

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,

APA Hearing Officer  
David N. Greenwood

**NOTICE OF CROSS-MOTION**

---

**PLEASE TAKE NOTICE** that upon the affirmation of Matthew D. Norfolk, Esq., affirmed March 4, 2026, and upon all papers and proceedings heretofore had herein, Unconventional Concepts, Inc. and Michael Hopmeier will cross-move the hearing officer, David N. Greenwood, Administrative Law Judge, upon submission only, on March 13, 2026, for an order staying the above-referenced public hearing on APA Project No. 2021-0276 and all pre-hearing proceedings during the pendency of the CPLR Article 78 proceeding currently before Essex County Supreme Court, Index No. CV26-0063, and for such other relief deemed just and proper.

**PLEASE TAKE FURTHER NOTICE** that answering papers, if any, are to be served on the return date by 5:00 PM via email to the hearing officer and the parties, or as otherwise directed by the hearing officer.

Dated: Lake Placid, New York  
March 4, 2026

Norfolk Beier PLLC

By:   
Matthew D. Norfolk, Esq.  
55 Barn Road, Ste. 201  
Lake Placid, New York 12946  
518.302.8080  
mnorfolk@norfolkbeier.com  
*Attorneys for Applicants*

To: See Attached Service List

**Service List**  
**APA 2021-0276 Public Hearing**  
**Unconventional Concepts, Inc. and Michael Hopmeier**

**Project Sponsor / Applicant  
Representatives**

Matthew M. Norfolk  
Norfolk Beier PLLC  
1936 Saranac Ave, Suite 106  
Lake Placid, NY 12946

Shane Kelly  
Norfolk Beier PLLC  
1936 Saranac Ave, Suite 106  
Lake Placid, NY 12946

**APA Hearing Staff**

Grace Sullivan  
Senior Attorney  
Adirondack Park Agency  
PO Box 99  
1133 NYS Route 86  
Ray Brook, NY 12977

Jennifer Hubbard  
Adirondack Park Agency  
PO Box 99  
1133 NYS Route 86  
Ray Brook, NY 12977

**Petitioners for Party Status**

Roger Downs  
Conservation Director  
Sierra Club Atlantic Chapter  
Care of Todd D. Ommen  
Managing Attorney  
Pace Environmental Litigation Clinic  
78 North Broadway  
White Plains, NY 10603

David Gibson  
Managing Partner  
Adirondack Wild: Friends of the Forest  
Preserve  
P.O. Box 9247  
Niskayuna, NY 12309

Philip H. Gitlen, Esq.  
Paul Van Cott, Esq.  
Anna V. Seitelman, Esq.  
Attorneys for Adirondack Council, Inc.  
Whiteman Osterman & Hanna LLP  
One Commerce Plaza  
Albany, NY 12260

Christopher Amato  
Conservation Director and Counsel  
Protect the Adirondacks  
P.O. Box 48  
North Creek, NY 12853

David N. Greenwood  
Administrative Law Judge  
NYS DEC  
Office of Hearings and Mediation Services  
625 Broadway, 1st Floor  
Albany, New York 12233-1550

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,

APA Hearing Officer  
David N. Greenwood

**Attorney Affirmation of  
Matthew D. Norfolk, Esq.  
in Opposition to Motion to  
Revise Issues, and in  
Support of Cross-Motion to  
Stay Public Hearing**

---

1. I, Matthew D. Norfolk, Esq., am a member of Norfolk Beier PLLC, attorneys for Unconventional Concepts, Inc. and Michael Hopmeier (hereinafter collectively referred to as the “Applicants”). 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 in this matter.

2. I make this affirmation in opposition to the motion of Adirondack Council, Inc. (hereinafter referred to as “Adirondack Council”), seeking to revise and reorder the issues in this public hearing, and in support of Applicants’ cross-motion to stay the public hearing and all pre-hearing proceedings pending a decision in the CPLR Article 78 proceeding currently before the Essex County Supreme Court, Index No. CV26-0063.

**The Public Hearing Should be Stayed Pending  
Resolution of the Related Article 78 Proceeding**

3. As the parties are aware, Applicants commenced a CPLR Article 78 proceeding seeking (1) to annul, vacate, and set aside as a nullity the determination of the Board of New York State Adirondack Park Agency to conduct this public hearing, and (2) to annul, vacate, and set aside the determination of Barbara Rice, Executive Director of New York State Adirondack Park

Agency (hereinafter collectively referred to as the “APA”), denying Applicant’s motion to disqualify the hearing officer, David N. Greenwood, Administrative Law Judge (hereinafter referred to as the “Hearing Officer”), from presiding over and conducting said public hearing and pre-hearing proceedings.

4. The Article 78 proceeding involves similar parties, including Applicant Michael Hopmeier, Hearing Officer, and the APA.

5. The Hearing Officer has regulatory and inherent authority to control the course of this proceeding to ensure fairness, efficiency, and the conservation of administrative resources. A stay is warranted here as parallel judicial review may affect (or entirely moot) these proceedings, and the public hearing as a whole. The Article 78 proceeding presents threshold jurisdictional questions that go to the validity of this forum and the authority of the presiding officer. Moving forward with discovery, motion practice, and the evidentiary hearing while those issues are pending risks wasting substantial resources, and may prejudice the parties.

6. If Supreme Court grants relief on either ground, all proceedings, including Adirondack Council’s instant motion, could be nullified. The court could determine that the APA erred in sending the application to a public hearing and reverse that determination, causing the parties to restart this process. The court could also determine that the Hearing Officer should be disqualified and a new hearing officer appointed to replace him. This would call into question the validity of all decisions and formal rulings made by the Hearing Officer, including on Adirondack Council’s instant motion.

7. The public hearing should be stayed as to not waste parties’ time and money. There is a briefing schedule in place in the Article 78 proceeding—a true and accurate copy of which is annexed hereto as **Exhibit A**. Although the hearing start date has been adjourned until April 22,

2026, the dates of the discovery schedule in place in this public hearing are still active. In the public hearing, parties are to serve witness lists and discovery demands on or before March 18, 2026. In the Article 78 proceeding, respondents' answering papers are due March 19, 2026. It is premature and potentially inefficient use of parties' efforts to continue with discovery and what is essentially trial preparation herein while the Article 78 proceeding is being litigated. As can be seen in Exhibit A, the papers in the Article 78 proceeding will be fully submitted by April 20, 2026—before the hearing start date. Applicants request the hearing start date be adjourned until June 24, 2026, at 10:00 AM, at APA headquarters, and that all proceedings, including but not limited to, motions, discovery, and pre-hearing conferences, be stayed until Supreme Court issues its decision, which will likely be within 60 days of April 20, 2026.

8. The requested stay is temporary and narrowly tailored. It would remain in effect only until Supreme Court resolves the Article 78 proceeding. No prejudice will result from a short pause. In contrast, denying a stay risks duplicative proceedings, wasted resources, and potential invalidation of the record. Administrative efficiency, fairness, and judicial economy all favor allowing the court to resolve the threshold legality of this proceeding before requiring the parties to continue expending substantial effort.

9. For the Hearing Officer's authority to stay the public hearing, see:

**State Administration Procedure Act (“SAPA”) §304. Powers of presiding officers. Except as otherwise provided by statute, presiding officers are authorized to:**

**(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.**

**9 NYCRR §580.12. Adjournments.**

**(a) An application for an adjournment made in advance of the first hearing day, or while the hearing is in recess, shall not be granted except for good cause shown and unless written request is presented therefor to the hearing**

**officer on notice to the parties three business days in advance of the next scheduled hearing session.**

**(b) An application for an adjournment made during a hearing shall not be granted except for good cause shown.**

**(c) Hearings shall be adjourned to a time, day and place certain. No further formal notice need be given; however, the agency may give such notice of the reconvening of a hearing as it deems appropriate.**

**9 NYCRR §580.14. Conduct of the Hearing.**

**(4) The hearing officer shall have power to:**

...

**(iii) set the time and place of hearings beyond the initial hearing day, regulate the course of the hearing; adjourn the hearing from time to time, indicate the place of the adjourned hearing; and fix the time for the filing of briefs and other documents;**

...

**(xi) do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing.**

10. For good cause shown surrounding the pendency and implications of the Article 78 proceeding, including the threat to the validity of the hearing, waste of administrative and party resources, and the lack of any prejudice, it is respectfully requested the public hearing is stayed pending the outcome of the Article 78 proceeding, with the hearing start date adjourned to time, day and place certain of June 24, 2026, at 10:00 AM, at APA headquarters.

**The Issues as Order in APA Project Order #2021-0276 Should Not be Modified**

11. Subject to and without waiving the foregoing objections and requests of Applicants' cross-motion, Adirondack Council's request to revise and reorder the issues in APA Project Order #2021-0276 (hereinafter referred to as the "Project Order") should be denied.

12. Pursuant to 9 NYCRR §580.3, the APA determined the issues in this hearing and provided notice thereof. The Project Order states:

**the hearing officer shall have all the authority provided in 9 NYCRR 580.9, and the hearing notice shall direct potential parties to address the issues stated above in any petition for party status. 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).**

Despite what the APA purports to order, it cannot override the hearing procedures prescribed by Executive Law and 9 NYCRR Part 580 to grant authority to the Hearing Officer to add issues. The APA's decree here in the Project Order is an extra-judicial determination, and the Hearing Officer's adding of an issue would also be an extra-judicial act.

13. The Hearing Officer's authority on this topic is limited to:

**9 NYCRR §580.9:**

**The hearing officer may direct the parties to appear for a conference to simplify, define, limit or resolve issues. The hearing officer shall summarize for the record the action taken at the conference and any admissions, stipulations or agreements which were made by the parties.**

and

**9 NYCRR §580.14(4):**

**The hearing officer shall have power to: (i) direct the parties to appear and confer at any time prior to or during the course of the hearing to consider the simplification of issues by consent of the parties.**

Neither of these sections provide the Hearing Officer the authority to add or reorder issues, only to limit or simplify the issues. Clearly, the regulations envisioned that once the parties to the public hearing fleshed out the evidence for the public hearing record, it would be prudent to narrow the issues and hone in on the focus of the hearing. Adirondack Council is instead proposing to broaden the scope of the public hearing, expanding the number and extent of the issues, and revisiting threshold jurisdictional issues determined years ago. This is not what the above-cited regulations are for, and to expand the scope of the public hearing is outside the power of the Hearing Officer.

14. Further, the Hearing Officer can only revise the issues upon consent of the parties. Here, Applicants do not consent to modifying the issues as presented in the Project Order. The parties have already been directed by the Hearing Officer to appear and confer to discuss the issues. Despite cooperation and productive discussion among the parties, a formal agreement could not be agreed upon and stipulated by the parties. Without consent, the Hearing Officer cannot revise the issues of the public hearing.

15. Additionally, the issues should not be reordered, or deemed to require the presentation of evidence in the order listed in the Project Order. “The burden shall be on the project sponsor to present testimony concerning the matters alleged in the application.” 9 NYCRR §580.11(b). “In addition to proving the allegations of the application, the project sponsor shall have the burden of demonstrating that the project will be in compliance with applicable statutory and regulatory requirements.” 9 NYCRR §580.14(b)(6)(i). The burden is on Applicants to present their case and introduce evidence. Adirondack Council cannot dictate how Applicants present their case, and Applicants object to any attempt to interfere with their right to proceed with their legal strategy. *See* 9 NYCRR §580.14(b)(4) (“As a general rule, the project sponsor shall proceed first, followed by the agency staff, other governmental agencies, and other parties”).

**WHEREFORE**, it is respectfully requested that the Hearing Officer (1) grant Applicants’ cross-motion for a stay of the public hearing and pre-hearing proceedings; (2) deny Adirondack Council’s motion to revise and reorder the issues be denied; (3) grant such other and further relief to the Applicants as is just, fair, and appropriate.

I affirm this 4th day of March, 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 and, of course, in the above-captioned administrative proceeding.

By:   
Matthew D. Norfolk, Esq.

# **EXHIBIT A**

SUPREME COURT FOR THE STATE OF NEW YORK  
COUNTY OF ESSEX

---

In the Matter of MICHAEL HOPMEIER,

Petitioner,

-against-

BOARD OF NEW YORK STATE ADIRONDACK PARK  
AGENCY, RUSH HOLT, in his capacity as Member of  
the Board of New York State Adirondack Park Agency,  
BARBARA RICE, in her capacity as Executive Director  
of New York State Adirondack Park Agency, and DAVID  
N. GREENWOOD, in his capacity as Administrative  
Law Judge for New York State Adirondack Park  
Agency,

**Scheduling Order**

Index No. CV26-0063

Respondents.

---

The Court's February 4, 2026 order to show cause (NYSCEF Doc No. 19) is modified as follows:

Petitioner shall have until February 13, 2026 to serve Respondents with the Order to Show Cause, dated February 4, 2026 (NYSCEF Doc. No. 19), and Verified Petition, with exhibits,

Petitioner shall have until February 27, 2026, to file and serve a memorandum of law in support of the Verified Petition;

Respondents shall have until March 19, 2026, to file and serve an answer or dispositive motion;

Petitioner shall have until March 26, 2026, to file and serve a response;

Respondents shall have until April 9, 2026, to file a reply in support of a dispositive motion they may have filed; and,

The return date shall be April 20, 2026 at 10 am at the Essex County Supreme Courthouse at 7559 Court Street, Elizabethtown, NY 12932.

So Ordered.

Dated: February 13, 2026 at Glens Falls, NY



---

Hon. Allison M. McGahay