WHITEMAN
OSTERMAN
& HANNA LLP

Attorneys at Law
www.woh.com

One Commerce Plaza
Albany, New York 12260
518.487.7757 phone
518.487.7777 fax

Paul VanCott
Of Counsel
518.487.7733 phone
pvancott@woh.com

November 5, 2026

Via Email

Mark Hall, Chairman
Adirondack Park Agency
1199 NYS Route 86
Ray Brook, New York 12977

Re: In the Matter of the Application of Unconventional Concepts, Inc. and Michael Hopmeier
APA Project No. 2021-0276 (the "Project")

Dear Chairman Hall and Adirondack Park Agency Members and Designees (the "APA Board"):

On behalf of our client, the Adirondack Council, LLC (the "Adirondack Council"), we write to provide comments on staff's summary of the record in the above-referenced proceeding (the "Staff Summary"). The Staff Summary followed the October 8, 2026 Certification of the Record (the "Record") for the public hearing of APA Project No. 2021-0276 made by NYSDEC Administrative Law Judge ("ALJ") David N. Greenwood. The Contents of the Record are listed in ALJ Greenwood's Certification, a copy which is attached for your convenience.

The Staff Summary is inconsistent with the Record because of its inclusion of the so-called Compiled Application Materials (See Page 17, Item 14 of the Staff Summary), which was not listed as part of the Contents of the Record certified by ALJ Greenwood. We do not believe that this omission by ALJ Greenwood was inadvertent, and staff lack authority to include the Compiled Application Materials in the Record for consideration by the APA Board after the Certification of the Record by ALJ Greenwood. We respectfully ask that the APA Board exclude the Compiled Application Materials from the Record and not consider those materials in making its determination.

Pursuant to 9 NYCRR § 580.14(b)(6), Unconventional Concepts, Inc. and Michael Hopmeier, as the Project Sponsors, had the burden of proving that their proposed project meets the requirements of the APA Act and the APA regulations at the hearing ordered by the APA Board. Since the Project Sponsors failed to avail themselves of the opportunity to prove the allegations of their application in the hearing through the submission of pre-filed testimony and other direct testimony, whatever information or contentions that may have been included in their multiple application submissions never became part of the Record certified by ALJ Greenwood.

Specifically, ALJ Greenwood listed the following as the contents of the Record he certified:

1. Adjournments Hearing Notice and Scheduling Orders;
2. Appeal of Party Status Ruling;
3. Discovery Demands and Responses;
4. Hearing Officer Qualification;
5. Motions and Letter Requests;
6. Notices of Appearance;
7. Other Correspondence in Record;
8. Petitions for Party Status;
9. Record Issues;
10. Rulings and Orders;
11. Summaries and Recordings of Video Conferences;
12. Witness Lists APA Staff Summary; and
13. 2026.5.7_ServiceList.pdf.

Before listing the contents of the Record that he certified, ALJ Greenwood noted that 9 NYCRR § 580.14(g)(2) requires that the hearing record must also include the application. However, since the Project Sponsors never presented their direct case about what the application consisted of from among the various materials submitted as part of its multiple application submissions which, in some cases, contradict or are different than materials submitted previously as part of the application submissions, exactly what the Project Sponsors contend their application consists of is unclear and, in any event, never became part of the contents of the Record admitted or otherwise received by ALJ Greenwood.

The Compiled Application Materials were compiled by APA staff and have no probative value as they have never been received by the ALJ as part of the Record, much less supported by testimony or subjected to cross-examination or rebuttal. Accordingly, we respectfully submit that ALJ Greenwood's omission of the Compiled Application Materials from the Record was intentional and that the Record reviewed by the APA Board should be limited to the Contents of the Record listed by ALJ Greenwood in his certification.

The Staff Summary is also incomplete because it does not provide a summary of the issues presented for an APA Board determination and of pertinent information to be considered by the Board *for the aid of the Agency* (9 NYCRR § 580.18(a)), including:

1. Whether the Project Sponsors' refusal, **after the APA Board issued its hearing order identifying the Project Site as consisting of two tax parcels**, to have the two parcels included in the application, requires an APA Board determination that the application is incomplete?

2. Whether the Project Sponsors failed to meet their "burden of demonstrating that the project will be in compliance with applicable statutory and regulatory requirements" (See 9 NYCRR § 580.14(b)(6)(i)) based upon the hearing issues in the APA Board's Hearing Order (as modified by ALJ Greenwood by Order dated March 24, 2026). Specifically, it is respectfully submitted that the APA Board should determine:

- Whether the Project Sponsors met their burden of demonstrating that the Project is included on the list of primary or secondary uses for Rural Use areas in APA Act § 805(f)(4) or is an unlisted use for purposes of APA review jurisdiction consistent with APA Act § 810(2)(c)(15)? This determination is also relevant to APA's determination of the Project's compatibility pursuant to APA Act §

809(10)(b), because if it is not listed, the statute provides that *there shall be a presumption that such project would not be compatible with the character description, purposes, policies and objectives of such land use area….*

- Whether the Project Sponsors met their burden of demonstrating that the Project *would be consistent with the land use and development plan* (the "Plan") pursuant to APA Act § 809(10)(a) in the absence of any proof that the Project is consistent with APA Act §§ 805(3)(f) and 805(4)? The Plan is defined in APA Act § 802(29) to include the provisions of APA Act §§ 805(3) and 805(4), so the Project Sponsors' absence of proof is relevant to this determination.
- Whether the Project Sponsors met their burden of demonstrating, pursuant to APA Act § 809(10)(b), that the Project would be compatible with the *[p]urposes, policies and objectives* for Rural Use areas provided in APA Act §§ 805(3)(f)(2) in the absence of any proof having been provided? As noted above, it is relevant that if the Project is not a listed use for Rural Use areas pursuant to APA Act § 805(f)(4), APA Act § 809(10)(b) provides a statutory presumption that the Project is not compatible in Rural Use.
- Whether, in the absence of any proof regarding the Project's impacts or benefits, the Project Sponsors met their burden of demonstrating, pursuant to APA Act § 809(10)(e), that the Project will not have an *undue* adverse impact on:

    - Water resources, land resources, or air resources;
    - Soils, forest and open space resources, including the quality and availability of nearby lands for outdoor recreational purposes;
    - Park resources or nearby uses due to noise;
    - Native or migrating wildlife and their habitats at or near the howitzer testing range, considering species sensitivities;
    - Health and safety impacts due to the operation, storage or transport of military equipment;
    - Nearby Wilderness and Wild Forest areas or their use and enjoyment; or
    - Adjoining and nearby land uses, such as property values?

On behalf of the Adirondack Council, we respectfully request that the APA Board consider these comments for corrections and/or supplementation of the Staff Summary.

Very truly yours,



Paul Van Cott

Attachment

Cc: Service List
Barbara Rice, Executive Director
Matthew Robinson-Loffler, Counsel