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February 24, 2026

Via Email

Hon. David N. Greenwood
Administrative Law Judge
New York State Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway, First Floor,
Albany, NY 12233-1550

Re: In the Matter of the Application (the “Application”) of Unconventional
Concepts, Inc. and Michael Hopmeier
APA Project No. 2021-0276

Dear Judge Greenwood:

On behalf of the Adirondack Council, Inc., we respectfully move for an order by you revising the existing hearing issues in APA Project Order #2021-0276 (the “Hearing Issues”) based upon the proposal from Adirondack Park Agency (“APA”) staff that is included herein as Exhibit 1.¹ We further ask that your order direct that the parties present testimony and evidence on the revised hearing issues at the adjudicatory hearing in the order provided in Exhibit 1. The primary goal of this motion is to ensure that an orderly and understandable record is developed through the adjudicatory hearing for the APA Board’s consideration.

The intervenors had initially proposed revisions to the Hearing Issues by our letter dated January 20, 2026. APA staff responded to the intervenors’ joint proposal with a marked-up, revised proposal. Exhibit 1 is a clean version of staff’s proposal for changes to the Hearing Issues. During the February 4, 2026 pre-hearing conference, facilitated by you, no party objected to APA staff’s proposed changes to the Hearing Issues. An order revising the Hearing Issues based upon the Proposed Issues in Exhibit 1 is appropriate for the reasons discussed below.

¹ From your email correspondence, we understand that you will also be providing a ruling on whether or not the two new issues proposed by the intervenors should be added to the issues to be adjudicated in the hearing.

Proposed Revisions to Existing Hearing Issues

Existing Hearing Issues ## 1, 2 and 3 relate to legal determinations the APA Board must make pursuant to APA Act § 809(10)(a), (b), and (e) (i.e., consistency, compatibility and undue adverse impact). We submit that adjudication related to these legal determinations should not occur until all of the fact and opinion evidence concerning the project's potential impacts is in the record and available to party witnesses. This makes sense so that the portion of the hearing related to the legal issues can be informed by evidence that is already in the record regarding the project's potential impacts, which are relevant to all three legal determinations. For this reason, the proposed reordering of Hearing Issues ## 1, 2 and 3 as Proposed Issues ## 3, 4, and 5 in Exhibit 1 is logical and would support a more orderly and understandable record.

With respect to Hearing Issue #1 (Proposed Issue #3) regarding the howitzer range's consistency with the Adirondack Park Land Use and Development Plan ("APLUDP"), it is further proposed to revise this issue to focus on whether the proposed project is consistent as opposed to compatible with the APLUDP to more closely follow APA Act § 809(10)(a).

Regarding Hearing Issue #2 (Proposed Issue #4) on the compatibility of the howitzer testing range in Rural Use, it is additionally proposed to separately adjudicate the question of whether the proposed project is a "commercial use" that is embedded as a sub-issue in that Hearing Issue. Fact and opinion evidence on this issue (Proposed Issue #1) will ultimately provide a basis for an APA Board determination as to whether the proposed howitzer testing range is or is not presumed to be compatible. *See* APA Act § 809(10)(b). Whether the proposed project is a commercial use is also relevant to its consistency with the APLUDP. Accordingly, adjudicating whether the project is a commercial use early in the hearing and before adjudication of the proposed project's consistency and compatibility will inform witness testimony related to those legal issues and contribute to a better record. It will also simplify the compatibility issue consistent with APA Act § 809(10)(b), which requires a threshold determination of whether a project is a listed, compatible use in order to establish whether the use is presumed to be compatible or not.

Finally, for existing Hearing Issue #3 concerning whether the howitzer range will have any "undue" adverse impact, it is proposed to remove all references to the "undue" legal conclusion from a revised Proposed Issue #2 that focuses on the potential adverse impacts of the proposed project on the resources of the Adirondack Park and nearby land uses. This will avoid having technical experts for specific impacts make uninformed legal conclusions about whether the project's impacts on a specific resource are "undue" without all of the evidence or the expertise necessary to do so. Whether those impacts are "undue" would then be adjudicated separately as Proposed Issue #5, which is proposed to be revised to more closely follow the language of APA Act § 809(10)(e) (including consideration of any benefits the proposed project may provide).

Conclusion

APA staff's proposed revisions to the Hearing Issues in Exhibit 1 follows the logical sequence for developing the fact and opinion testimony regarding the project's potential impacts with respect to the development considerations necessary for informed party testimony and evidence related to the three legal determinations required by APA Act § 809(10)(a), (b) and (e). Moreover, these proposed revisions are consistent with the Appellate Division, Third

Department's articulation of the "undue adverse impact" approval criterion in Protect v APA, 121 AD3d at 67 (2014) with respect to the Adirondack Club & Resort project in Tupper Lake. *Protect* requires the APA Board, when making its determination as to whether the adverse impacts from a project are "undue," to also consider whether the project is consistent with the APLUDP and compatible in the land use area where it is proposed to be located. Accordingly, having all of the evidence about potential project impacts in the record before any adjudication related to those legal issues occurs is logical and will support the development of an orderly and understandable record.

We believe that it is within your authority to order these proposed revisions to the Hearing Issues based upon APA Project Order #2021-0276, which provides:

The hearing officer may in their sole discretion simplify, define, limit, or resolve the scope of issues, or add an issue if not expressly excluded and for which a party makes an offer of proof to ensure that the record covers substantive and significant issues relating to the findings or determinations required of the Agency under APA Act § 805(4) and § 809(10).

APA staff's proposed revisions to the Hearing Issues in Exhibit 1 are within the scope of this authority and are substantively consistent with APA Project Order # 2021-0276. They simplify and/or resolve the referenced shortcomings of the existing Hearing Issues as discussed above. Requiring their adjudication in the order provided in Exhibit 1 will allow for the more efficient development of an orderly and understandable record for the APA Board.

For all of the foregoing reasons, it is respectfully submitted that your decision to grant this motion and order the revisions to the Hearing Issues as set forth in Exhibit 1, including their order of adjudication, is reasonable and appropriate. Thank you for your consideration of this motion.

Very truly yours,



Paul Van Cott

Attachments

Cc: Attached Service List

EXHIBIT 1

Proposed Hearing Issues for APA Project 2021-0276

February 24, 2026

- Issue #1:** Whether the proposed howitzer testing range is a commercial use (APA Act § 810(2)(c)(16)), another use in APA Act § 810(2)(c), or a use that is not “included on either the list of primary uses or the list of secondary uses for rural use areas” (APA Act § 810(2)(c)(16)).
- Issue #2:** Whether the howitzer testing range would have any adverse impacts upon the natural, scenic, ecological, wildlife, recreational or open space resources of the park considering the development considerations contained in APA Act § 805(4) and 9 NYCRR 574.5, including, but not limited to the following:
- i. Whether the howitzer testing range involves any potential discharges, residues, or other pollutants that may adversely affect water resources, land resources, or air resources. [APA Act § 805(4)(a)(1) – (3)]
 - ii. Whether the howitzer testing range would have any adverse impacts to land resources within the park, such as soils, forest and open space resources, including the quality and availability of nearby lands for outdoor recreational purposes. [APA Act § 805(4)(a)(1) and (2)]
 - iii. Whether the applicant has provided a reliable, comprehensive and accurate modeling of the noise that would be produced by the howitzer testing range and whether such noise will have any adverse impacts upon the Park's resources or nearby uses. [APA Act § 805(4)(a)(1)]
 - iv. Whether noise mitigation measures exist that are feasible to implement that would minimize or avoid any adverse impacts to the Park's resources from the howitzer testing range. [APA Act § 805(4)(a)(1)]
 - v. Whether the howitzer testing range would create any ecological impacts or disruption to native or migrating wildlife and their habitats at or near the howitzer testing range, considering species' sensitivities. [APA Act § 805(4)(a)(5) and (6)]
 - vi. Whether the howitzer testing range could have adverse health and safety impacts relating to the operation, storage, and transport of military equipment. [APA Act § 805(4)(c)(2)(a)]
 - vii. Whether the howitzer testing range would adversely impact nearby Wilderness and Wild Forest areas or their use and enjoyment. [APA Act § 805(4)(c)(2)(a)]
 - viii. Whether the howitzer testing range would have an adverse economic impact on adjoining and nearby land uses, such as property values. [APA Act § 805(4)(c)(2)(a)]

- Issue #3:** Whether the howitzer testing range would be consistent with the Adirondack Park land use and development plan, including, but not limited to, whether the howitzer testing range would be consistent with the purpose of insuring overall conservation, protection, preservation, development and use of the unique scenic, wildlife, recreational, open space, ecological, and natural resources of the Adirondack Park. [APA Act § 809(10)(a)]
- Issue #4:** Whether the howitzer testing range would be compatible within the Rural Use land area classification, and whether it would be compatible with the character description and purposes, policies and objectives of the Rural Use land area classification. [APA Act § 809(10)(b)]
- Issue #5:** Whether the howitzer testing range would have any undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project. [APA Act § 809(10)(e)]

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APA 2021-0276 Public Hearing
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