

**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

**REQUEST FOR PERMISSION TO PROVIDE REMOTE TESTIMONY AND FOR
CLARIFICATION REGARDING HARD COPY FILING**

Submitted by

**HOULTON BAND OF MALISEET INDIANS, PENOBSCOT NATION, NATURAL
RESOURCES COUNCIL OF MAINE, AND CONSERVATION LAW FOUNDATION**

The Penobscot Nation, Houlton Band of Maliseet Indians, Natural Resources Council of Maine, and Conservation Law Foundation (collectively “Intervenor 2”) respectfully request that the LUPC grant permission for Intervenor 2’s expert in aqueous geochemistry, Dr. Ann Maest, to testify via remote means at the upcoming October 16-18 hearing on Wolfden Mt Chase LLC’s (“Wolfden”) rezoning petition. In addition, Intervenor 2 respectfully requests that the LUPC clarify whether the parties are required to file with the LUPC hard copies of witness lists, pre-filed testimony, and any exhibits, or whether electronic submission to Tim Carr (along with electronic service to the Service List) is sufficient. If hard copy filing is required, Intervenor 2 requests that the hard copy be due one business day after the deadlines for electronic filing stated in the Second Procedural order, to enable the parties to send the hard copies by overnight delivery or arrange for hand delivery during business hours.

The undersigned counsel for Intervenor 2 contacted counsel for Wolfden and for Intervenor 1 regarding these requests. Intervenor 1 had no objection to these requests. Counsel for Wolfden requested that we submit this request without noting a position for Wolfden, and that Wolfden would submit a response by the end of the week.

Request for Remote Testimony

Intervenor 2 requests that the LUPC allow intervenors’ aqueous geochemistry expert, Dr. Ann Maest, to testify remotely at the upcoming hearing. Shortly after the Second Procedural order came out, we learned that this expert, who is based in Colorado, will be unable to attend the October 16-18 hearing in person because an immediate family member has joint replacement surgery scheduled for October 9 and the expert will need to be present in Colorado to assist that family member, including through the week of the hearing. This conflict only recently arose.

Dr. Maest is an aqueous geochemist with expertise in the fate and transport of natural and human-generated contaminants in groundwater and surface water environments. She has over 25 years of research and professional experience as a geochemist and has worked on natural systems as well as on those that have been affected by industrial activities, especially hardrock mining

and petroleum extraction. Dr. Maest has designed, conducted, and managed groundwater and surface water hydrogeochemistry studies. She also works on independent monitoring and capacity building projects with community and indigenous groups in North and South America.

Dr. Maest worked as a research geochemist with the U.S. Geological Survey in Menlo Park, California, where she conducted research on metal and metalloid speciation, and as a Senior Scientist at the Environmental Defense Fund in Washington, D.C., where she designed technical and policy approaches to minimize the release of toxics from mining and manufacturing facilities. The results of her research have been published in peer-reviewed journals including Applied Geochemistry, Chemical Geology, Applied and Environmental Microbiology, and Environmental Science and Technology. Dr. Maest is an Associate Editor of Mine Water and the Environment. She has served on several National Academy of Sciences committees and a board related to earth resource issues and on international committees on mining and sustainable development. Dr. Maest has been an invited speaker at national and international fora and presented on technical challenges and solutions for the mining sector at the United Nations. She holds a Ph.D. in geochemistry and water resources from Princeton University and an undergraduate degree in geology from Boston University.

Dr. Maest would provide vital expert testimony at the hearing regarding the impacts of Wolfden's proposed project on water quality, including with respect to the treatment of contaminated water, the creation of acid mine drainage, the fate and transport of contaminants and acidity through ground and surface waters, and water balance. Among other relevant factors, Dr. Maest's testimony will go to the heart of the LUPC's inquiry as to whether the proposed project "will have no undue adverse impact on existing uses or resources" and the "[p]ositive and negative impacts upon the areas within and adjacent to the Commission's jurisdiction resulting from the change in use and development of the area" including impacts to "ecological and natural values," "wildlife and plant habitats," "water resources," and "recreation resources." 01-672 Me. Code R. Chapter 12 §§ 4(B)(1)(b); 4(B)(2)(a); 4(B)(3)(d). Accordingly, Dr. Maest is an important witness for Intervenor 2, providing testimony on a central issue.

Request for Clarification Regarding Hard Copy Filing

Intervenor 2 requests that the LUPC clarify whether hard copies of the witness list, pre-filed testimony, and any exhibits must be filed with the LUPC. Section VII of the Second Procedural Order references electronic submission to Tim Carr, but it also refers to the filing requirements of the First Procedural Order which specify hard copy filing in addition to electronic submission. If the LUPC requires hard copy filing, Intervenor 2 requests that the hard copy be due to be received by LUPC at least one business day after the deadlines for electronic filing stated in the Second Procedural order, to enable the parties to send the hard copies by overnight delivery or arrange for hand delivery to the LUPC during business hours.

Dated: August 30, 2023

Respectfully Submitted,



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

IN THE MATTER OF REZONING PETITION ZP 779A WOLFDEN MT. CHASE, LLC))))))	RESPONSE TO REQUEST TO ALLOW REMOTE TESTIMONY AND DEADLINE FOR HARD COPY FILINGS AND REQUEST FOR CLARIFICATION OF THE SECOND PROCEDURAL ORDER
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On behalf of Wolfden Mt. Chase, LLC (“Wolfden”), the following responds to the request by Intervenor Group Two (i) to change the due date for hard copies of filings to one day after the deadline set in the First Procedural Order, and (ii) to allow an expert witness to testify remotely. Wolfden also requests clarification regarding two aspects of the Second Procedural Order.

A. Response to Request by Intervenor Group Two

Wolfden has no objection to modifying the First Procedural Order to allow hard copies of required filings to be due one business day after the deadline for electronic filings.

In theory, Wolfden does not object to allowing remote testimony in extenuating circumstances and for good cause shown. We have concerns, however, with the mechanics of how that will be accomplished here. First, we do not know what equipment is available that will allow for remote testimony and whether it will be possible for the parties and the Commission to hear and see the witness while they are testifying, which is important to assessing their credibility. Second, we do not know what measures are proposed or available that will ensure there is an opportunity to conduct meaningful cross-examination of the witness. For example, it will be difficult if not impossible to present documents to the witness during cross. Finally, there

is the potential for technology failure that may prevent the parties from cross-examining the witness.

If for any reason it is not possible to hear or see the witness or there is not an appropriate opportunity to conduct cross-examination of the witness due to their remote participation, then the appropriate relief would be to strike the testimony. We believe that in requesting the opportunity to have their witness testify remotely, Intervenor Group Two must assume the risk that there will be technology or other failures or challenges that may result in the testimony being stricken if there is not a meaningful opportunity to conduct cross-examination.

Finally, we believe that any decision to allow remote participation must be based on extenuating circumstances. Wolfden has witnesses that must travel significant distances to participate in the hearing. At least one witness has agreed to postpone surgery to be present in person for the hearing. Accordingly, we believe that any relief from the requirement that the person be present to testify should be granted sparingly. We do not object to the request here based on the representations made by counsel on behalf of the witness.

B. Request for Clarification of Second Procedural Order

The list of topics identified in the Second Procedural Order includes “Historical and cultural resources/relevant tribal impacts.” Second Procedural Order at Section IV, p.5. As noted during the first pre-hearing conference, we do not believe there is a separate regulatory standard related to tribal impacts nor has Intervenor Group 2 identified any such standard. We do not interpret the Second Procedural Order to conclude otherwise, but we wanted to confirm that the “relevant tribal impacts” to be addressed at the public hearing must be tied to the topics identified in the procedural order and the underlying regulatory standards on which they are based.

Finally, the Second Procedural Order notes that after the witness lists are filed it may be necessary to discuss supplementing a party's witness list. Second Procedural Order at Section VII.A. The applicant has provided comprehensive information on the project on which the intervenors can rely in preparing their pre-filed testimony. In contrast, there is not a similar body of evidence developed by the intervenors on which the applicant can rely in preparing its pre-filed testimony. Nor would it be efficient for the applicant to identify witnesses and pre-file testimony based on its best guess of what Intervenor Group Two will allege in its pre-filed testimony.

We believe that upon a showing of good cause, it may be appropriate to allow a witness to testify at the hearing even if they have not pre-filed testimony, as long as they are identified prior the hearing and their testimony is limited to rebutting specific issues raised in the pre-filed direct testimony of another party. To the extent that Wolfdan seeks leave to call a rebuttal witness who has not submitted pre-filed testimony, we propose that such witness be identified within a week after submission of pre-filed testimony (or by October 2).

Thank you for consideration of this response and request for clarification of the Second Procedural Order.

Dated: August 31, 2023



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

IN THE MATTER OF
PETITION ZP 779A
WOLF DEN MR. CHASE, LLC

RESPONSE TO REQUESTS OF
INTERVENOR GROUP 2 DATED
AUGUST 30, 2023

Intervenor H.C. Haynes, Inc., responds to Intervenor Group 2 requests as follows:

REQUEST FOR REMOTE TESTIMONY

Haynes does not object to the request for remote testimony but joins in Wolfden's requests that the parties due process rights, especially cross examination and rebuttal, be protected.

REQUEST FOR CLARIFICATION OF SECOND PROCEDURAL ORDER

Haynes does not object to the request for clarification of the hard copy filing deadline.

Dated: September 1, 2023



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**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

**REPLY IN SUPPORT OF REQUEST FOR PERMISSION TO PROVIDE REMOTE
TESTIMONY AND RESPONSE TO CLARIFICATION OF THE SECOND
PROCEDURAL ORDER**

Submitted by

**HOULTON BAND OF MALISEET INDIANS, PENOBSCOT NATION, NATURAL
RESOURCES COUNCIL OF MAINE, AND CONSERVATION LAW FOUNDATION**

The Penobscot Nation, Houlton Band of Maliseet Indians, Natural Resources Council of Maine, and Conservation Law Foundation (collectively “Intervenor 2”) replies to the Wolfden Mt. Chase, LLC (“Wolfden”) response to Intervenor 2’s request to allow an expert witness to testify remotely and responds to Wolfden’s requests for clarification on the Second Procedural Order regarding the (1) inclusion of “historical and cultural resources/relevant tribal impacts” in the list of topics and (2) witness testimony on rebuttal without pre-filed testimony.

A. Reply to Wolfden’s Response to Intervenor 2’s Request for Remote Testimony.

Wolfden indicates that it does not oppose Intervenor 2’s request that the Land Use Planning Commission (“LUPC”) allow intervenors’ aqueous geochemistry expert, Dr. Ann Maest, to testify remotely at the upcoming hearing, but unreasonably suggests that any technical difficulties ought to prevent the witness’ testimony from being considered by the LUPC. Intervenor 2 objects to Wolfden’s overly broad proposed remedy of striking the witness’ testimony in the event of technical difficulties. Intervenor 2 is confident that if the LUPC approves remote participation of the witness, then appropriate equipment will be available for Wolfden to both see the witness and to engage in meaningful cross-examination. If any technical difficulties do arise, the LUPC can exercise its judgment under the particular circumstances to appropriately resolve the issue. There is no reason to circumscribe the LUPC’s discretion and pre-ordain a harsh remedy.

Wolfden further alleges that it will be difficult if not impossible to present documents to the witness during cross examination. However, technology is readily available to address this concern. For example, documents to be used during cross examination could be converted to a portable document format (pdf) and emailed to the witness. Alternatively, the share document feature could be used in Microsoft Teams, which the LUPC used for the first pre-hearing conference. In short, Intervenor 2 has no doubt that any technological difficulties that may arise during the witness’ testimony can be adequately resolved.

Wolfden does not object to Intervenor 2's request for remote testimony and Intervenor 1 also does not object to the request for remote testimony. Intervenor 2's request for remote testimony should be granted without the conditions requested by Wolfden.

B. Reply to Wolfden's Request for Clarification of Second Procedural Order.

Wolfden also requests two clarifications to the Second Procedural Order. First, Wolfden seeks clarification to "confirm that the 'relevant tribal impacts' ... be tied to the topics identified in the procedural order and the underlying regulatory standards on which they are based." Wolfden's Response at 2. Second, Wolfden seeks clarification to allow rebuttal witnesses that have not pre-filed testimony. Intervenor 2 objects to both proposed clarifications.

First, with respect to the topic of historical and cultural resources/relevant tribal impacts identified in the Second Procedural Order LUPC has decided the appropriate topics for the hearing and can weigh for itself how the testimony, tribal or otherwise, relates to the standards. This approach is consistent with the Rules for the Conduct of Public Hearings, which provide that "the experience, technical competence and specialized knowledge of the Commission or Presiding Officer may be utilized in the evaluation of all evidence submitted." Rule 5.07(A).

Second, Intervenor 2 objects to allowing Wolfden the opportunity to present witnesses that have not pre-filed testimony with the LUPC in accordance with the Second Procedural Order. As an initial matter, it should be noted that, as required by the LUPC Rules of Practice, the Applicant bears the burden of proof. Rule 4.05(A)(6). Wolfden has had years to prepare its Application and to prepare for this hearing, having initially filed an Application on this proposed mine in 2020. Therefore, Wolfden should have witnesses available to pre-file testimony that they believe allow them to meet that burden.

Finally, this request does not seem like a clarification of the Second Procedural Order, but rather an effort to create a special exemption to the Second Procedural Order for Wolfden. The Second Procedural Order clearly states that "No person will be allowed to testify at the hearing for the Applicant or Intervenors unless that person has submitted Pre-filed testimony." Second Procedural Order at 9. This does not seem like a statement that requires clarification. Also, the Rules provide that "the Presiding Officer may require that all or part of the testimony to be offered at such a hearing be submitted in written form." Rule 5.09(D). Intervenor 2 does not oppose witnesses that have been listed and have pre-filed testimony from providing rebuttal testimony that may be outside the scope of their pre-filed testimony, however witnesses that have not filed pre-filed testimony should be barred from testifying. Wolfden's purported "clarification" regarding the testimony of witnesses that have not filed pre-filed testimony should be denied.

Dated: September 1, 2023

Respectfully Submitted,



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

IN THE MATTER OF)	
REZONING PETITION ZP 779A)	REPLY IN SUPPORT
WOLFDEN MT. CHASE, LLC)	OF REQUEST FOR
)	CLARIFICATION OF THE
)	SECOND PROCEDURAL ORDER
)	

On behalf of Wolfden Mt. Chase, LLC (“Wolfden”), the following responds to the Intervenor Group Two’s Response to Request for Clarification of the Second Procedural Order as follows:

With respect to the request to allow a witness to testify on rebuttal who has not pre-filed direct testimony, the request was that “upon a showing of good cause” it be allowed, not as a matter of course. The Second Procedural Order specifically recognizes there may be a need for a pre-hearing conference to discuss supplementing a party’s witness list. Second Procedural Order at p. 9. If a party seeks to supplement its witness list, we believe the request can be addressed at that time, including whether accommodations need to be made to the deadline for or requirement of pre-filing testimony.

Dated: September 5, 2023



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