presiding Officer

This Second Procedural Order sets forth the Presiding Officer's decisions with respect to requests for Interested Person status, the topics for the hearing, the dates and location of the hearing, and other administrative matters for the public hearing on Wolfden Mt. Chase, LLC's (Wolfden or Applicant) Application for Zone Change (Application). The items in this procedural order follow from the agenda and discussion during the First Pre-hearing Conference.

I. BACKGROUND

- A.** On February 24, 2023, the Maine Land Use Planning Commission (Commission) accepted as complete for processing Wolfden's application to rezone 374 acres in T6 R6 WELS from a General Management to a Planned Development (D-PD) subdistrict. The proposed D-PD subdistrict would allow for the development and operation of the Pickett Mountain metallic mineral mine.
- B.** The application is subject to and will be reviewed under the Commission's Chapter 12 rules (Mining and Level C Mineral Exploration Activities). 06-672 C.M.R. Chapter 12, effective May 27, 2013. Chapter 12 requires a public hearing to be held by the

Commission prior to a final decision on the application.

C. First Procedural Order. On July 18, 2023, the Presiding Officer issued a Procedural Order that set forth general expectations regarding the conduct of the hearing and ruled on petitions to intervene. The First Procedural Order granted intervenor status to the following groups:

1. H.C. Haynes (Intervenor 1 or Haynes).

2. The Penobscot Nation, Houlton Band of Maliseet Indians, Natural Resources Council of Maine, and Conservation Law Foundation (Intervenor 2 or Tribal Nations and NGOs).

D. Pre-hearing Conference. On July 28, 2023, a hybrid (virtual and in-person) pre-hearing conference was held pursuant to Chapter 5, Section 5.05 of the Commission's Rules. An agenda for the Pre-hearing Conference was distributed in advance.

Participants in the July 28, 2023, Pre-hearing Conference:

Land Use Planning Commission (Commission or LUPC) Commissioners
Everett Worcester, Chair and Presiding Officer

LUPC Staff

Stacie Beyer, Executive Director

Tim Carr, Senior Planner

Billie Theriault, Permitting and Compliance Regional Supervisor

Maine Attorney General's Office

Caleb Elwell, Assistant Attorney General

Applicant

Ron Little, President, Wolfden Mount Chase, LLC

Jeremy Ouellette, VP Project Development, Wolfden Mount Chase, LLC

Leah Page, Senior Scientist, Wolfden Mount Chase, LLC

Brook Barnes, Environmental Services, Stantec

Juliet Browne, Attorney, Verrill Law

Maye Emlein, Associate Attorney, Verrill Law

Intervenors

Dean Beaupain, Attorney, Bloomer Russell Beaupain

Nick Bennett, Staff Scientist, Natural Resources Council of Maine

Laura Berglan, Senior Attorney, Earthjustice

Aaron Bloom, Senior Attorney, Earthjustice

Peter Brann, Attorney, Brann & Isaacson

Dan Kusnierz, Water Resources Program Manager, Penobscot Nation

Marissa Lieberman-Klein, Associate Attorney, Earthjustice

Charlie Loring, Director of Natural Resources, Penobscot Nation

Sean Mahoney, Senior Counsel, Conservation Law Foundation
Sharri Venno, Environmental Planning, Houlton Band of Maliseet Indians

Interested Persons

Francesca Gundrum, Policy Advocate, Maine Audubon

B. Criteria and standards.

1. **Interested Persons.** In accordance with the Commission's Chapter 5 rule, Section 5.03(B), participation in the hearing by interested persons may be allowed at the discretion of the Presiding Officer. Interested persons may be permitted to make oral or written statements on the issues; introduce documentary, photographic and real evidence; attend and participate in conferences; and submit written or oral questions of other participants, within such limits and on such terms and conditions as may be fixed by the Presiding Officer.
2. **Hearing Locations.** In accordance with Chapter 5, Section 5.02(C), all hearings of the Commission must be held in a location or through certain means, and at a time determined by the Commission to be appropriate when considering the needs, costs, safety, and convenience of the interested parties together with those of the Commission. To the extent practicable, hearings must be held at a location in close proximity to, or significantly affected by, the project or projects under review or which are concerned about the issue.
3. **Ex parte Communications.** In accordance with Chapter 5, Section 5.02(E)(5), ex parte communications must be disclosed and made part of the public record.

II. GENERAL MATTERS

- A. Ex parte communications.** During the First Pre-hearing Conference, the Applicant raised concerns about the Commissioners possibly receiving automated e-mail notifications from Intervenor 2 organizations and requested that any such notifications be disclosed and made part of the hearing record. The Presiding Officer has determined that the request is reasonable under applicable ex parte communication provisions. An e-mail message will be sent to all Commissioners reminding them that pursuant to Commission rules regarding ex parte communications they must disclose and submit for the public record any communications received from any Intervenor, Interested Person, or other individual on any issue of fact law or procedure related to the Pickett Mountain Mine proposal, including, but not limited to, emails or mailings sent to members or subscription lists that mention the Pickett Mountain Mine proposal or mining.

Any Commissioner receiving such communication will be asked to forward it to Tim Carr at tim.carr@maine.gov or Tim Carr, Land Use Planning Commission, DACF, Harlow Building, 18 Elkins Lane, 22 State House Station, Augusta, ME 04333, for entry into the public record.

III. REQUESTS FOR INTERESTED PERSON STATUS

- A. Interested Person Status Granted to Maine Audubon:** In accordance with Chapter 5, Rules for the Conduct of Public Hearings, Section 5.03(B), Maine Audubon is granted Interested Person status.

On July 18, 2023, Maine Audubon filed a timely request for Interested Person status. In the request, Maine Audubon noted that it is the state's oldest and largest wildlife conservation non-profit organization and that it would provide expertise regarding the impacts of the proposed project on terrestrial and aquatic wildlife and habitats. Maine Audubon requested Interested Person status to provide oral and written statements, attend and participate in conferences, submit questions of other participants on issues related to environmental impacts, and introduce documentary, photographic, and real evidence.

During the First Pre-hearing Conference, Maine Audubon reviewed their request for Interested Person status and asked to be included on the service list if Interested Person status were granted. The Applicant requested that Maine Audubon's participation be limited to submitting testimony during the public comment session and submitting questions in writing through the Presiding Officer during the daytime technical sessions. The Applicant expressed concern about Maine Audubon's participation in the hearing with the rights of an Intervenor without being subjected to the same rules as the Intervenor. Intervenor 1 objected to Maine Audubon's request on the basis that Maine Audubon's issues are similar to those of Intervenor 2 and that inclusion of Maine Audubon as an Interested Person will make the process more complicated and cause delays. Intervenor 1 suggested that Maine Audubon could serve as a witness for Intervenor 2 due to shared concerns about environmental impacts. During the discussion of this item, Maine Audubon indicated they intended to rely on Maine Audubon staff to provide evidence and oral statements.

After consideration of the Commission's rules and the concerns and objections of two parties (the Applicant and Intervenor 1), the Presiding Officer grants Maine Audubon Interested Person status. However, in accordance with the broad discretion to establish terms and conditions for the participation of Interested Persons as provided in Section 5.03(B), the Presiding Officer requires that Maine Audubon consolidate its participation in the hearing with Intervenor 2 for all purposes and with respect to all issues for the hearing. In making this determination, the Presiding Officer finds that Maine Audubon's interests are substantially similar to those of Intervenor 2, and consolidation would simplify the hearing without prejudice to the rights of any party.

IV. TOPICS

While the Commission will consider many different topics as it conducts its review of the Applicant's proposal, all topics relevant to the Commission's review will not be covered during the hearing. The Presiding Officer has selected the public hearing topics for the daytime technical sessions based on consideration of a range of factors, including significance and relevance to the Commission's overall review; interest expressed by

Intervenors, Interested Persons, and the Applicant; anticipated value-added by oral testimony (as opposed to Commission reliance on written materials); and public interest. Written comments for the Commission's consideration may be submitted on any relevant topic, including those not selected for presentation at the hearing.

In advance of the First Pre-hearing Conference, the Applicant and the Intervenors submitted lists of topics for the hearing. These lists were consolidated into a single list by LUPC staff which was discussed at the Pre-hearing Conference.

The Presiding Officer has determined that the following topics will be considered during the technical sessions of the public hearing:

- Financial practicability
- Water and fish resources/aquatic habitats
- Wildlife resources/habitats
- Natural character
- Historical and cultural resources/relevant tribal impacts
- Socioeconomics

The list of topics selected is chosen from the topic requests submitted by the Intervenors and Applicant in advance of the Pre-hearing Conference, with some consolidation of topics that overlapped in subject matter. At the Pre-hearing Conference, no party raised objections to these topics. In their pre-filed topics list and at the Pre-hearing Conference, the Applicant requested the opportunity to address consistency with the CLUP and D-PD criteria, and no undue adverse impact on existing uses and resources at the hearing more generally. The Presiding Officer has determined that these topics are best addressed in the Applicant's project overview and opening statement or as they relate to the above-listed topics for the hearing, and they have not been selected as individual topics for presentation.

V. HEARING DATES, LOCATION, AND PROCESS

- A. Postponing the hearing.** At the First Pre-hearing Conference, Intervenor 2 objected to proceeding with a hearing on Wolfden's Application because the Application does not identify where ore processing and storage facilities will be located and thus is incomplete. Intervenor 2 asserted that the mining project would require an ore processing plant to transform raw material from the mine into usable commercial products and a tailings management facility to permanently store the waste produced by ore processing. Intervenor 2 argued that to effectively assess the feasibility of the project, its financial viability, whether it constitutes well-planned development that is reasonably self-contained and self-sufficient, and its potential impacts, it is necessary to consider all aspects of the operation, even those planned to be located outside of the area proposed for rezoning.

Wolfden opposed the request to postpone the hearing and asserted in response that because Wolfden plans to source these facilities off-site and outside of the Commission's jurisdiction, it is unnecessary to include detailed plans regarding these components of the operation as part of its rezoning application. Wolfden further argued that the purpose of the D-PD subdistrict states that proposals must "depend on a particular natural feature or location that is available at the proposed site." Chapter 10, Section 10.21(H)(1). The location of the zone depends on the ore deposit and the development necessary to mine it, not the location of processing and storage facilities. In addition, Wolfden contended that the Commission staff accurately concluded that the application was complete for processing and requested that the Commission proceed with scheduling the public hearing.

Chapter 4, Section 4.05(A)(5) of the Commission's rules provides the required components that an application must include for the Commission to accept it as complete for processing, such as the inclusion of evidence demonstrating title, right, and interest; documentation of compliance with notice requirements; and that the applicant has answered all applicable questions on the designated application form. Section 4(A) of the Commission's Chapter 12 rule regulating metallic mineral mining activities requires that, once an application is accepted as complete for processing, a public hearing be held on the petition. Accordingly, the Commission is required by rule to proceed to a public hearing on Wolfden's application. Intervenor 2 pointed to no specific omission of materials required by the Commission's application forms and identified no statutory or regulatory provision in support of its request to postpone the mandatory public hearing.

Section 4.05(A)(6) of the Commission's rules provides that the applicant has the burden of proof and must demonstrate by substantial evidence that the criteria of all applicable statutes and regulations have been met. The public hearing that is a required component of this application process provides Wolfden the opportunity to show evidence demonstrating that its proposal will meet all applicable statutory and regulatory requirements. The hearing also provides opponents of the project the opportunity to provide contrary evidence and identify areas where Wolfden has failed to carry its burden of proof.

The D-PD Development Subdistrict is designed to accommodate large-scale and well-planned developments that are dependent on a particular natural resource and are unable to be accommodated by existing subdistricts. Given the scale and complexity of the types of development intended to utilize this subdistrict, it is likely that a given development project may frequently involve integration with complex global or regional economic systems and may rely on disparate manufacturing or processing facilities and intricate supply and transportation chains. Requiring that every component necessary for the ultimate successful commercial operation of a planned development project, including those which are not within the area proposed for development, be included as part of the application before the Commission may even proceed to substantively review the

petition's compliance with applicable standards would impose significant burdens on applicants and Commission resources.

At the public hearing, Intervenor 2 will have the opportunity to present its arguments that Wolfden's omission of specific details regarding the eventual siting of facilities necessary for the successful commercial operation of the project results in a failure to demonstrate compliance with applicable standards. As Intervenor 2's objection relates to the sufficiency of the evidence provided by Wolfden, the public hearing process is the most appropriate venue for Intervenor 2 to raise its concerns regarding insufficient evidence and for the Commission to consider those arguments. Accordingly, Intervenor 2's request to postpone the public hearing is denied.

B. Hearing dates and location. During the First Pre-hearing Conference, Intervenor 2 requested that, if a hearing is to take place this year, it be held in early to mid-December. Intervenor 2 asserted that the complexity of the application; limitations on preparation time (for example, for pre-filed testimony) of witnesses due to other job responsibilities; and limitations on participation by tribal members, guides, camp operators, and others involved in the region's outdoor economy who are in their busiest season during September and October all make a December hearing more practicable. Intervenor 2 also stated that the additional time is minor relative to the time required for the entire process (including mandatory baseline studies and permitting by the Department of Environmental Protection) and the time already spent on the prior application.

Wolfden stated that they had no objection to holding a hearing as late as the end of October but that holding a hearing in December may result in transportation difficulties due to inclement weather and scheduling conflicts due to the holidays and has the potential to delay the project moving into the next phase should a rezoning be approved.

During the First Pre-conference Hearing, both the Applicant and Intervenor 2 commented on the importance of facilitating local participation by holding accessible public comment sessions, potentially at one or more locations different from the technical sessions of the hearing. Intervenor 2 specifically requested opportunities for evening public comment sessions in the Houlton and Bangor areas for members of the Houlton Band of Maliseet Indians and the Penobscot Nation who may face limitations on transportation. Intervenor 2 noted that more northern locations identified by the Commission as options, such as locations in Presque Isle or Fort Kent, would present logistical difficulties for some tribe members. In advance of the Pre-hearing Conference, the Commission received one public comment requesting that the hearing be held in Patten, Sherman, or Island Falls and one public comment requesting that the hearing be held in a central location in the state.

The Presiding Officer has determined that the public hearing will be held **Monday, October 16, through Wednesday, October 18, at Stearns Jr./Sr. High School, 199 State St, Millinocket, Maine.**

In determining the dates and location for the public hearing, the Presiding Officer

considered the requests of the parties and the Commission's rules. Holding the hearing later in October provides the parties additional time to prepare and members of the public additional time to plan while minimizing potential safety concerns and delays due to weather and avoiding scheduling issues around the November and December holidays. Millinocket is approximately a one-hour drive from Mount Chase (just south of the Project Area), Houlton, and Old Town, balancing the need to hold the hearing in a location reasonably accessible to residents of the project area and other public participants with the need of the Commission to find a suitable venue in a community that offers the facilities necessary to support the hearing.

Public hearings convened by the Commission are subject to applicable State statutes and Commission Rules, Chapter 4, Rules of Practice, and Chapter 5, Rules for the Conduct of Public Hearings.

The purpose of the public hearing is to provide a forum for the Commission to receive and evaluate evidence relevant to its review of the Applicant's application for a zone change. Oral testimony provided at the hearing is one source of information the Commission considers as part of its review. The application, written agency comments, pre-filed testimony, post-hearing briefs, rebuttal briefs, and written public comments also aid the Commission in reaching its decision.

The hearing will include daytime technical sessions and evening public comment sessions. The technical sessions will include an opportunity for the Applicant, Intervenor, and government agencies to provide testimony to the Commission. Along with providing testimony on select key topics, as part of the technical sessions, the Applicant and Intervenor will have an opportunity to provide opening and closing statements.

Technical sessions will be held at Stearns Jr./Sr. High School. During technical sessions, one representative of each party will cross-examine a single witness; however, different representatives of the same party may cross-examine different witnesses. Prior to the date of the hearing, the parties will be required to identify each representative that will be participating in cross-examination and the witness or witnesses they will be cross-examining.

The public comment sessions will be held in the evening on October 16 and 17 at Stearns Jr./Sr. High School. Witnesses scheduled to testify during the technical sessions may not testify during the evening public comment sessions. Members of the public affiliated with the Applicant, an Intervenor, or an Interested Person may testify in the evening session in their individual capacity only and not on behalf of the organization that person is affiliated with.

VI. SERVICE LIST

- A. Consolidation of parties by the Presiding Officer.** Maine Audubon is being consolidated with Intervenor 2 (Tribal Nations and NGOs). This consolidation does not

change the service list included in the First Procedural Order. The contact person for Intervenor 2 shall relay to Maine Audubon materials distributed to the service list.

VII. WITNESS LISTS AND PRE-FILED TESTIMONY

- A. Witness lists.** The parties must file a list of witnesses that includes the qualifications of each witness and the topics on which each will be testifying. Witness lists must be submitted to Tim Carr and copied to the service list, by **4:00 PM on Monday, September 11**, following the filing requirements provided in the First Procedural Order. The Commission recognizes that once the witness lists are submitted, there may be a need for a pre-hearing conference to discuss supplementing a party's witness list.
- B. Pre-filed testimony.** During the First Pre-hearing Conference, both the Applicant and Intervenor 2 stated that receiving pre-filed testimony three weeks in advance of the hearing was acceptable. Accordingly, pre-filed testimony must be submitted electronically to Tim Carr and copied to the service list, by **4:00 PM on Monday, September 25**, following the filing requirements provided in the First Procedural Order.

Pre-filed testimony is limited to the hearing topics and must be sworn under oath and notarized and include the witness's qualifications. No person will be allowed to testify at the hearing for the Applicant or Intervenor unless that person has submitted Pre-filed testimony, and no testimony will be allowed into the record if the witness does not participate in the hearing. All direct testimony delivered at the hearing must be consistent with the witnesses' Pre-filed testimony. Topics and issues not covered in Pre-filed testimony may not be raised in direct testimony at the hearing.

All persons providing sworn, written, Pre-filed testimony must be made available in person at the hearing for questioning by the Commission, staff/consultants, and appropriate parties. Any scheduling constraints or other limitations concerning witnesses' ability to appear at the hearing, including any relevant physical disabilities, must be noted in writing with witnesses' Pre-filed testimony. Each party is responsible for keeping their witnesses informed regarding the hearing schedule and ensuring that their witnesses maintain maximum flexibility during this period.

Pre-filed rebuttal testimony is not allowed. Time for rebuttal will be included in the public hearing schedule.

VIII. SUMMARY OF SCHEDULE


- | | |
|-------------------------------------|-----------------------|
| A. Pre-filed witness lists- | September 11, 2023 |
| B. Public notice of hearing- | September 11-15, 2023 |
| C. Pre-filed testimony- | September 25, 2023 |

- D. Second pre-hearing conference-** October 10, 2023
- E. Public hearing-** October 16, 17, and 18, 2023

IX. AUTHORITY AND RESERVATIONS

This Procedural Order is issued by the Presiding Officer pursuant to the Commission's Chapter 5, *Rules for the Conduct of Public Hearings*. All objections to matters contained herein should be timely filed in writing with the Commission according to the service list but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this Order at any time.

DONE AND DATED AT AUGUSTA, MAINE, THIS 25th DAY OF AUGUST 2023



Everett Worcester, Chair and Presiding Officer