

STATE OF MAINE

PENOBSCOT, ss.

SUPERIOR COURT

THE PENOBSCOT NATION

and

CONSERVATION LAW FOUNDATION,
Petitioners,

v.

MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Respondent,

and

NEWSME LANDFILL OPERATIONS,
LLC,
Party-In-Interest.

PETITIONERS' REPLY IN SUPPORT OF
MOTION FOR THE COURT TO TAKE
JUDICIAL NOTICE

Pursuant to M.R. Evid. 201

Civil Action No. PENSC-APP-2024-00014

October 9, 2026

**PETITIONERS' REPLY IN SUPPORT OF MOTION FOR THE COURT TO TAKE
JUDICIAL NOTICE**

The Penobscot Nation and Conservation Law Foundation (altogether "Petitioners") respectfully submit this Reply in response to both Respondent Maine Department of Environmental Protection's ("Department") and Party-in-Interest NEWSME Landfill Operations, LLC's ("NEWSME") oppositions to Petitioners' Motion for Judicial Notice ("Motion"). Petitioners' Motion requests this Court take notice of written statements made by the Department and NEWSME in Exhibits A, B, and C, which are attached to the Motion. Those statements indicate that—contrary to the factual record before this Court—NEWSME now plans to install a per- and polyfluoroalkyl substances ("PFAS") treatment system located *off-site* of Juniper Ridge

Landfill (“JRL”) and licensed through a proceeding *separate from* the JRL expansion licensing proceeding. The Department’s and NEWSME’s oppositions to Petitioners’ Motion only further underscore the fact that the written statements are accurate and relevant and are therefore appropriate subjects of judicial notice.

I. The Oppositions Admit the Accuracy of the Documents Subject to the Notice Request and Concede That the Planned Location of the PFAS Treatment System Has Changed.

Neither the Department nor NEWSME contest that all three exhibits to Petitioners’ Motion (and the facts contained therein) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned under Maine Rule of Evidence 201(b). In fact, the Department recognizes that “[a]ll three of these documents are associated with an ongoing administrative proceeding[.]” Department’s Opp’n 1, and NEWSME cites Exhibit A while conceding that its plan for the PFAS treatment system “evolved during the design and licensing process[.]” NEWSME’s Opp’n 3.

Neither the Department nor NEWSME contest that the record before the Department and this Court reflects the understanding that the PFAS treatment system required by the Second Public Benefit Determination (“PBD”) would be located onsite at JRL. In fact, the Department:

acknowledges that it made some statements in its legal briefing and argument that reflect an assumption that the leachate treatment system would likely be located at JRL, in which case it would be evaluated in the JRL expansion licensing proceedings . . . These statements properly reflected the administrative record at the time the Department issued the revised PBD. . . NEWSME originally intended to locate the leachate treatment system at JRL.

Department’s Opp’n 4-5. NEWSME similarly admits that “[w]hen the Department issued the Second PBD, NEWSME intended to develop a PFAS treatment facility on JRL’s premises. Accordingly, the record before the Department and the Court accurately reflected that plan.” NEWSME’s Opp’n 5.

The Department and NEWSME argue only that judicial notice is inappropriate because the written statements—which establish the fact that both the planned location and the planned licensing proceeding for the PFAS treatment system have changed—allegedly are not relevant to this Court’s review of the Second PBD. This relevance argument fails for the reasons described below.

II. The Nature of this Action as a Rule 80C Appeal Does Not Render the Written Statements Irrelevant.

NEWSME argues that the written statements are not relevant because they constitute “[i]nformation outside of the record.” NEWSME’s Opp’n 5.¹ The Department similarly asserts that “judicial notice in an 80C action must be carefully circumscribed.” Department’s Opp’n 2. However, in deciding Petitioners’ motion for judicial notice during the appeal of the Department’s First PBD, this Court confirmed that judicial notice is appropriate when the facts to be noticed are “part of the context in which the existing factual record must be viewed and the parties’ arguments assessed.” *Penobscot Nation v. Dep’t Env’t Prot.*, No. PENS-APP-2024-00014 at 3 (Me. Super. Jan. 7, 2026) (Order on 80C Appeal) [hereinafter Court Order]. Similarly, in *Cobb v. State*, the

¹ Relying on *Friends of E. Bay*, 2026 ME 90, ¶¶ 32-33, NEWSME states: “[i]nformation outside of the record and events that occur after the agency renders its decision *necessarily* are not relevant to whether the agency’s decision was adequate.” NEWSME’s Opp’n 5 (emphasis added). *Friends of E. Bay* does not support NEWSME’s broad assertion. The case is inapposite on both procedural and substantive grounds. Procedurally, the *Friends of E. Bay* court did not consider or decide a motion for judicial notice. Rather, the intervenor there argued that the Department of Marine Resources abused its discretion by declining to “make additional findings or reopen the record in light of recent federal regulatory changes regarding PFAS chemicals” after the intervenor argued that the gear used in the proposed project “is likely to contain PFAS” and the project is “likely” to result in PFAS discharges. *Friends of E. Bay*, 2026 ME 90, ¶¶ 32-33. Substantively, the *Friends of E. Bay* court highlighted that reopening the record was inappropriate partly because: (1) “there is no evidence in the record” that the project would result in PFAS discharges; and (2) the *federal regulatory changes* “occurred after the close of the administrative record.” *Id.* ¶¶ 34-35. Here, to the contrary: (1) NEWSME and the Department admit that the planned location for the PFAS treatment system has changed; and (2) the change that occurred after the close of the administrative record is a central component of the proposal that is the subject of the appeal, as opposed to a subsequent change in law.

NEWSME additionally relies on *Friends of Lincoln Lakes v. Bd. Of Env’t Prot.*, 2010 ME 18, ¶¶ 12-13, 989 A.2d 1128. This case is similarly inapposite: it does not consider or decide a motion for judicial notice or make any statements regarding relevance under the judicial notice standard in an 80C action.

Maine Superior Court decided judicial notice was appropriate in an 80C action when the noticed information met Maine Rule of Evidence 201(b). *Cobb v. State*, No. CV-03-05, 2003 WL 23415204, at *3 (Me. Super. Ct. Dec. 22, 2003). There, the court took judicial notice of a scholarly authority after the evidence closed and remanded the case for additional evidence. *Id.*²

Here, similarly, the nature of this action as an 80C review of an administrative record does not decrease or eliminate the relevance of the written statements that NEWSME changed the planned location of the PFAS treatment system. To the contrary, like in this Court’s consideration of the First PBD during Petitioners’ first 80C appeal, here the information requested to be noticed provides context for the Court’s review of the record and assessment of whether the arguments still have force given the change of circumstances. And like in *Cobb*, the additional information is relevant and supports remand. For example, the changed location of the PFAS treatment system raises previously-unconsidered questions regarding impacts of trucking landfill leachate twenty miles from JRL. These questions are directly relevant to whether the proposed expansion would provide a “substantial public benefit,” 38 M.R.S. § 1310-AA; 06-096 C.M.R. ch. 400 § 5, including whether the expansion “is not inconsistent with ensuring environmental justice for the community in which the facility or expansion is proposed.” 38 M.R.S. § 1310-AA(3)(E); 06-096 C.M.R. ch. 400 § 5(E)(5).³

² The Appellate Court of Maryland offers persuasive precedent as well. When reviewing an administrative decision and considering whether to “consider adjudicative facts outside the administrative record[,]” the Maryland court stated: “a reviewing court does not abuse its discretion in taking judicial notice, then remanding, when, as in this case, the adjudicative facts concern events that occurred after the agency issued its decision.” *Matter of AutoFlex Fleet, Inc.*, 261 Md. App. Ct. 627, 677 (2024), *reconsideration denied* (June 3, 2024).

³ NEWSME’s opposition offers an alternative argument that “[i]f the change in the proposed location of the PFAS treatment system has any relevance to the Court’s review of the Department’s decision, it is that it *strengthens* the basis for the Department’s conclusion that expanding JRL provides a substantial public benefit.” NEWSME’s Opp’n 6. NEWSME’s alternative argument highlights that the change in location raises substantive questions regarding the impact of the changed location on environmental justice, which is a factor the Court must explicitly consider when evaluating whether the proposed expansion meets the PBD statute. 38 M.R.S. § 1310-AA(3)(E).

Even the Department has implicitly acknowledged the relevance of the change in PFAS treatment system location. On October 5, 2026, the Department published a memorandum that requested additional information about the proposed PFAS treatment system, which stated: “the requirement for a PFAS treatment system is *inextricably linked to JRL, the PBD, and the proposed expansion.*” Memorandum from Vera Maheu, Maine DEP, to Lane Gould, State of Maine Dep’t of Administrative and Financial Services/Bureau of General Services, re: Juniper Ridge Expansion II Leachate Management Submittal Dated Sept. 18, 2026 (Oct. 5, 2026) (emphasis added) [hereinafter Memorandum].⁴

III. The Written Statements Highlight Potential Deficiencies in the Licensing Considerations That Are Relevant to the Court’s Evaluation of the Second PBD.

The Second PBD makes the operation of the proposed JRL expansion contingent on PFAS treatment. R. 3165 (Second PBD requiring NEWSME to “design, install, and operate a PFAS treatment system for its leachate *prior* to the operation of the proposed expansion, if a license is issued by the Department.”) (emphasis added). Before NEWSME changed the treatment system’s planned location, the record before the Department and this Court supported an understanding that the JRL expansion licensing proceedings would address all issues related to PFAS impacts of the expansion *together*—including health risks, environmental risks, and the treatment system’s potential mitigation of those risks. R. 3167 n.28 (Second PBD stating that “[t]he Department approved the PFAS treatment system implementation schedule . . .” which identified the JRL expansion licensing process as the only licensing process that will occur before the treatment system’s construction); *see also* Pet’rs’ Mot. ¶ 10.

⁴ Accessible at <https://www.maine.gov/dep/ftp/Juniper-Ridge/PBD2024/2026-10-05%20JRL%20Memo-PFAS%20Treatment%20System%20Technical%20Details.pdf>.

By changing the PFAS treatment system’s planned location—a change that NEWSME concedes will result in two separate Department licensing proceedings and a local approval process in Hampden, *see* NEWSME’s Opp’n 3 n.4—NEWSME has created new uncertainties and potential deficiencies with the JRL expansion licensing process which potentially undercut the reasoning of the PBD. These uncertainties are relevant to the PBD because they inform “the context in which the existing factual record must be viewed and the parties’ arguments assessed.” Court Order at 3. For example, it now seems possible that the JRL expansion licensing proceeding could address PFAS risks from the expansion, but not address the efficacy of the treatment system to mitigate those risks, which would limit the ability of the JRL expansion licensing proceeding to fully consider and address PFAS impacts. Relatedly, it now seems possible for the JRL expansion licensing proceedings to occur *before* the PFAS treatment system licensing proceedings, which again would limit the ability of the JRL expansion licensing proceeding to fully consider and address PFAS impacts.⁵ The Second PBD was premised on the understanding that the JRL expansion licensing proceeding would address both the PFAS risks from expansion and the method of mitigating those risks.

Thus, the written statements, which result in uncertainties and potential deficiencies in the ability of the licensing proceedings to fully consider the proposal’s PFAS impacts, are relevant to the Court’s determination of whether the Second PBD meets the PBD statutory requirements.

⁵ The Department’s October 5, 2026 memorandum further underscores these uncertainties. Memorandum at 2 (“In order for the Department to evaluate how and to what extent the proposed PFAS treatment system will effectively treat the leachate from the proposed expansion of JRL, the Department must know and understand the technology that is being proposed for the PFAS treatment system, which PFAS are proposed to be treated by the system (i.e., long-chain, short-chain), and to what extent the proposed system is expected to reduce PFAS concentrations. To the extent that this information is already available, please provide this information as soon as possible.”).

IV. Conclusion.

Petitioners' Motion satisfies Maine Rule of Evidence 201. It seeks judicial notice of written statements in three documents which contain indisputable and readily verifiable facts—facts which were admitted in both oppositions. The written statements are relevant to the Court's consideration of whether the Second PBD complies with 38 M.R.S. § 1310-AA because they directly relate to whether the proposed expansion would provide a substantial public benefit.

Accordingly, Petitioners respectfully request that the Court grant the Motion.

Date: October 9, 2026

Respectfully submitted,

THE PENOBSCOT NATION,
CONSERVATION LAW FOUNDATION

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served via the Court's e-filing system on October 9, 2026 to the attorneys of record for Maine Department of Environmental Protection and NEWSME Landfill Operations, LLC.

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