



KATHY HOCHUL  
Governor

BARBARA RICE  
Executive Director

March 11, 2026

**(By E-Mail: david.greenwood@dec.ny.gov)**

Honorable David Greenwood  
Administrative Law Judge  
NYS Department of Environmental Conservation  
Office of Hearing and Mediation Services  
625 Broadway, First Floor  
Albany, NY 12233-1550

Re: In the matter of the application of Unconventional Concepts, Inc. and Michael Hopmeier – P2021-0276

Dear Judge Greenwood,

The Adirondack Park Agency hearing staff consent to the proposed modifications to the scheduling order as submitted by Protect the Adirondacks. The hearing staff object to the applicant's motion for an indefinite stay of the proceedings for the reasons outlined below. This letter also includes additional comments regarding Adirondack Council's motion for a revised issues list and the challenges to that motion as presented by the applicant.

**I. Opposition to Applicant's Motion to Stay the Public Hearing**

The Adirondack Park Agency hearing staff submit this response in opposition to applicant's motion to stay the administrative hearing for the abovementioned project pending the resolution of a related Article 78 proceeding. Applicant's argument in favor of the stay is couched in laudable principles such as fairness, judicial efficiency, and conservation of administrative resources. While such considerations may support a stay in some circumstances, they do not justify one here. Both the motion for a stay and the Article 78 proceeding initiated by the applicant frustrate those very same principles and do so without serving the paramount judicial principle of due process.

As discussed by both Protect the Adirondacks and the Sierra Club Atlantic Chapter in letters submitted to your Honor on March 10, 2026, the request for a stay of the hearing proceedings pending the outcome of the Article 78 challenge has already been denied by both your Honor and the Supreme Court of Essex County. The Agency hearing staff agree with the positions outlined in both letters and will not restate them here. The duplicative request requires the parties, the Agency hearing staff, and your Honor to redirect resources to a question that has been asked and answered (twice). This repackaged

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request undermines the legitimacy of applicant's concerns for judicial efficiency and administrative resources.

The Article 78 claims further dispel any notion that a stay promotes judicial efficiency or conservation of resources. According to the applicant's motion, the Article 78 proceeding seeks to "(1) annul, vacate, and set aside as a nullity the determination of the Board of the 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, denying applicant's motion to disqualify the hearing officer, David N. Greenwood, Administrative Law Judge, from presiding over and conducting said public hearing and pre-hearing proceedings."

The first claim seeks to overturn the Board's unanimous vote directing the project to proceed to a public hearing based on a single member's alleged conflict of interest. Even if the Court were to conclude that a conflict of interest existed, the remaining nine members also voted in favor of sending the proposed project to a public hearing. Accordingly, the alleged conflict would not alter the course of this proceeding or eliminate the need for a public hearing before the Agency may act on the application.

Allowing the hearing to move forward while the Article 78 is pending provides all parties, including the applicant, the opportunity to lay the groundwork for the case they intend to present at the evidentiary portion of the public hearing. The APA hearing staff see no reason to postpone the development of the record required for the Agency's eventual determination.

The second claim also lacks any basis which might support granting a stay of the proceedings. Without a concrete showing of bias, speculation regarding interim rulings does not justify granting an indefinite stay, particularly where such interim rulings are unlikely to determine the ultimate outcome of the public hearing. Further, the applicant identifies no specific prejudice that would result from proceeding with witness lists, preliminary discovery, or the scheduled opening session on April 22. These preliminary matters should not be delayed based upon an unsubstantiated allegation of bias. Moreover, the designation of a new judge would not undermine the work done in preparation for the evidentiary portion of the hearing, which has not yet been scheduled.

Contrary to the applicant's assertions, moving forward with the hearing while the Article 78 proceeding is pending best serves the interests of fairness, judicial efficiency, and conservation of administrative resources. The applicant does not provide a compelling argument as to how a stay would benefit any of the parties, including the applicant whose purported goal is to ultimately obtain an Agency permit. Considering this, hearing staff respectfully request that applicant's motion to stay the proceedings during

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the pendency of the Article 78 be denied, and that the proceedings move forward with the first hearing day as scheduled on April 22, 2026.

## **II. Additional Response to Proposed Revisions to the Hearing Issues**

The Agency hearing staff submitted a letter response to Adirondack Council's motion seeking to revise and reorder the public hearing issues on March 2, 2026. Hearing staff's position on the issue remains unchanged. However, the hearing staff would like to clarify the basis of your authority to grant this motion. In responding papers, the applicant argues that modifying the issues without consent of the parties is beyond the authority granted to the ALJ under Agency regulations and that the Agency was not authorized to extend that authority through its November Project Order. Hearing staff disagree.

Pursuant to 9 NYCRR §580.3, the Agency "*may* determine to limit the issues to be considered at the hearing, in which case it will advise the project sponsor of its determination and the notice of the hearing will specify the issues to be considered" [emphasis added]. The Agency chose to limit the issues to exclude those that do not need to be explored during the hearing – namely, questions relating to the shoreline restrictions or intensity guidelines. If the Agency had not defined the issues, the hearing officer would clearly have the authority to determine which issues may be considered at the hearing. In defining the issues, the Agency did not intend to limit the hearing officer's authority with respect to the scope of issues, which is why the order specifically reserves the hearing officer's right to "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)." Accordingly, modifying or clarifying the issues for hearing is fully consistent with both the Agency's regulations and the Project Order issued by the Board.

The provisions of the regulations cited by the applicant as limitations on the hearing officer's authority are separate from the authority granted pursuant to the November Project Order. Agency Regulations §580.9 and §580.14(g) are not intended to limit the hearing officer's authority to broaden the scope of issues or to hear an issue that was not included in the Project Order. Rather, these provisions are intended to prevent the hearing officer from unilaterally resolving an issue identified by the Board for which the parties have not reached consensus on.

The motion submitted by Adirondack Council does not purport to limit or resolve any of the issues identified by the Board. Rather, the motion proposes minor modifications to the ordering of the issues and narrow revisions to the language, both of which the applicant's counsel consented to at the February 4, 2026 prehearing conference.

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Granting Adirondack Council's motion would not alter the substantive issues identified by the Board.

For the reasons stated above, Agency hearing staff support the motion submitted by Adirondack Council and affirm that resolution of that motion is within your discretion.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Grace Sullivan". The signature is written in black ink and is positioned above a horizontal line.

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Grace Sullivan, Attorney for the APA hearing staff

CC: Service List