



March 12, 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: Opposition to Motion to Revise Hearing Issues
In the Matter of the Application of Unconventional Concepts, Inc. and Michael Hopmeier
APA Project No. 2021-0276

Dear Judge Greenwood:

On behalf of Applicants, I submit this letter in opposition to the motion to modify and reorder the hearing issues, making reference to:

1. Protect's offer of proof, dated February 3, 2026, and supplemented in a letter dated March 6, 2026 (hereinafter referred to, respectively, as the "Offer of Proof" and the "Supplemental Offer of Proof");
2. Adirondack Council's motion to revise the issues to be considered at the public hearing, dated February 24, 2026 (hereinafter referred to as the "Issues Motion");
3. APA staff's letter in support of the Issues Motion, dated March 2, 2026;
4. Applicants' opposition, dated March 4, 2026, to the Issues Motion, dated February 24, 2026 (hereinafter referred to as "Applicants' Opposition");
5. Adirondack Council's letter, dated March 11, 2026;
6. APA staff's letter, dated March 11, 2026;
7. Email from Dave Gibson of Adirondack Wild: Friends of the Forest Preserve, dated March 5, 2026;
8. Email from Todd D. Ommen, Esq. on behalf of Sierra Club, dated March 2, 2026.

Applicants hereby incorporate their arguments of Applicants' Opposition.

Addressing Argument II in APA staff's letter, dated March 11, 2026, despite APA staff's interpretation, the language of 9 NYCRR §580.3 does not allow the hearing officer to add issues, and actually does the opposite. The Agency has discretion on whether to limit the issues to be considered in a public hearing pursuant to 9 NYCRR §580.3. If the Agency declines to exercise such discretion and does not limit the issues in the notice of hearing, then 9 NYCRR §§580.9 and 580.14(4) may be employed for the hearing officer, on consent of the parties, to simplify the issues and narrow the focus of the hearing. In such a situation, the hearing officer would then have authority to establish the scope and define the issues that are consented to by the parties. This is not the situation here. The Agency *did* determine the issues to be considered and, thus, did not

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leave it to the parties to define the issues. Because the Agency already limited the issues pursuant to 9 NYCRR §580.3, Your Honor is without regulatory authority to add issues and expand the scope of the hearing.

Addressing the Order of Proof and Supplemental Order of Proof, the hearing issues should not be modified to add Proposed Issue No. 2 relating to whether Applicants have government contracts. Adding an entire issue on this subject would be redundant as it is already covered by Issue No. 3. As Protect argues in the Order of Proof at 3, Intervenors want to challenge Applicants' contention that the project is of benefit to the United States military and national security and to present evidence to the APA Board for its consideration of the factors laid out in Executive Law §809(10)(e). However, Issue No. 3 already contemplates presentation of evidence relating to the factors listed in §809(10)(e). APA Project Order 2021-0276, dated November 14, 2025, at 7, states Issue No. 3 as, "[w]hether the proposed howitzer testing range would have an undue adverse impact upon the natural, scenic, ecological, wildlife, recreational or open space resources of the park [APA Act § 809(10)(e)]..." (emphasis added). Therefore, adding a separate issue to address factors already to be considered in an existing issue is unnecessary.

The Supplemental Order of Proof puts forth an email as Exhibit A in an attempt to demonstrate that Applicants do not have a military contract as stated in the application, and therefore an entirely separate hearing issue is required. Said email does not conclusively demonstrate that Applicants do not have a military contract, and the argument therein fails regardless.¹ Confidentiality prohibits further discussion of the matter. However, it should suffice to say that Unconventional Concepts, Inc. is a research and development company and regularly enters into and terminates government contracts in the course of business.

To the extent that the project should only be approved if Applicants already have a contract ignores the possibility that contracts enabling Applicants to benefit the United States military and national security may be easily obtained once the application is approved and, therefore, denying the application due to a lack of proof of a contract would not only be short-sighted and paradoxical, but also puts Intervenors in the position of bureaucratically burdening essential research and development needed by our military during wartime.

Therefore, the motion to revise the hearing issues should be denied.

Respectfully,

Norfolk Beier PLLC

By: 

Matthew D. Norfolk, Esq.

cc: Service List

¹ It should be noted that the letter in Exhibit A of the Supplemental Order of Proof is over three years old.