



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

Fourth 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 Fourth Procedural Order sets forth the Presiding Officer's decisions with respect to the hearing schedule, post-hearing briefing, and submission deadlines of additional materials for the public hearing on Wolfden Mt. Chase, LLC's (Wolfden or Applicant) Application for Zone Change (Application). It also includes an updated Summary of Schedule.

I. BACKGROUND

- A.** On February 24, 2023, the Maine Land Use Planning Commission (Commission or LUPC) 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. Third Procedural Order. The Third Procedural Order set October 9, 2023, as the deadline for “the submission of graphics and presentations the parties intend to use as visual aids during the public hearing.”

D. Second Pre-Hearing Conference. On October 3, 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 October 3, 2023, Pre-Hearing Conference:

Land Use Planning Commission 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

Juliet Browne, Attorney, Verrill Law

Maye Emlein, Associate Attorney, Verrill Law

Intervenors

Dean Beaupain, Attorney, Bloomer Russell Beaupain

Laura Berglan, Senior Attorney, Earthjustice

Aaron Bloom, Senior Attorney, Earthjustice

Peter Brann, Attorney, Brann & Isaacson

Marissa Lieberman-Klein, Associate Attorney, Earthjustice

Sean Mahoney, Senior Counsel, Conservation Law Foundation

E. Hearing Schedule for the Technical Sessions.

1. **Schedule Sequence and Time Allocation.** On October 2, 2023, the LUPC provided the parties with a draft schedule for the hearing. The draft schedule proposed a topic-by-topic hearing sequence using the topics determined in the Second Procedural Order. At the Second Pre-Hearing Conference, held on October 3, 2023, all the parties expressed a preference for a party-by-party hearing sequence, emphasizing that such a sequence allowed each party to present

its case in the way it determines most effective. The Presiding Officer requested a joint proposal on the hearing sequence from the parties, including time allocation if possible.

The parties were unable to agree on the sequencing and time allocation for the hearing and, on October 4, 2023, submitted individual proposals on hearing sequence and time allocation. The parties proposed a presentation schedule of testimony by the Applicant, followed by the Intervenors, but differed with respect to proposed time allocation, order of Intervenors, and the sequencing of cross-examination, with the Applicant proposing that cross-examination should take place after the conclusion of direct testimony by each party's witnesses, and Intervenor 2 requesting that cross-examination take place following the conclusion of the testimony of each individual witness or panel of witnesses. With respect to time allocation, Intervenor 2 requested that it be given equal time to the Applicant and Intervenor 1 collectively. The Applicant agreed to the time allocation proposed in the LUPC's draft schedule but asked that the parties be allowed to apportion time between cross-examination and direct testimony without restriction.

2. **Opening and Closing Statements.** On September 15, 2023, Intervenor 2 also proposed that there be no opening and closing statements in light of the long list of witnesses or, alternatively, that if opening or closing statements are allowed, they count toward a side's overall time limit.

Intervenor 1 objected to the elimination of opening and closing statements, and the Applicant objected to the elimination of opening statements. Both parties stated that reasonable limits could be placed on opening and closing statements, with the Applicant recommending 15 minutes for opening statements. Both parties also suggested that closing statements could occur at the Commission meeting at which the rezoning decision is made.

- F. **Post-Hearing Briefing.** In a request on September 15, 2023, Intervenor 2 proposed that Wolfden, Intervenor 1, and Intervenor 2 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. Intervenor 1 responded that post-hearing briefing should be due after the hearing record closes to allow the parties to address any material filed after receiving the hearing transcript. The Applicant agreed that post-hearing briefing would be beneficial but proposed that such briefs should be filed 30 days after the close of the record, not 30 days after the transcript is made available to the parties. The Applicant stated that it did not believe reply briefs were necessary.

- G. **Clarification on Deadlines and Submission of Materials.** On October 5, 2023, the parties requested clarification on the submission of new materials. They requested that deadlines for the submission of new materials and materials for the presentation laptop at the hearing be moved closer to the hearing date to allow additional preparation time.

H. Criteria and Standards.

1. **Sequencing of the Hearing.** In accordance with Sections 5.08(A)(1) through (4), the Presiding Officer may vary the order in which witnesses appear, may vary the order in which cross-examination occurs, and may limit redirect and re-cross-examination of witnesses.
2. **Closure of the hearing.** In accordance with Chapter 5, Sections 5.10(A) and (B), after the conclusion of a hearing the record will remain open for a period of 10 days for the purpose of allowing interested persons to file written statements with the Commission, followed by a period of seven additional days for the purpose of allowing interested persons to file statements in rebuttal, unless the Presiding Officer decides to keep the record open for additional time.

II. HEARING SCHEDULE

Having considered the parties' requests, the Presiding Officer provides in Attachment A the schedule for the Millinocket portion of the hearing. This schedule allows a party-by-party approach to the hearing, with panels of witnesses cross-examined directly after testimony. The order of testimony in the hearing schedule is the Applicant, followed by Intervenor 2, followed by Intervenor 1. The time allocation is similar to that proposed by LUPC staff in the draft hearing schedule. The schedule depicted in Attachment A is intended to accommodate the requests of the parties that they be given flexibility in how they present their testimony and evidence while allowing for a consistent, predictable schedule and ensuring an orderly process. The parties are free to order the presentation of their witnesses within the time frames afforded them and may present individual witnesses or panels of witnesses within the designated witness panels as they choose.

III. POST-HEARING BRIEFING AND CLOSING STATEMENTS

The Presiding Officer agrees with the consensus of the parties at the Second Pre-Hearing Conference that post-hearing briefs be due on November 21, 2023, and be limited to 30 pages. There will be no closing statements at the hearing nor at a subsequent regular meeting of the Commission. The hearing record will close for members of the public on November 9, 2023. The hearing record will remain open until November 21, 2023, for the limited purpose of allowing the parties to submit post-hearing briefs as outlined in Section V below.

IV. DEADLINES AND SUBMISSION OF MATERIALS

The deadline for electronic submission of new materials and for submission of materials for the presentation laptop is **11:59 p.m. on October 12, 2023**. New materials include, but are not limited to, videos; any material that was only linked in earlier submissions (for large documents, the relevant subset may be provided); presentations for opening statements; rebuttal evidence, and witness presentations summarizing pre-filed testimony. Any new

materials used as exhibits during the hearing, including evidence submitted in rebuttal to pre-filed testimony, which are not already part of the record, must be appropriately labeled as such and compiled according to Chapter 5, Section 5.07(C)(4) with a single paper copy brought to the hearing for the record. Paper copies of materials that are already part of the record, including pre-filed testimony and attachments, are not required. Paper copies of any new materials that were only linked in earlier submissions are due by **4:00 p.m. on October 13, 2023**.

V. UPDATED SUMMARY OF SCHEDULE

The Summary of Schedule from the Third Procedural Order is updated below according to the decisions made in this procedural order.

- | | |
|---|------------------------------|
| A. Deadline for New materials | October 12, 2023 |
| B. Deadline for Materials for the Presentation Laptop | October 12, 2023 |
| C. Public Hearing, Technical Sessions - Millinocket | October 16, 17, and 18, 2023 |
| D. Public Hearing – Bangor | October 23, 2023 |
| E. Deadline for Public Comments | November 2, 2023 |
| F. Deadline for Rebuttal Comments | November 9, 2023 |
| G. Post-Hearing Briefing/Closure of Record for the Parties | November 21, 2023 |

VI. 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 10th DAY OF October 2023



Everett Worcester, Chair and Presiding Officer

ATTACHMENT A

Hearing Schedule: October 16, 17, and 18, 2023
Stearns Jr./Sr. High School
Millinocket, ME



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HEARING SCHEDULE

**In the Matter of
Zoning Petition ZP 779A**

Wolfden Mt. Chase, LLC.
Application for Zone Change, Pickett Mountain Mine

October 16-18, 2023
Stearns Jr./Sr. High School, Millinocket

DAY 1- MORNING SESSION- 9:30 a.m. – 12:15 p.m.

- | | |
|--|-----------|
| 1. Introductions and Presiding Officer’s Opening Statement | (5 min.) |
| 2. LUPC Staff Statement | (15 min.) |
| 3. Applicant’s Project Summary and Opening Statement | (15 min.) |
| 4. Intervenor 1’s Opening Statement | (10 min.) |
| 5. Intervenor 2’s Opening Statement | (10 min.) |

Applicant – Panel 1

- | | |
|--|-----------|
| 6. Applicant’s Testimony and Evidence | (50 min.) |
| 7. Break | (15 min.) |
| 8. Intervenor 2’s Cross-Examination | (25 min.) |
| 9. LUPC Staff and Commission Questions | (20 min.) |

DAY 1- AFTERNOON SESSION- 1:15 p.m. – 4:30 p.m.

Applicant – Panel 2

- | | |
|--|-----------|
| 1. Applicant’s Testimony and Evidence | (50 min.) |
| 2. Intervenor 2’s Cross-Examination | (25 min.) |
| 3. LUPC Staff and Commission Questions | (15 min.) |
| 4. Break | (15 min.) |

Applicant – Panel 3

- | | |
|--|-----------|
| 5. Applicant’s Testimony and Evidence | (50 min.) |
| 6. Intervenor 2’s Cross-Examination | (25 min.) |
| 7. LUPC Staff and Commission Questions | (15 min.) |



DAY 1- EVENING SESSION- 6:30 p.m. - TBD

1. Presiding Officer's Opening Statement (5 min.)
2. Applicant's Project Summary (15 min.)
3. Public Testimony (Questions by Commission and Staff, Parties must ask any clarifying questions through the Presiding Officer) (TBD)
4. Presiding Officer's Closing Statement (5 min.)

DAY 2- MORNING SESSION- 8:30 a.m. – 12:30 p.m.

1. Introductions and Presiding Officer's Opening Statement (5 min.)

Applicant – Panel 4

2. Applicant's Testimony and Evidence (40 min.)
3. Intervenor 2's Cross-Examination (20 min.)
4. LUPC Staff and Commission Questions (15 mins)
5. Break (15 mins)

Intervenor 2 – Panel 1

6. Intervenor 2's Testimony and Evidence (50 min.)
7. Applicant's Cross-Examination (25 min.)
8. Intervenor 1's Cross-Examination (20 min.)
9. LUPC Staff and Commission Questions (15 min.)

Intervenor 2 – Panel 2

10. Intervenor 2's Testimony and Evidence (35 min.)

DAY 2- AFTERNOON SESSION- 1:30 p.m. – 4:30 p.m.

1. Intervenor 2's Testimony and Evidence - continued (10 min.)
2. Applicant's Cross-Examination (25 min.)
3. Intervenor 1's Cross-Examination (15 min.)
4. LUPC Staff and Commission Questions (15 min.)

Intervenor 2 – Panel 3

5. Intervenor 2's Testimony and Evidence (25 min.)
6. Break (15 min.)
7. Intervenor 2's Testimony and Evidence - continued (20 min.)
8. Applicant's Cross-Examination (25 min.)
9. Intervenor 1's Cross-Examination (15 min.)
10. LUPC Staff and Commission Questions (15 min.)

DAY 2- EVENING SESSION- 6:30 p.m. - TBD

1. Presiding Officer's Opening Statement (5 min.)
2. Applicant's Project Summary (15 min.)
3. Public Testimony (Questions by Commission and Staff, Parties must ask any clarifying questions through the Presiding Officer) (TBD)
4. Presiding Officer's Closing Statement (5 min.)

DAY 3- MORNING SESSION- 8:30 a.m.- 12:05 p.m.

1. Introductions and Presiding Officer's Opening Statement (5 min.)

Intervenor 2 – Panel 4

1. Intervenor 2's Testimony and Evidence (50 min.)
2. Applicant's Cross-examination (25 min.)
3. Intervenor 1's Cross-Examination (15 min.)
4. LUPC Staff and Commission Questions (15 mins.)
5. Break (15 mins.)

Intervenor 1 - Panel

6. Intervenor 1's Testimony and Evidence (35 min.)
7. Intervenor 2's Cross-Examination (15 min.)
8. LUPC Staff and Commission Questions (15 min.)

9. Applicant's Redirect (20 min.)

10. Presiding Officer's Closing Statement (5 min.)