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January 20, 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 of Unconventional
Concepts, Inc. and Michael Hopmeier
APA Project No. 2021-0276

Dear Judge Greenwood:

On behalf of the Adirondack Council, Inc. and the other three intervenor parties in the above-referenced proceeding (Protect the Adirondacks, Adirondack Wild: Friends of the Forest Preserve, and Sierra Club), please find attached proposed revisions and suggested additions to the issues identified for adjudication by the Adirondack Park Agency (“APA”) Board in its November 14, 2025 project order (“APA Project Order 2021-0276”) for the above-referenced matter (“Project 2021-0276”). We respectfully request that discussion of these proposed revisions be included in the agenda for the January 21, 2026 pre-hearing issues conference.

The proposed revisions to APA Project Order 2021-0276 are based upon the APA Act and applicable law. They are presented in a logical order that we believe will ensure the most efficient adjudication of the issues identified by the APA Board. The issues proposed to be added are intended to provide information missing from the Project Sponsor’s application that we believe the APA Board should have for its consideration as part of the record. Briefly, the rationale for the proposed revisions and additions to APA Project Order 2021-0276 is as follows:

Proposed Issue #1

In Issue #3 of APA Project Order 2021-0276, the APA Board identified the question of whether the proposed howitzer testing range is a commercial use for adjudication as part of the issue of whether the proposal is compatible in the land use area where it is proposed to be

located. We respectfully submit that this is a threshold jurisdictional issue that must be addressed in order to establish the basis for APA's review of Project 2021-0276. Determination of this jurisdictional predicate is also relevant to the adjudication of the other hearing issues identified by the APA Board.

APA Act § 809(2)(a) subjects applications for Class A and Class B regional projects to APA review, including any required adjudicatory hearing. APA Act § 810 defines by lists what the Class A and Class B regional projects are in each land use area, paralleling the lists of primary and secondary compatible uses provided in APA Act § 805. APA's jurisdiction to review applications requires a specific predicate of jurisdiction from one of those Section 810 lists to trigger its jurisdiction to review an application pursuant to Executive Law § 809. If a proposed application does not involve a listed use, Section 810 provides a "catch-all" predicate for jurisdiction. Establishing this statutory predicate of jurisdiction is routinely done by APA in its jurisdictional determinations, permits and orders, and enforcement orders.

Here, APA Project Order 2021-0276 seeks additional information in order to establish this statutory predicate for APA review jurisdiction under Section 809. The APA Board has determined that Project 2021-0276 involves a Class B regional project but seeks further information on whether the proposed project is a commercial use, for which the statutory predicate of jurisdiction in Rural Use is APA Act § 810(2)(c)(16). If it is not a commercial use, then another 810(2)(c) predicate for a Class B regional project jurisdiction must be established to provide the basis for APA's review of Project 2021-0276 under Section 809.

For discussion at the pre-hearing conference, we respectfully submit that the proposed howitzer testing range is not a commercial use as defined in the APA Act and properly is subject to APA permitting review under Section 809 under the "catch-all" provision of APA Act § 810(2)(c)(15) as an unlisted use. Since this is a threshold jurisdictional issue, we respectfully ask that it be made Issue #1 for adjudication.

We would also ask the Project Sponsor to consider a stipulation that the proposed howitzer testing range is an unlisted use and subject to APA review as a Class B Regional Project pursuant to APA Act § 810(2)(c)(15). Separate from the substantive issues that need to be adjudicated with respect to Project 2021-0276, classifying the proposed howitzer testing range as a commercial use for APA jurisdictional purposes would create a very negative precedent that must be challenged. For the efficiency of the adjudicatory hearing on the merits of Project 2021-0276, we submit that a stipulation is appropriate in order to avoid the unnecessary expenditure of time and resources by the parties on this threshold jurisdictional issue.

Proposed Issues #2 and #3

These issues are proposed to be added in order to provide important evidence about Project 2021-0276 that is not included in the Project Sponsor's application for the APA Board's consideration.

Proposed Issue #4

Proposed Issue #4 is proposed to provide for adjudication of issues identified by APA Project Order 2021-0276 pertaining to the potential adverse impacts of Project 2021-0276 on the resources of the Adirondack Park and nearby land uses, all of which evidence is relevant to the

three ultimate legal determinations the APA Board must make as to whether Project 2021-0276: (1) is consistent with the Adirondack Park Land Use and Development Plan (“APLUDP”) pursuant to APA Act § 809(10)(a); (2) is compatible in the Rural Use land use area where the project is proposed to be located pursuant to APA Act § 809(10)(b); and (3) would not have an undue adverse impact pursuant to APA Act § 809(10)(e). Fundamentally, the evidence about Project 2021-0276’s potential adverse impacts is relevant to the development considerations provided in APA Act § 805(4) that must be considered by the APA Board in making each of those three legal determinations. Thus, until all evidence about potential adverse impacts is in the record, it is not possible for the parties to provide any additional evidence that may be relevant to the APA’s consideration of the Section 809(10) legal determinations the Board must make with respect to Project 2021-0276.

To separate the hearing’s evidence gathering about potential adverse impacts from the eventual legal determinations the APA Board must make, in Issue #4 we accordingly propose to revise APA Project Order 2021-0276 to delete any references to the “undue adverse impact” legal determination and to only provide for adjudication of the potential adverse impacts of Project 2021-0276. This will avoid having technical experts make legal conclusions without all of the evidence necessary to do so. Once, and only after all of the evidence on the project’s potential adverse impacts is in the record, consistent with APA Project Order 2021-0276, our proposed revisions would allow for the parties to provide any additional evidence relevant to the three Section 809(10) legal determinations the APA Board must make through adjudication of Issues #5, #6 and #7 as discussed below.

Proposed Issues #5, #6 and #7

Consistent with APA Project Order 2021-0276, these revised issues would provide for adjudication of any additional evidence relevant to the three legal determinations the APA Board must make pursuant to APA Act § 809(10)(a),(b) and (e). For the reasons discussed above, they are proposed to be reordered from APA Project Order 2021-0276 Issues #1, #2 and #3.

For proposed Issue #5 pertaining to consistency with the APLUDP (APA Act § 809(10)(a)), we propose to revise the issue to require adjudication of whether the project is consistent as opposed to compatible with the APLUDP in order to follow the express statutory language of that Section 809(10) criterion. Proposed Issue #6 regarding compatibility is consistent with Issue #3 from APA Project Order #2021-0276, with the exception that the question of whether the howitzer testing range is a commercial use would become Issue #1 as discussed above. Proposed Issue #7 is consistent with Issue #2 from APA Project Order 2021-0276.

The proposed ordering of revised Issues #5, #6 and #7 follows the sequence provided for these legal determinations in APA Act § 809(10) and is consistent with the Appellate Division, Third Department’s articulation of the Section 809(10) “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:

Significantly, before new development is undertaken, the APA must "consider those factors contained in the development considerations of the plan which are pertinent to the project under review" and determine that the proposed project "would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or

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*open space resources of the park" (Executive Law § 809 [10] [e]; see also Executive Law § 805 [4]). In considering whether any adverse impact is undue, Executive Law § 809 (10) (a) and (b) require the APA to determine that a project is "consistent with the land use and development plan" and "compatible with the character {**121 AD3d at 71}description and purposes, policies and objectives of the land use area wherein it is proposed to be located." In doing so, the APA must also consider the burden that development will place on public services, as well as any "commercial, industrial, residential, recreational or other benefits that might be derived from the project" (Executive Law § 809 [10] [e]); see Executive Law § 805 [4]).*

While APA Act § 809(10) requires compliance with each of the statutory criteria for which legal determinations must be made, the Appellate Division's decision plainly requires that the APA Board's legal determination as to "whether any adverse impact is undue" also depends upon whether the project is consistent with the APLUDP and compatible in the land use area where it is proposed to be located. Accordingly, in addition to requiring the prior adjudication of Project 2021-0276's potential adverse impacts as discussed above, before any evidence on the Section 809(10) criterion concerning "whether any adverse impact is undue" is provided by the parties, evidence regarding Project 2021-0276's consistency with the APLUDP and compatibility in Rural Use must necessarily already be in the record consistent with the Appellate Division's decision.

For all of the foregoing reasons, it is respectfully submitted that adjudication of whether Project 2021-0276 is a commercial use must occur first in the adjudicatory hearing for this matter, followed by adjudication of any potential adverse impacts of the project, followed finally by adjudication of whether Project 2021-0276 complies with the statutory criteria provided in APA Act § 809(10)(c) consistent with the Appellate Division's decision in *Protect v APA*. We look forward to discussion of this proposal for the issues to be adjudicated in the hearing for Project 2021-0276 at the pre-hearing conference tomorrow.

Very truly yours,



Paul Van Cott

Attachment

Cc: Attached Service List

Service List
APA 2021-0276 Public Hearing
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Proposed Hearing Issues for APA Project 2021-0276

January 20, 2026

Issue #1: Whether the proposed howitzer testing range is subject to APA permitting jurisdiction under APA Act § 809 as a commercial use (APA Act § 810(2)(c)(16)), another use in APA Act § 810(2)(c), or as 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 applicant has contractual or other legal arrangements with persons or other legal entities for testing howitzers on the proposed range and substantiation of national security concerns, if any, with respect to such proposed testing.

Issue #3 Whether the applicant has conducted activities at and surrounding the project site that are not authorized by and violate the APA Act and the applicant’s existing APA permit, APA Permit 2023-0111, and the relevance of such noncompliance to any reasonable expectation that the applicant will comply with permit conditions in the event the howitzer testing range is approved by APA.

Issue #4: Whether the howitzer testing range would have any adverse impacts upon the natural, scenic, ecological, wildlife, recreational or open space resources of the park [APA Act § 809(10)(e)], 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 #5: 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 #6: 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 #7: 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? [APA Act § 809(10)(e)]