

STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter of the Application of

APA Project No. 2021-0276

UNCONVENTIONAL CONCEPTS, INC. and MICHAEL
HOPMEIER,

Administrative Law Judge
David N. Greenwood
NOTICE OF CROSS-MOTION
Oral Argument Requested

PLEASE TAKE NOTICE that upon the affirmation of Matthew D. Norfolk, Esq., affirmed August 28, 2026, with exhibits, and upon all papers and proceedings heretofore had herein, Unconventional Concepts, Inc. and Michael Hopmeier will cross-move Administrative Law Judge David N. Greenwood, on September 7, 2026, or on such date selected by Administrative Law Judge David N. Greenwood, for an order barring Adirondack Council, Adirondack Wild: Friends of the Forest Preserve, Protect the Adirondacks, and Sierra Club from participating in pre-hearing proceedings in the above-captioned adjudicatory proceeding and declaring that said parties may only participate in the public hearing herein to the extent permitted by N.Y.S. Adirondack Park Agency rules and regulations, and granting Unconventional Concepts, Inc. and Michael Hopmeier such other relief deemed just and proper.

Dated: Lake Placid, New York
August 28, 2026

Norfolk Beier PLLC

By: 
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To: See Attached Service List

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Unconventional Concepts, Inc. and Michael Hopmeier

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STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter of the Application of

UNCONVENTIONAL CONCEPTS, INC. and MICHAEL
HOPMEIER,

APA Project No. 2021-0276

Administrative Law Judge
David N. Greenwood

**Attorney Affirmation in Opposition to the Intervenor's Motion to Dismiss and
in Support of Applicants' Cross-Motion to Bar the Intervenor from
Participating in Pre-Hearing Proceedings**

I, Matthew D. Norfolk, Esq., am a member of Norfolk Beier PLLC, attorneys for Unconventional Concepts, Inc. (hereinafter referred to as "UCI") and Michael Hopmeier (hereinafter collectively referred to as the "Applicants"). I affirm this 28th day of August, 2026, under the penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the foregoing herein is true, and I understand that this document may be filed in an action or proceeding in a court of law. Except where stated to be upon information and belief, the following allegations are based upon my personal knowledge, review of the application record, and correspondence and documents exchanged amongst counsel and Administrative Law Judge (hereinafter referred to as "ALJ") David Greenwood or otherwise filed in this matter.

1. I submit this affirmation in opposition to the joint motion filed by the intervenors, Adirondack Council, Adirondack Wild: Friends of the Forest Preserve, Protect the Adirondacks, and Sierra Club (hereinafter collectively referred to as the "Green Groups"), in the main, seeking to "dismiss" the above-captioned adjudicatory proceeding. Specifically, per the Notice of Joint Motion filed by the Green Groups, they seek an order dismissing the instant adjudicatory proceeding and referring the subject application back to the conflicted New York State Adirondack Park Agency (hereinafter referred to as the "APA") Board of Commissioners, which includes Rush

Holt, a recent Board Member for Adirondack Council, for “final action” *solely* on the grounds that the Applicants have allegedly failed to comply with ALJ Greenwoods’ third scheduling order, *to wit*: (1) failed to permit the Green Groups to enter upon and inspect the project site and (2) failed to timely submit “pre-filed” testimony.¹ This affirmation is also submitted in support of the Applicants’ cross-motion to bar the Green Groups from participating in pre-hearing proceedings. For the reasons stated below, the Green Groups’ motion must be denied in its entirety and the Applicants’ cross-motion granted in its entirety.

I. The Green Groups Do Not Have the Legal Right to Participate in Pre-Hearing Proceedings and, Thus, Lack the Legal Right to Conduct a Project Site Inspection or File Their Joint Motion to Dismiss.

2. Pursuant to 9 N.Y.C.R.R. §580.7(a), “[a]ny person may seek to become a party in order to present evidence, cross-examine witnesses, and otherwise participate *in a public hearing* by filing a written petition with the executive director or, if he has been selected at the time of its filing, the hearing officer.” (Emphasis added.) As expressly and plainly stated in §580.7(a), the Green Groups may only participate in the *public hearing*. They may “present evidence,” which is performed *in a public hearing*. They may “cross-examine witnesses,” which is performed *in a public hearing*. And, they may “otherwise participate *in a public hearing*” (emphasis added). Said another way, the Green Groups may present evidence, cross-examine witnesses and participate *in a public hearing* in other ways. They may not participate in *pre-hearing* proceedings nor may ALJ Greenwood, with all due respect, authorize or standby and let the Green Groups participate in pre-hearing proceedings.

3. All of those involved in the above-captioned adjudicatory proceeding, with the exception of Applicants and myself, have repeatedly conflated pre-hearing proceedings with the

¹ “Pre-filed testimony” is written testimony that is to be filed prior to the start of the public hearing in this matter.

public hearing itself, which, again, has yet to start. Long ago, when this adjudicatory proceeding was in its infancy, I pointed out more than once during *pre-hearing* conferences that there is a distinction between the *public hearing*, which is scheduled to begin on October 28, 2026, and *pre-hearing proceedings*, which are ongoing. Part 580 acknowledges, indeed created, the distinction between pre-hearing proceedings and a public hearing. (See, e.g., §580.5, *Parties to the Hearing*; §580.7, *Intervention*; §580.9, *Pre-hearing conferences*; §580.10, *Appearances*; §580.14, *Conduct of the hearing*.) The most obvious distinction found in Part 580 is the title of §580.9, “**Pre-Hearing Conferences**” (emphasis added).

4. Furthermore, every scheduling order that ALJ Greenwood has issued makes a distinction between the public hearing, which is to commence on October 28, 2026, and pre-hearing proceedings. Finally, all who have participated in the pre-hearing proceedings to date, including the Green Groups, attorneys for the Green Groups, APA attorneys and I have expressly recognized or acknowledged the distinction between a public hearing and pre-hearing proceedings. For example, the APA’s online public record for the proceeding distinguishes the “Hearing Materials” from “Pre-Hearing Materials.” (See <https://apa.ny.gov/permitting/topic/permit-hearing.html> (last visited August 28, 2026).) The “Pre-Hearing” online folder consists of four online subfolders entitled “2025,” “2026,” “Discovery,” and “Witness Lists.” These subfolders contain 93 documents. The “Hearing” online folder contains *zero* (0) documents or any other item. The reason for this is because the public hearing has not yet started. Again, it is scheduled for October 28, 2026.

5. Moreover, the pre-hearing proceedings – to date – have not been public or available to the public to attend, making the distinction between pre-hearing proceedings and the public hearing even more clear.

6. In addition to the foregoing, State Administrative Procedure Act (hereinafter referred to as “SAPA”) unequivocally supports the argument that pre-hearing proceedings are different than and separate from the public hearing. SAPA recognizes procedural activity occurring before the public hearing in an adjudicatory proceeding. SAPA, Article 3, expressly contemplates and regulates numerous procedural events that may occur before the actual taking of evidence at a hearing. In particular, SAPA §§301, 302, 304, and 305 contemplate notice, pleadings, motions, conferences concerning simplification of issues, filing schedules, discovery, depositions, settlements, consent orders, defaults, and other procedural matters associated with an adjudicatory proceeding. Thus, SAPA distinguishes between the broader adjudicatory proceeding and the actual hearing conducted within that proceeding.

7. SAPA §301(1) provides, “[in] an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time.” The statutory language is significant. It does not equate the “adjudicatory proceeding” with the “hearing.” Rather, it provides that within an adjudicatory proceeding, a party must be afforded an opportunity for a hearing. That distinction indicates that the adjudicatory proceeding is the broader procedural matter, while the hearing is a component of that proceeding.

8. SAPA §301(2) requires reasonable notice of the hearing. Among other things, the notice must state the time, place and nature of the hearing; the legal authority and jurisdiction under which it will be held; the statutes and rules involved; and a short and plain statement of the matters asserted. The APA may decry that it has been and is the agency’s position that a public hearing commences with its issuance of the notice of a public hearing. This is simply wrong – a grossly skewed interpretation of SAPA and the APA regulations. Nonetheless, SAPA §301(2) further permits a party to apply for a “more definite and detailed statement” when the agency’s

statement is insufficiently definite or detailed. These requirements necessarily contemplate procedural activity occurring before the hearing itself.

9. SAPA §301(5) provides, “[u]nless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.” Accordingly, SAPA expressly recognizes that an adjudicatory proceeding can be resolved through mechanisms that do not require completion of a hearing.

10. SAPA §302 demonstrates that pleadings, motions, and intermediate rulings are part of the adjudicatory proceeding. SAPA §302(1) defines what constitutes the record in an adjudicatory proceeding. It provides, in relevant part, that the record shall include “all notices, pleadings, motions, intermediate rulings,” as well as the evidence presented, objections and rulings, proposed findings, recommendations, and the final agency decision. Thus, SAPA, itself, demonstrates that an adjudicatory proceeding encompasses more than merely the hearing.

11. SAPA §304 expressly authorizes pre-hearing case management. SAPA §304 grants substantial procedural authority to the presiding officer. In addition to things not relevant here, §304(4) authorizes the presiding officer to “[r]egulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.”

12. Moreover, § 304(5) authorizes the presiding officer to “[d]irect the parties to appear and confer to consider the simplification of the issues by consent of the parties.” A conference directed toward narrowing the issues is naturally capable of occurring before the evidentiary hearing. SAPA, therefore, affirmatively contemplates procedural conferences and case-management activities ancillary to, and preceding, the hearing itself.

13. SAPA §305 contemplates pre-hearing discovery and depositions. SAPA §305 provides that “[e]ach agency having power to conduct adjudicatory proceedings may adopt rules

providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.” Discovery and depositions precede a hearing and are mechanisms for preparing the issues and evidence to be presented at that hearing. Accordingly, SAPA §305 provides additional statutory confirmation that an adjudicatory proceeding may contain procedural stages occurring before the hearing.

14. In sum, SAPA Article 3 unmistakably contemplates procedural activity occurring before an evidentiary hearing. SAPA §301 provides for notice, requests for more definite statements, and informal disposition. SAPA §302 includes notices, pleadings, motions, and intermediate rulings within the administrative record. SAPA §304 authorizes scheduling, filings, and conferences designed to simplify the issues. SAPA §305 authorizes agency rules governing discovery and depositions. Hence, SAPA’s statutory structure supports the conclusion that an adjudicatory proceeding is broader than the hearing itself. The hearing is only one component or stage of the adjudicatory proceeding, while other procedural events, such as discovery or limiting the issues to be addressed at the hearing, may occur before the hearing.

15. Based upon the foregoing, both the APA regulations and SAPA have structured and contemplate an adjudicatory proceeding to include many procedural events or stages separate and apart from the public hearing to be had therein. Revisiting APA regulation 9 N.Y.C.R.R. §580.7(a), the plain language therein only permits qualified persons or entities (intervenor) to participate in the *public hearing*. If the drafters of the regulations intended to permit intervenors to participate in all stages of the adjudicatory proceeding, presumably the APA regulations would have stated so. For example, they would have permitted intervenors to inspect a project site inspection, something that ALJ Greenwood, APA Attorney Sullivan and I all agree the APA regulations do not provide.

16. I acknowledge that counsel for the Green Groups and the attorneys for the APA must promote or defend their respective clients' interests. They will make counter-arguments, I am sure. However, upon information and belief, these attorneys all went to law school. Upon information and belief, they are all licensed to practice law in the State of New York. Educated and qualified as they are, I am sure they agree with my interpretation and summary of the APA regulations and SAPA. There simply is no other reasonable interpretation of the regulations and statute. Indeed, one does not need to be a federal court judge, a justice of the New York State Court of Appeals or New York State Supreme Court, an administrative law judge or a practicing attorney to correctly read and interpret the relevant language in the APA regulations and SAPA and come to the conclusion that the Green Groups do not have the legal right to participate in pre-hearing proceedings.

17. Nonetheless, I anticipate that the Green Groups will argue that intervenors were permitted by the APA to participate in pre-hearing proceedings in the matter of the application of Adirondack Club and Resort (ARC) involving a proposed project in Tupper Lake, New York and, thus, are allowed to participate in pre-hearing proceedings in the instant matter. In particular, they likely will argue that a precedent was set in the ARC application and that the APA's apparent past interpretation of its own regulations is entitled to deference. The APA may adopt this no-good argument, as well. However, as the Appellate Division, Third Department, plainly stated in *Matter of Jorling v. Adirondack Park Agency*, 214 A.D.3d 98, 103 (3d Dept. 2023):

An agency's interpretation of its own regulations is ordinarily entitled to deference, but this rule does not apply when the agency's interpretation contradicts the plain language of the regulations or is irrational or unreasonable (see *Matter of Entergy Nuclear Indian Point 2, LLC v New York State Dept. of State*, 130 AD3d 1190, 1192, 14 N.Y.S.3d 177 [3d Dept 2015]; *Matter of Town of Camillus v Commissioner of Dept. of Env'tl. Conservation*, 256 AD2d 967, 968, 681 N.Y.S.2d 903 [3d Dept 1998]).

18. In *Jorling*, an Article 78 proceeding against the APA, in which I participated as counsel for the applicant/respondent, the petitioners challenged the APA's method of categorizing or classifying wetlands. In response, the APA argued that the way it interpreted the relevant APA regulations and the method in which they classified the wetlands in that particular matter had been done by the APA for decades and, therefore, the court should give the agency's interpretation deference and accept its regulation interpretation and methodology and uphold its final action. The Third Department rejected this argument and annulled the APA's determination granting the application because of the agency's misinterpretation or misapplication of its own regulations. The appellate court made it abundantly clear that deference will not be given if an agency's interpretation of its regulations contradicts the plain language of the regulation.

19. As demonstrated above, the Green Groups' anticipated arguments are without merit – they are losing arguments. What's more, unlike the situation in *Jorling* where the APA had classified wetlands using a particular methodology scores and scores of times over a period of decades, here, we are faced with a proceeding that rarely occurs. There has not been a sufficient number of APA adjudicatory proceedings to establish a reliable “track record” and a definitive precedent.² Now is the time to mandate compliance with Part 580, in particular §580.7. Otherwise, a court of competent jurisdiction will do that. I am confident about this. The language in the APA regulations, in particular §580.7, and SAPA is simply not open to interpretation.

² I cannot explain with certainty why the intervenors in the ARC proceeding were permitted to participate in pre-hearing proceedings. I have suspicions. Whiteman Osterman & Hanna LLP and former APA attorney, Paul Van Cott, who is now an attorney at Whiteman Osterman & Hanna LLP representing Adirondack Council, were involved in the ARC proceeding. Whiteman Osterman & Hanna LLP represented ARC in the previous proceeding, and Attorney Paul Van Cott was the attorney for the APA. I believe these attorneys involved in the previous ARC proceeding either misinterpreted, overlooked or ignored SAPA and the APA regulations. I suppose there could be other reasons, but in the end, it does not matter. To allow the Green Groups to continue to participate in pre-hearing proceedings in the instant matter would contradict the plain language in SAPA and the APA regulations. Borrowing an old adage, two wrongs don't make a right. This misapplication of SAPA and the APA regulations should not be allowed to continue.

20. As for the Applicants and me, we unsuccessfully opposed the Green Groups' application to be granted party status. We have accepted the ruling granting them party status, although disagree with it. Applicants and I have largely complied with ALJ Greenwood's directives, with the exception of untimely requesting more time to file pre-hearing testimony. Until now, we have tolerated the Green Groups' participation in the pre-hearing proceedings and their maneuvers therein designed to create an adversarial proceeding that resembles a lawsuit rather than an administrative proceeding intended to develop a record for the APA Board to assist it in rendering a determination on the application. However, Applicants can no longer tolerate this. The Green Groups are unlawfully participating in the pre-hearing proceedings and Applicants hereby object, again, to their (unlawful) participation.

21. As demonstrated above, as a matter of law, ALJ Greenwood must grant the Applicants' cross-motion and order the Green Groups barred from further participating in pre-hearing proceedings and, in turn, strike or deny their pending motion to dismiss the adjudicatory proceeding and have the application referred to the conflicted APA Board for final action.

22. Notwithstanding the foregoing, and assuming for the sake of argument that the Green Groups may lawfully participate in pre-hearing proceedings, which they cannot, the Green Groups would still not have the right to inspect the project site. The APA Act and the rules and regulations promulgated thereunder do not give the Green Groups the right to enter upon and inspect the project site.³ Both ALJ Greenwood and APA Attorney Grace Sullivan agree with this legal conclusion. ALJ Greenwood expressly stated in a conference and in his email of July 10, 2026, that "there is no legal requirement for one to be conducted as part of the hearing process..."

³ The obvious reason for this is that neither the APA Act nor the rules and regulations found in Title 9, *Executive Department*, Subtitle Q, *Adirondack Park Agency*, permit it. Again, 9 N.Y.C.R.R. §580.7(a) authorize intervenors to participate in the public hearing – nothing more.

Likewise, APA Attorney Sullivan expressly stated in her email of July 9, 2026, that there is no legal requirement to allow the Green Groups an opportunity to inspect the project site. Annexed hereto as **Exhibit A** are true and accurate copies of ALJ Greenwood's and Attorney Sullivan's respective emails. Thus, to the extent that the Green Groups' motion is based upon the Applicants' refusal to let them enter the private land where the project is proposed, it must be denied.

23. Lastly, it must be said that the Applicants have acted in good faith in developing the record for the APA Board to consider. Without any legal obligation or requirement, the Applicants voluntarily offered the Green Groups an opportunity to enter upon and inspect the project site, which is located at 195 Hale Hill Lane, in the Town of Lewis, County of Essex, State of New York (hereinafter referred to as "195 Hale Hill") under certain reasonable terms and conditions. Annexed hereto as **Exhibit B** is a true and accurate copy of the Applicants' invitation to the Green Groups to enter upon 195 Hale Hill and conduct an inspection. In an email sent on July 9, 2026, ALJ Greenwood expressly stated that he "I have no objections to the terms and conditions." The Green Groups rejected the offer, wailing that their inspection should not be subject to any terms and conditions. And now, with their instant motion, the Green Groups have the audacity to accuse the Applicants of being obstinate wrongdoers thumbing their proverbial nose at ALJ Greenwood, the APA and this adjudicatory process.

II. The Missile Silo Lot (87 Hale Hill Lane) Is Not Part of the Project Site and, Therefore, Even If the Green Groups May Participate in Pre-Hearing Proceedings, Which They Cannot, They Have No Legal Right to Inspect the Lot.

24. On November 19, 2021, nearly five years ago, the Applicants filed an *Application for Commercial and/or Industrial Uses* form, with attachments and subsequent supplements, seeking approval to operate a ballistic testing range at 195 Hale Hill Lane to assist the United

States in research and development of artillery.⁴ On the second page of the application form, Michael Hopmeier is designated as the Project Sponsor and James Pulsifer is designated as the consenting property owner. Moreover, on page 2 of the application form, the project site is identified by its tax map parcel number - 38.1-1-31.000. That tax map number is designated to 195 Hale Hill only. The attachments to the application form more specifically identified the project site as 195 Hale Hill Lane. For example, attached to the application form is a copy of the deed for 195 Hale Hill (Attachment A), a property description report from the County of Essex for 195 Hale Hill (Attachment A), and site plans depicting 195 Hale Hill (Attachment D). Furthermore, all of Applicants' subsequent responses to the six notices of incomplete application (NIPAs) specifically identify 195 Hale Hill as the project site.

25. Finally, Applicants did not provide the APA proof of consent by the owner of the lot located at 87 Hale Hill Lane, in the Town of Lewis and County of Essex, bearing tax map no. 38.1-1-29.000 (commonly referred to the "Missile Silo Site") to the filing of the project application. This is further proof that the Missile Silo Lot has not and is not a part of the project site.⁵

26. As demonstrated above, Applicants only applied for approval to operate a ballistic testing range at 195 Hale Hill. The project does not include any other property, including but not limited to the Missile Silo Lot. Accordingly, even if the Green Groups had a right to visit and inspect the project site, which they do not, and the Missile Silo Lot was a part of the project, which it is not, the Green Groups would not have a right to visit and inspect the Missile Silo Lot.

⁴ The application form, with its attachments and supplements, and other official documents submitted by the Applicants may be found on the APA website, <https://apa.ny.gov/permitting/topic/permit-hearing.html>.

⁵ Notably, at no time over the five years the project application has been pending did the APA request the consent of the owner of the Missile Silo Lot to permit the Applicants to go forward with their application for the project.

Accordingly, to the extent the Green Groups' motion is based upon the Applicants' refusal to permit them to inspect the Missile Silo Site, it must be denied.

III. The Proposed Ballistic Testing Operation Will Be Conducted under a Federal Contract and, Thus, Is Exempt from State and Municipal Land Use Laws, Including the APA ACT, Making the Green Groups' Motion Moot.

27. Formed in 1996, UCI is a professional engineering and technical consulting firm specializing in matters related to national security and strengthening and enhancing the capabilities of the U.S. military. Typical projects involve high value, time critical programs which do not necessarily fall under the purview of conventional consulting firms or government agencies. Its past work has involved agencies and organizations including the Defense Advanced Research Projects Agency, the Defense Threat Reduction Agency, Centers for Disease Control and Prevention (CDC), National Aeronautics and Space Administration (NASA), the Joint Chiefs of Staff, Department of Homeland Security, U.S. Northern Command, U.S. Joint Forces Command, U.S. Army organizations, and the Office of the Secretary of Defense, to name a few. Areas of expertise encompass development and transitioning of technologies from and to civilian, commercial, military, and government sectors. UCI is especially adept at finding and transitioning technologies that are developed for very specific high technology applications but can be adapted and implemented in areas that were not their original purpose. Additionally, UCI does comprehensive strategy and policy reviews to validate concepts of application and operations related to these technologies. The broad background and vision of UCI have resulted in a number of technologies originally developed for specific defense and government initiatives being transitioned into other government programs, thereby leveraging taxpayer's dollars. In addition, UCI has been instrumental in transitioning technologies through Cooperative Research and Development Agreements (CRDAs), Cooperative Agreements (CAs) and commercial licensing

agreements to support university and commercial sector research and development. Dual use of existing technology leverages the high cost of development in new technology and finds alternative markets and applications where none were present before. UCI has also been instrumental in new business development and has supported the transition of Explosive Ordnance Disposal (EOD) training devices, medical testing equipment and antimicrobial solutions into commercial applications. UCI is a registered vendor in the United Nations Global Marketplace as a supplier to the United Nations. UCI has also been a leader in environmental support and maintenance. For example, it has invested significant resources in firefighting equipment, such as firetrucks and high-capacity deployable water bladders, which have been made available to the local Town of Lewis fire department. Further, it is expending resources in the deployment of pollinators. For example, UCI is currently deploying honeybee colonies for the sole purpose of supporting the environment and will not be realizing any financial gain from the sale of the honey as part of their strategic mission to enhance and maintain the Adirondak Park through proactive measures, something the Green Groups purport to do, but seldom seem to do.

28. Make no mistake, UCI's national-security work is an integral part of ensuring the national security of the United States of America and its citizens. No one should assume that the proposed ballistic testing range is just a commercial shooting range. It is not.

29. All of the activities and uses the Applicants propose (*i.e.*, ballistic testing and the storage of munition and other equipment) will be performed under and subject to a federal contract. These activities or uses are strictly regulated by federal departments and agencies (*e.g.*, the United States Army Capabilities Command and Defense Command (DEVCOM) and Defense Contract Management Agency). Federal government contractors, like UCI, are audited every six months.

30. The Applicants stated in their application that the testing would be subject to federal contracts, but seemingly was ignored by the APA, the Green Groups and the media. The APA continues to claim jurisdiction over the project. The Applicants decided to continue with the application before the APA in good faith to demonstrate transparency and consider the concerns the APA and Green Groups may have with the project. Yet, at no time has the APA encouraged discussions with the Applicants (and the Green Groups) to resolve the issues it has with the proposed project. The Applicants' requests to engage in meaningful discussions with the APA to consider modifications to the proposed project and the operations planned went unreturned.

31. Nonetheless, as mentioned above and stated in the application, the proposed ballistic testing at 195 Hale Hill will only be performed pursuant to a contract with the federal government (*e.g.* Department of War and U.S. Army). Under the Supremacy Clause of the United States Constitution (Clause 2) and the doctrine of intergovernmental immunity, federal government actions are generally not subject to state or municipal regulations. *United States v. Windsor*, 765 F.2d 16 (2d Cir 1985) ("Absent congressional consent, direct state regulation of the activities of the [federal] Government is barred by the Supremacy Clause.") This includes acts performed by federal government private contractors. *See, e.g., Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 180-81 (1988); *Windsor, supra*; *The Geo Group and United States of America v. Newsom*, Case No. 20-56172 (9th Cir. 2020); *United States v. State of Montana*, 699 F. Supp. 836 (Montana District 1988). Thus, again, assuming for the sake of argument that the Green Groups may participate in pre-hearing proceedings, which they cannot, their instant motion is moot. Any argument or proof submitted against the application is irrelevant. The entire project is subject to federal regulations and only federal regulations. The proposed project is immune to state regulation, including the APA Act and the rules and regulations promulgated thereunder.

WHEREFORE, it is respectfully requested that ALJ Greenwood deny the Green Groups' motion in its entirety and grant the Applicants' cross-motion in its entirety, grant the Applicants such other and further relief as is just, fair, and appropriate.

A handwritten signature in blue ink, appearing to read 'M. Norfolk', with a long horizontal flourish extending to the right.

By: _____
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Attorneys for Michael Hopmeier and
Unconventional Concepts, Inc.

EXHIBIT A

RE: Preliminary response RE: P2021-0276: Site Visit Scheduling

From Sullivan, Grace (APA) <Grace.Sullivan@apa.ny.gov>

Date Thu 7/9/2026 5:04 PM

To Matthew D. Norfolk <mnorfolk@norfolkbeier.com>; PVanCott@woh.com <PVanCott@woh.com>

Cc Greenwood, David N (DEC) <david.greenwood@dec.ny.gov>; Executivedirector@protectadks.org <executivedirector@protectadks.org>; Hubbard, Jennifer M (APA) <Jennifer.Hubbard@apa.ny.gov>; Christopher Amato <conservationdirector@protectadks.org>; pgitlen@WOH.com <pgitlen@WOH.com>; David Gibson <dgibson@adirondackwild.org>; Seitelman, Anna V. <ASeitelman@woh.com>; Ommen, Todd D. <tommen@law.pace.edu>; Sean Davis <sdavis@norfolkbeier.com>

Dear Judge Greenwood,

While there are no specific rules, regulations, or statutory provisions which require the intervening parties be provided the opportunity for a site visit, the principles of evidence, judicial equity, and common practice all strongly support that it is well within your authority to order one.

It is unclear to the APA hearing staff how we went from negotiating the terms of the site visit, to a dispute as to whether a site visit should occur at all.

APA hearing staff is willing to limit the July 15th site visit to the portion of the Project Site located at 195 Hale Hill Lane, Lewis, NY, but we believe the discussion as to whether a second site visit may be scheduled for the other parcel should be left open for a later date.

However, for the reasons outlined in our prior e-mails, we request that the terms provided by the Applicant's attorney are modified to reflect the needs of the APA hearing staff, intervening parties, and any participating experts. To reiterate:

1. The site visit start time shall be 10:00A.M.
2. The duration of the site visit shall not be less than 1.5 hours.
3. Any limitation on the number of participants at the site at one time due to "safety concerns" must be addressed through the expansion of site visit opportunities rather than limitations on which experts will be permitted to visit the site. It would be helpful if each of the parties could provide a number of anticipated participants so that we can gauge the extent of this issue. We anticipate having 2-3 attendees.

Respectfully submitted,
Grace Sullivan

From: Matthew D. Norfolk <mnorfolk@norfolkbeier.com>

Sent: Thursday, July 9, 2026 3:58 PM

To: PVanCott@woh.com

Cc: Greenwood, David N (DEC) <david.greenwood@dec.ny.gov>; Sullivan, Grace (APA) <Grace.Sullivan@apa.ny.gov>; Executivedirector@protectadks.org; Hubbard, Jennifer M (APA) <Jennifer.Hubbard@apa.ny.gov>; Christopher Amato <conservationdirector@protectadks.org>; pgitlen@WOH.com; David Gibson <dgibson@adirondackwild.org>; Seitelman, Anna V. <ASeitelman@woh.com>;

Re: Preliminary response RE: P2021-0276: Site Visit Scheduling

From Greenwood, David N (DEC) <david.greenwood@dec.ny.gov>

Date Fri 7/10/2026 12:39 PM

To Matthew D. Norfolk <mnorfolk@norfolkbeier.com>; PVanCott@woh.com <PVanCott@woh.com>; Sullivan, Grace (APA) <Grace.Sullivan@apa.ny.gov>

Cc Executivedirector@protectadks.org <executivedirector@protectadks.org>; Hubbard, Jennifer M (APA) <Jennifer.Hubbard@apa.ny.gov>; Christopher Amato <conservationdirector@protectadks.org>; pgitlen@WOH.com <pgitlen@WOH.com>; David Gibson <dgibson@adirondackwild.org>; Seitelman, Anna V. <ASeitelman@woh.com>; Ommen, Todd D. <tommen@law.pace.edu>; Sean Davis <sdavis@norfolkbeier.com>

Dear Parties:

Please forgive my delay in responding to this email thread, I was out this morning with minor outpatient surgery, nothing serious. It would be beneficial to this process to have a site visit, but there is no legal requirement for one to be conducted as part of the hearing process that I am aware of. The requests of APA hearing staff for a slightly later start time and a slightly longer site visit duration seem entirely reasonable to me and I struggle to imagine a good reason for refusing such minor accommodations. I was prepared to get hotel accommodations in order to get to the site as early as proposed, but it would be great if I could just drive from the Albany area in the morning. MR. NORFOLK: Please confer with the Applicant, your client and see if he is willing to continue with the planned site visit for July 15, 2026. Let us know when you can I hope we can work this out.

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

w: (518) 402-9004 | david.greenwood@dec.ny.gov
dec.ny.gov

From: Matthew D. Norfolk <mnorfolk@norfolkbeier.com>

Sent: Thursday, July 09, 2026 5:05 PM

To: PVanCott@woh.com <PVanCott@woh.com>; Sullivan, Grace (APA) <Grace.Sullivan@apa.ny.gov>; Greenwood, David N (DEC) <david.greenwood@dec.ny.gov>

Cc: Executivedirector@protectadks.org <executivedirector@protectadks.org>; Hubbard, Jennifer M (APA) <Jennifer.Hubbard@apa.ny.gov>; Christopher Amato <conservationdirector@protectadks.org>; pgitlen@WOH.com <pgitlen@WOH.com>; David Gibson <dgibson@adirondackwild.org>; Seitelman, Anna V. <ASeitelman@woh.com>; Ommen, Todd D. <tommen@law.pace.edu>; Sean Davis <sdavis@norfolkbeier.com>

Subject: Re: Preliminary response RE: P2021-0276: Site Visit Scheduling

Attention: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Judge Greenwood:

On behalf of my clients, Project Sponsor Michael Hopmeier and Unconventional Concepts, Inc., the Applicant, I hereby withdraw the offer extended to the intervening parties to perform an inspection of the project site. The intervening parties object to the site visit terms and conditions my clients have presented. Furthermore, there is no legal requirement that a project sponsor or applicant permit intervening parties to enter upon and inspect a project site. I certainly could not find any. I invite all receiving this email to correct me if there is, indeed, a legal mandate requiring my clients to permit intervening parties to enter upon and inspect the project site.

Sincerely,
Matthew D. Norfolk, Esq.



D: 518.302.7064

F: 518.302.7100

A: The Outpost Plaza
55 Barn Road, Suite 201
Lake Placid, NY 12946

E: mnorfolk@norfolkbeier.com

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From: VanCott, Paul <PVanCott@woh.com>

Sent: Thursday, July 9, 2026 1:57 PM

To: Matthew D. Norfolk <mnorfolk@norfolkbeier.com>; Sullivan, Grace (APA) <Grace.Sullivan@apa.ny.gov>; Greenwood, David N (DEC) <david.greenwood@dec.ny.gov>

Cc: Executivedirector@protectadks.org <executivedirector@protectadks.org>; Hubbard, Jennifer M (APA) <Jennifer.Hubbard@apa.ny.gov>; Christopher Amato <conservationdirector@protectadks.org>; Gitlen, Philip <PGitlen@woh.com>; David Gibson <dgibson@adirondackwild.org>; Seitelman, Anna V. <ASeitelman@woh.com>; Ommen, Todd D. <tommen@law.pace.edu>; Sean Davis <sdavis@norfolkbeier.com>

Subject: RE: Preliminary response RE: P2021-0276: Site Visit Scheduling

What do these last 2 emails from you mean, Matt?

Perhaps we should call off any site visit if your client is unwilling provide reasonable courtesies to accommodate staff and the other parties. You are essentially denying the parties a

EXHIBIT B



July 7, 2026

Via Email Only

Hon. David Greenwood
Administrative Law Judge
NYS Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway
Albany, New York 12233-1550
david.greenwood@dec.ny.gov

Re: APA Project 2021-0276;
Sponsor/Applicant: Michael Hopmeier/Unconventional Concepts, Inc.;
Site Address: 195 Hale Hill Road, Town of Lewis, County of Essex

Dear Judge Greenwood:

Our clients, Mr. Michael Hopmeier (Sponsor) and Unconventional Concepts, Inc. (hereinafter referred to as "UCI") (Applicant), require the terms and conditions stated hereinbelow to apply to and govern the site visit scheduled for July 15, 2026. The primary purpose of the terms and conditions is to ensure the safety and well-being of those visiting the site, as well as facilitate an efficient and organized site visit.

Terms and Conditions of Site Visit:

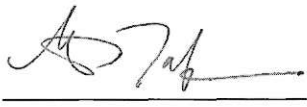
1. All individuals attending the site visit must sign a waiver of liability and hold harmless agreement, which shall be provided to Your Honor, the Adirondack Park Agency (hereinafter referred to as the "APA") and the parties before 5 pm on Friday, July 10, 2026.
2. The taking of photographs and recording of videos shall be limited to the site.
3. Transportation to the site shall be provided by UCI (individuals will be transported to the site using well-equipped all-terrain passenger vehicles).
4. The visit shall begin at 8:30 am sharp.
5. The Adirondack Park Agency (hereinafter referred to as the "APA") and each party shall be permitted to have no more than three individuals attend the site visit.
6. The APA and each party shall have 45 minutes to inspect the site.

[Signature On Following Page]

Hon. David Greenwood
July 7, 2026
Page 2

Sincerely,

Norfolk Beier PLLC

By: 

Matthew D. Norfolk

cc: Counsel of Record