



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

First Procedural Order

In the Matter of

Zoning Petition ZP 779A

Wolfden Mt. Chase, LLC.

Application for Zone Change, Pickett Mountain Mine

T6 R6 WELS, Penobscot County, Maine

Commissioner Everett Worcester, Chair and Presiding Officer

This First Procedural Order sets forth the Presiding Officer's decisions with respect to Petitions for Leave to Intervene, the first pre-hearing conference, and other administrative matters for the public hearing on Wolfden Mt. Chase, LLC's (Wolfden or Applicant) Application for Zone Change (Application).

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.

II. GENERAL MATTERS

- A. General expectations of the parties.** All parties are expected to comply with deadlines and filing requirements established by the Presiding Officer. Failure to comply may result in appropriate sanctions, including the rejection of the argument, evidence, or testimony the party seeks to offer. All participants in the hearings are expected to conduct themselves professionally throughout the proceedings in their dealings with the Commission and each other.
- B. Petition materials.** According to Section 5.03(A)(5) of the Commission's *Rules for the Conduct of Public Hearings* (Chapter 5), the applicant must provide each person granted intervenor status pursuant to this section with a copy of the application or petition and any amendments thereto. In this case, a copy of the application and all amendments have been posted on the [Commission's Pickett Mountain Mine webpage](#) and are, therefore, already available to the parties. Paper copies of the application will be made available upon request.
- C. Ex parte communications.** The parties are directed to 5 M.R.S. § 9055 and Chapter 5, Section 5.02(E), for a statement of legal restrictions on contact with Commission members during pending proceedings. The parties are cautioned to avoid any conduct that could give rise even to the appearance of improper contact with Commission members.
- D. Application Amendment.** The state agencies and the Commission's third-party consultants have recently completed their review of the Application. The Commission has provided the Applicant opportunity to respond to all the review comments and a few additional questions from the Commission's staff. Details are provided in a letter from staff to Wolfden dated July 13, 2023, available on the agency's webpage. A response from Wolfden is due by August 12, 2023, which will be posted on the webpage immediately following receipt.

III. PETITIONS FOR LEAVE TO INTERVENE

- A. Notice.** Chapter 5 states that notice of the requirement to file a petition for intervention will be given in a manner consistent with Section 4.04 of the Commission's rules or in such other manner as the Presiding Officer deems appropriate. The Commission published an initial notice of public hearing to set the deadline for intervenor requests. The notice was published in the Houlton Pioneer Times and the Bangor Daily News, sent electronically via the State GovDelivery system to the LUPC News and Information and Wolfden Pickett Mountain Mine Rezoning (ZP779A) lists, and postal mail to all persons listed in the Commission's Chapter 4 rules, Section 4.04(B)(5) on June 7, 2023. The public notice set a deadline of 5:00 PM on June 28, 2023, for all petitions to intervene.
- B. Criteria and standards.** In accordance with Chapter 5, Section 5.03(A), a petition to intervene must:
1. Be filed by the date specified by the Commission or Presiding Officer;

2. Be under oath or affirmation; and
3. Demonstrate that the petitioner is or may be substantially and directly affected by the proceeding.

C. Intervenor Status Granted. Having reviewed the petitions, the following entities submitted timely petitions under oath or affirmation that demonstrate they may be substantially and directly affected by the proceeding and are therefore granted intervenor status:

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).

IV. SERVICE LIST AND FILING REQUIREMENTS

A. Service list: The Commission's staff and the designated contact persons for the Applicant and each intervenor constitute the service list. All filings in this proceeding must be copied to the service list.

The Commission will maintain the effective service list. The most current copy is attached as Appendix A. Updates to the list will be distributed to the parties by the Commission via email on an as-needed basis. It is the responsibility of each party to ensure its filings are copied to all names on the service list.

B. Contact person responsibilities: As applicable, the contact persons for each party are responsible for the submittal of pre-filed witness lists, evidence, and testimony; coordination of other pre-hearing matters; presentation of an oral summary of the pre-filed direct testimony at the hearing, producing witnesses for cross-examination, cross-examining other parties' witnesses, and any post-hearing filings. Each contact person is responsible for assuring all filings have been provided to the others in their group.

C. Change in contact person: All parties must provide timely notice in writing of any change in the designated contact person to the Commission's staff and the other parties and must provide the new contact information.

D. Consolidation of parties by the Presiding Officer: No party is currently being consolidated pursuant to the authority granted in the Commission's Chapter 5 rules. However, the right is reserved should it become necessary to do so.

E. Filing Requirements:

1. *Paper copy of the original and electronic copy for the record.* All materials, including exhibits, must be provided to the Commission as 1) a signed paper copy original (notarized when appropriate) **and** 2) electronically. For electronic submittals, 10 MB in size or less, the electronic submittal may be filed by email to

wolfdenrezoning.lupc@maine.gov. For more extensive submittals, each party must establish a secure file share site from which the Commission can download all relevant materials. Electronic documents must be in Word (.doc or .docx) or Adobe (.pdf) format. Photo files must be in JPEG (.jpg) unless the Commission staff approves another format.

2. *Copying the other Parties.* All submissions in this matter, including emails, must be copied by the submitting party to the service list electronically upon submittal to the Commission. Any submissions of 10 MB in size or larger must be provided to parties electronically via a secure file share site unless a party states it prefers paper documents.
3. *Electronic file naming convention.* The titles of all electronic files must be as short as possible and must use the following naming convention:

[yyyy]-[mm]-[dd]_[party acronym]-[document title or brief description].[extension]
(e.g., “2023-09-06_Wolfden_Prefiledtestimony.pdf”)

Electronic file names must not include characters such as “<, >, /, ?, &, !, +”.

Underscores and dashes should be used in place of blank spaces. Electronic files must contain no document security restrictions.

4. *Format of submissions and deadlines.* All materials submitted must be provided electronically by the date and time due. The Commission must receive the signed paper version by the date and time due at the Commission’s Augusta office either by U.S. postal mail or hand delivery. All paper copies of testimony and exhibits, including maps and other visuals, must be no larger than 11” x 17”. Any exhibits larger than 8½ x 11” must be folded to 8½ x 11” size.
5. *Meeting deadlines for submissions.* The close of business at the Commission’s Augusta office is 5:00 pm. All materials received after that time will be considered submitted the following day. An appointment is recommended for delivery of materials late in the day.

V. PREHEARING CONFERENCE

A. Date and time. A pre-hearing conference will be held using a hybrid format on July 28, 2023, at 10:00 am. The in-person component of the meeting will be held in Room 4B, 4th floor of Building H, Bangor Office Center, 106 Hogan Road, Bangor. A meeting link via Microsoft Teams will be sent to all parties in advance of the meeting for remote participation in the conference. Participation in the pre-hearing conference is limited to the Applicant and those granted Intervenor status.

B. Narrowing the scope.

1. Due to the large scope of this proposal, time at the hearing cannot be devoted to all the topics the Commission must consider in deciding on the statutory decision-making criteria. Not all the topics are of equal interest to the parties and members of the public, and the Commission does not anticipate a need to hear live testimony and

questioning for all the relevant topics. Therefore, at the pre-hearing conference, the Presiding Officer will discuss narrowing the scope of the hearing to the most significant and contested topics. Even though the hearing may be focused on a limited number of topics, the Applicant must meet all the statutory criteria and the regulatory requirements under the statute for the rezoning to be approved. In addition, Intervenor and any member of the public may submit written comments on any relevant topic that is not the subject of the hearing until the close of the record at the end of the hearing.

2. To begin the process of narrowing the topics that will be addressed at the hearing, by close of business on July 26, 2023, the Intervenor must submit a list of specific, relevant topics that they wish to address at the public hearing and the statutory or regulatory decision-making criteria that apply to each of the topics. The parties should be mindful that the limited hearing time should be devoted to an in-depth examination of the topics most likely to elicit conflicting evidence or technical testimony that warrants a closer examination than could be had in written documents alone. The statutory decision-making criteria are found in 12 M.R.S. § 685(A)(8-A), and the most relevant regulatory standards are found in Chapter 12, § 4(B). The Applicant may also submit a list of specific, relevant, topics, they believe should be addressed at the public hearing.
3. If any party wishes to amend its list of topics following the Applicant's response to review comments as discussed in section II,D above, the party must submit a request to amend its list of topics according to the service list within two weeks of receiving the Applicant's response.

VI. COMMISSION STAFF EVIDENCE, NON-CONFIDENTIAL AGENCY RECORDS

Chapter 5, § 5.07(C)(5) states that government agencies must provide other parties with copies of any exhibit offered in evidence. In addition, at its discretion and at any time, the Commission may take official notice of any facts of which judicial notice could be taken, including non-confidential agency records in a hearing concerned with an application for a zone change.

The Presiding Officer takes official notice of, and admits into evidence as exhibits, the following from the administrative record for zone change application ZP779, previously submitted by the Applicant on January 27, 2020, and withdrawn on October 13, 2021:

- A. 4.3_2020-02-21_PhoneNotes_KMoselle_Alaska DNR.** Telephone notes prepared by Stacie R. Beyer, LUPC, dated February 21, 2020, regarding financial practicality and technical feasibility.
- B. 4.10_2020-10-07_LUPCMemo_PickettMtnPond_.** A memorandum prepared by Stacie R. Beyer, LUPC, dated October 7, 2020, regarding a site visit to Pickett Mountain Pond.
- C. 6.4_2020-08-20_Wolfden Review_Penobscot County.** An email sent by Shaw Weeks, former Director, Penobscot County Unorganized Territory Administration, dated August 20, 2020, regarding Sheriff's office operations.
- D. 6.20_2021-01-29_Wolfden_Review_SWCA.** A review memorandum prepared by

SWCA Environmental Consultants, dated January 20, 2021, regarding financial practicability and technical feasibility.

VII. AUTHORITY AND RESERVATIONS

The Presiding Officer issues this Procedural Order 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 18th DAY OF JULY 2023

A handwritten signature in black ink, reading "Everett Worcester", is written over a horizontal line. The signature is cursive and fluid.

Everett Worcester, Chair and Presiding Officer

Appendix A

Pickett Mountain Mine Rezoning Application, ZP 779A

Service List

Pickett Mountain Mine Rezoning Application, ZP 779A

Service List

Land Use Planning Commission (LUPC or Commission)

Tim Carr
Land Use Planning Commission
22 State House Station
18 Elkins Lane, Augusta, ME 04333-0022
(207) 592-4129
Wolfdenrezoning.LUPC@maine.gov

Office of the Maine Attorney General (OAG)

Caleb E. Elwell, AAG
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Wolfden Mt. Chase, LLC (Applicant or Wolfden)

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

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