

**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 CLARIFICATION ON PROCEDURAL MATTERS**

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”), seek clarification on certain matters related to the upcoming hearing in light of the extensive witness lists and the First, Second, and Third Procedural Orders. Intervenor 2 discussed these issues with counsel for Wolfden and Intervenor 1. This letter reflects Intervenor 2’s position only.

1. **Time allocation:** In order to ensure an efficient and fair hearing, Intervenor 2 proposes that the LUPC determine in advance the total time that will be available for all aspects of the hearing, including all examinations, openings, and closings, and then divide that time evenly between the two sides in this proceeding—Wolfden and Intervenor 1, on the one hand, and Intervenor 2 (consisting of four intervenors) and Maine Audubon, on the other. Thus, for example, a party’s own direct testimony and presentations and their cross-examination of an opposing witness would count towards their time. In addition, Intervenor 2 proposes that there be no opening and closing statements, or at least no closing statements, in light of the long list of witnesses. If opening or closing statements are allowed we propose that they should count towards their side’s overall time limit.
2. **Order of witnesses:** Intervenor 2 proposes the following witness order: Wolfden witnesses, Intervenor 1 witnesses, and Intervenor 2 witnesses (consistent with Section 5.08(A) of the LUPC’s rules). An attempt to order witnesses by topic would be difficult and inefficient because many of the designated witnesses address multiple topics. With permission from the Chair, witnesses could be taken out of order due to availability.
3. **Post-Hearing Briefing:** Intervenor 2 proposes that Wolfden, Intervenor 1, and Intervenor 2 (with Maine Audubon) be allowed to simultaneously submit post-hearing briefs 30 days after the hearing transcript is provided to the parties, with reply briefs due 14 days thereafter.

Dated: September 15, 2023

Respectfully Submitted,



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

IN THE MATTER OF	)	HAYNES RESPONSE TO
PETITION ZP 779A	)	INTERVENOR 2 09 15 23
WOLFDEN MT. CHASE, LLC	)	REQUEST FOR CLARIFICATION
T6 R6 WELS	)	
PENOBSCOT COUNTY, MAINE	)	

H.C. Haynes, Inc., (“Haynes”) responds to Intervenor 2’s September 15, 2023, request for clarification of certain procedural matters as follows:

TIME ALLOCATION

The time necessary for a party’s presentation cannot be evaluated until the pre filed testimony has been reviewed.

There is no basis for the time allocated to Haynes to be considered part of the time allocated to Wolfden, their interests are not the same nor have they been, nor would it be appropriate to, consolidate them. Consolidation is among intervenors – Chapter 5 Section 5.03.A.1.

Haynes objects to being denied the opportunity to make an opening and or closing statement. Closing statements can be at the Commission meeting at which its decision is made. Reasonable limitations can be placed on openings and closings.

## ORDER OF WITNESSESS

The primary focus of the public hearing will be on the technical aspects of the application, Therefore, Intervenor 2 should make its presentation after the Applicant followed by rebuttal so that the technical testimony of witnesses for and against will be as near in time as possible for the benefit of the Commission in evaluating the evidence.

## POST HEARING BRIEFING

Post hearing briefing should be due after the record closes so that the parties may address material filed after receipt of the hearing transcript.

Dated: September 18, 2023



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

IN THE MATTER OF ZONING	)	
PETITION ZP 779A	)	
WOLFDEN MT. CHASE, LLC	)	APPLICANT’S RESPONSE TO
APPLICATION FOR ZONE CHANGE,	)	REQUEST FOR CLARIFICATION
PICKET MOUNTAIN MINE	)	ON PROCEDURAL MATTERS
T6 R6 WELS,	)	
PENOBSCOT COUNTY, MAINE	)	

Wolfden Mt. Chase, LLC (“Wolfden”) provides the following response to the request by Intervenor Two for clarification of certain procedural matters.

Time Allocation

First, and as discussed with counsel for Intervenor Two, we believe it is premature to allocate time until the Pre-Filed Direct Testimony is filed. Only then will the parties be in a position to make meaningful determinations as to how much time is needed both for the party’s direct presentation of its witnesses, as well as cross-examination of other party’s witnesses. The Commission will also be in a better position to determine how much time to set aside for Commission and staff questions and evaluate the most appropriate allocation of time among the parties.

We disagree with the request that that the total time be divided equally between Intervenor Two on the one hand and the Applicant and Intervenor One on the other hand. The Applicant bears the burden of proof and necessarily requires more time than intervenors to present its case. We also do not believe that Intervenor One’s time should be combined with the Applicant.

Second, Intervenor Two has suggested not a clarification of, but a modification to, the prior procedural order to eliminate opening and closing statements. We object to eliminating opening statements. We do not believe substantial time is necessary and suggest that opening statements be limited to 15 minutes per party. Instead of a blanket prohibition on closing statements, we suggest that any closing statement be included as part of a party's total allocated time limit and/or that in lieu of a closing statement at the end of the technical sessions a party be given the option to present a closing statement after the briefs are filed (assuming there is briefing) at the Commission meeting when the matter will be deliberated.

#### Order of Witnesses

Intervenor Two suggests that Section 5.08(A) of the Commission's rules dictate the order of intervenor witnesses. While it is true that the intervenors proceed after the Applicant, there is no requirement to hear from intervenor groups in any particular order. Here, it makes sense for Intervenor Two to proceed directly after presentation of the Applicant and governmental agencies, if any, because their witnesses will be discussing technical issues such as water quality and protection of the environment that will have just been discussed by the Applicant and that likely will be the majority focus of the hearing. Based on identification of its witnesses, Intervenor One will be focused on different issues and there is not any apparent benefit in having them proceed immediately after the Applicant prior to Intervenor Two.

#### Post-Hearing Briefing

The Applicant agrees it would be beneficial to allow post-hearing briefing. We believe that such briefs should be filed 30 days after the close of the record, not 30 days after the transcript is provided to the parties. As also discussed with counsel for Intervenor Two, the parties can always opt to expedite preparation of the transcript to ensure it is timely available for

preparation of the briefs. In any event, it would be prudent to discuss with the court reporter the anticipated timing for issuance of the transcript, as well as the schedule for the additional public comment session to be held in Bangor, prior to setting the schedule for post-hearing briefs. We do not believe reply briefs are necessary.

Dated: September 18, 2023

A handwritten signature in blue ink, appearing to read "Juliet B", is written over a horizontal line.

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