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Via E-Mail

LUPC Commissioners
c/o Chair Worcester
Maine Land Use Planning Commission
22 State House Station
August, Maine 04333-0022

Re: Wolfden Rezoning Petition, ZP 779, Wolfden Mt. Chase LLC, Pickett Mountain
Metallic Mineral Mine, T6 R6 WELS

Dear Chair Worcester:

On behalf of the Petitioner, Wolfden Mt. Chase (“WMC”), I am writing in response to the recommendation that the Commission direct staff to draft a denial of ZP 779. We are disappointed by the recommendation, particularly since it was provided to us less than a week prior to it being considered by the Commission. It proposes an unprecedented step that we believe is contrary to the Commission’s regulations and at odds with precedent. At the same time, we respect staff’s concerns and remain committed to a process that advances the project, which enjoys significant support in the region. To that end, we request that the petition be placed on hold to allow WMC to (i) further evaluate alternative locations for the project’s concentrator and dry stack tailings management facility, (ii) complete additional studies in support of its water management and treatment plan, and (iii) respond to any remaining issues identified by staff.¹

Additional detail in support of our request is provided below.

A. The Rezoning Process for Metallic Mineral Mines Presents Unique Challenges

Maine has enacted the most stringent mining regulations in the country (Chapter 200), and their enactment was hailed by environmentalists as the means to ensure that Maine’s natural environment is adequately protected from metallic mineral mining impacts. The decision by the Legislature, however, to have separate agencies responsible for rezoning (the Commission) and permitting (the DEP) has created a particularly challenging regulatory process for developing a mine in Maine. Project development under the regulations is an iterative process that results in changes to

¹ While many of the items identified in the spreadsheet included with the staff recommendation can be readily addressed and/or in some instances reflect a misunderstanding of the material that has been presented, we do not believe it would be productive to respond to those items here. WMC is not requesting that the Commission proceed to a public hearing on this record, but rather that the process be put on hold.

project design and layout as more detailed field and other data are gathered and feedback on those data is provided by the regulatory agencies. DEP's review of the baseline surveys and feasibility studies required by Chapter 200 would impact the location and sizing of project elements, as well as assumptions affecting the volume of water to be managed on-site and other design features. Additionally, this proceeding is the first time that the Commission's Chapter 12 rules have been applied to a metallic mineral mine.

Thus, the interplay between the Commission's application of the rezoning criteria and DEP's application of Chapter 200 standards remains a work in progress, such that it is to be expected that the regulatory process will involve extensive back and forth between the petitioner, staff, other governmental agencies, and the public, and that the petition will be amended numerous times. This has been the case even when the Commission is responsible for both zoning and permitting, as in the Plum Creek Moosehead Lake Concept Plan,² and is intensified when separate agencies are responsible for rezoning and permitting under an entirely new regulatory program.

WMC believes the extensive information provided to date demonstrates that the rezoning criteria are met.³ At the same time, we are mindful of staff's desire for more detailed information, and WMC has responded to multiple requests for additional data. It has taken considerable effort and expense, however, to provide the level of detail requested based on project plans that, by regulatory design, can only be preliminary pending the plan-development process that would occur in an iterative and interactive fashion as part of the Chapter 200 process. The additional information has often generated another round of questions and, in some instances, mistakenly creates the perception of inconsistencies or errors in the petition.

WMC believes that placing the petition on hold is warranted to allow it to conduct an expanded analysis of alternative locations for the concentrator and the dry stack tailings management facility. This is something staff previously requested and was one of the reasons for the delay in submitting the revised petition.⁴ We believe further analysis of the previously identified and additional alternative locations would advance the project. The selection of alternative locations for the concentrator and dry stack tailings facility outside of T6 R6 WELS could eliminate the challenges inherent in undergoing the rezoning process for those elements without the benefit of the final design under Chapter 200. WMC would also use the period that the petition is on hold to conduct additional

² The history of the Moosehead Concept Plan is instructive. The concept plan was originally filed in April, 2005 and was amended in April, 2006, April 2007, and again in October, 2007. Following the public hearings, the Commission determined that the regulatory criteria had not been satisfied and directed staff to propose further regulatory required amendments to the plan. Over the course of the next year, staff did so, and, in June, 2009, Plum Creek adopted those amendments as part of its Concept Plan, which was then approved by the Commission in September, 2009. https://www.maine.gov/dacf/lupc/plans_maps_data/resourceplans/moosehead/2009-09-23_decision.pdf

³ For example, in reviewing the July 1, 2020 petition, the Commission's own third-party experts concluded that while additional work remained, the petition was technically and financially feasible and consistent with the rezoning criteria. Specifically, SWCA Environmental Consultants (SWCA) provided a third-party review for the Commission and concluded that the development was "technically feasible" and the assumptions supporting the project's financial practicability were reasonable. January 29, 2021 SWCA Comments at 9. Linkan Engineering (Linkan) reviewed technical issues associated with the potential to contaminate ground and surface water and concluded that "[o]verall the documents were fairly well detailed for the expected level of project development"; there were not "any major category gaps in the documents"; and "the water treatment aspects of the project appear feasible for the purpose of rezoning." December 2, 2020 Linkan Comments at 2.

⁴ The global pandemic has further exacerbated delays and created additional challenges in the regulatory process.

testing to support the design and functioning of its water treatment facility and generate additional information on the site water balance, topics that have generated multiple rounds of questions, and ensure the balance of concerns raised by staff are addressed.

B. There is no Legal or Equitable Basis for Denying the Petition at this Procedural Phase

Here, staff is recommending denial of the petition before the adjudicatory process has even begun and without affording the petitioner an opportunity to respond to the alleged deficiencies.

While Chapter 4, Section 4.03(8)(b) allows the Commission to deny an application for failure to provide information necessary to make required findings, that provision must be read together with Section 4.03(8)(c), which allows an applicant to submit additional information as an amendment to an existing application, and Chapter 12, Section 4.A, which requires the Commission to hold at least one public hearing on a D-PD petition for a mining project. To the extent there is insufficient information to allow the Commission to make necessary findings, WMC requests the opportunity to submit an amended application as allowed under Section 4.03(8)(c)(ii).

Placing the process on hold until that time would avoid any dispute over whether the Commission can or should deny the first mining petition to come before it before even commencing the adjudicatory process or holding a public hearing consistent with the requirements of Chapter 12. Doing so also would be consistent with Commission precedent. For example, in the Highland Wind project (DP 4862), the Commission determined the application was not complete due to failure of the applicant to demonstrate sufficient right, title and interest. The Commission did not deny the application but, instead, placed it on hold until such time as the applicant could provide the required information.⁵ The amended application was accepted for processing almost a year later.⁶

Given the significant commitment and economic investment to date by WMC (\$15M), the unique challenges associated with applying new regulatory processes and standards, and the strong local and regional support for the project, we respectfully request that the Commission grant this request.

Thank you for your consideration of these comments.

Sincerely,



Juliet T. Browne

cc: Ron Little (President, Wolfden Mt. Chase LLC)
Jeremy Ouellette (Vice President of Project Development, Wolfden Mt. Chase LLC)
Judy C. East (Executive Director, LUPC)
Stacie R. Beyer (Planning Manager, LUPC)

⁵ https://www.maine.gov/dacf/lupc/projects/windpower/highland/DP4862_ReviewSuspended.pdf

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<https://www.maine.gov/dacf/lupc/projects/windpower/highland/RevisedApplication/NoticeOfAcceptanceForProcessing.pdf>