NEW YORK STATE | Adirondack Park Agency

Project Hearing: Motion to Dismiss

P2021-0276

November 19-20, 2026

Presentation Overview

Board Action: ALJ's Referral & Recommendation

- On September 14, the Administrative Law Judge (ALJ):
  - Granted the Joint Motion to Dismiss (JMTD), in part
  - Recommended that the Board dismiss the hearing
  - Returned the matter to the Board for consideration
- **Open Deliberation:** The Board may deliberate on a quasi-judicial matter in private, outside a public meeting. The Board has chosen to do it in public.
- Members may still ask to consult with counsel, privately or as a group. If that occurs, a recess can be taken and members will meet in the Blue Room.

ALJ ruling (000983 to 000984); Public Officers Law § 108(1)

What the Board Is Deciding – Core Decision

- **Issue:** Whether to accept, reject or modify the ALJ's recommendation to dismiss the proceeding for lack of prosecution, thereby denying the application.
- **What That Means:** The Applicants did not, in good faith, pursue their case. The proceeding is dismissed. It is not a decision on the Act's approval criteria.
- **Who Decides:** The Agency Board. It is not bound by the ALJ recommendation.

ALJ ruling (000983); Project Order at 6 (000035); Executive Law § 812(4)

Meeting Procedure: Two Days of Consideration

- **Day 1: Regulatory Programs Committee**
  - Hears this presentation
  - Recommends a decision to the full Board
- **Day 2: Full Agency Board**
  - Deliberates and makes the final decision
- **Public Comment:** No public comment can be taken on a matter pending decision until Agency business concludes.

Presentation Outline

- Project and Application History
- Governing Law
- Hearing History
- The Joint Motion to Dismiss
- The ALJ's Decision
- The Record
- Decisions Before the Board
- Board Action

Reference Slides – Located at End of the Presentation

Number	Subject	Slides in Presentation
R-1	Application history	85
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R-11	The six filings in detail	108 to 134

Reference slides follow the presentation. They hold dates and citations and are not read aloud.

Project Overview & Application History

Project Overview

- Town of Lewis, Essex County
- Ballistic Range: Test firing of 155 mm howitzer barrels:
  - Up to 30 times a year
  - Weekdays between 10 a.m. and 4 p.m.
  - Five-year period
- Steel projectiles fired into a “soft catch” system

Project Order at 1 to 2 (000030 to 000031)

Application History

- **November 19, 2021:** Application received.
- **November 2021 to July 2025:** Notices of Incomplete Application.
- **September 26, 2025:** Staff deemed the application complete.

Project Order at 1 to 2 (000030 to 000031). Detail: R-1

Project Order

Agency Board Project Order

- **November 14, 2025:** Agency Board Ordered a public hearing.

"Information currently available is insufficient to make a determination as to any of these approval criteria."

Project Order at 1, 5, 7 (000030, 000034, 000036)

Agency Board Project Order – Project Site Description

- The Range "utilizes two parcels."
  - **Lot 31** (Range) (195 Hale Hill Lane, 197 acres, owned by Pulsifer Logging LLC): the testing site
  - **Lot 29** (Silo) (87 Hale Hill Lane, 8 acres, owned by Diversified Upstate Enterprises, LLC): equipment storage

Project Order at 1 to 2 (000030 to 000031); Application Supplement at 29, 32 (Item 14.1). Detail: R-8

Project Site – Application Information

- **The Application:** Form, plus supplements, NIPA responses. Together: the Compiled Application Materials.
- **Application Supplement:** Equipment “will be removed from the site at 195 Hale Hill Lane and stored at the 87 Hale Hill Lane address”; the range “is an extension of the effort currently ongoing at 87 Hale Hill Lane.”
- **2021 to 2025:** Agency Docs list both parcels. So do Applicants’ Nov. 2025 Comments.
- **Notice of Public Hearing (December 2025):** Names both landowners; equipment “would be removed from Lot 31 and stored on Lot 29.”
- **July 9, 2026:** The Applicants state that Lot 29 (Silo) “is not part of my clients’ application.”
- **The Form Itself:** Lists only Lot 31 (Range). NIPA & Response

Item 14.1 at 6, 29, 31, 32, 1122; 000040 to 000041; 000816. Detail: R-8

Relevant Law – Administrative Proceedings

The Adirondack Park Agency

- **The Legislature Created the Agency**
- **Permits Required:** Must apply and "receive an agency permit therefor prior to undertaking the project."
- **To Approve a Permit:** The Agency "shall not approve any project ... unless it first determines that such project meets the following criteria."
- **Ordering Hearings:** The Agency may order a hearing for various reasons. The criteria are set out in the Act and Agency regulations.
- **To Deny a Permit:** "No project may be disapproved without a public hearing."

Executive Law §§ 803, 809(2)(a), 809(3)(d), 809(10); 9 NYCRR 572.12

Administrative Proceedings – SAPA, Act & Regulations

- **SAPA:** State Administrative Procedure Act (1975).
- **SAPA Article 3:** "Administrative Proceedings" (Title)
- **Role:** Sets one basic set of procedures that every state agency follows when it holds a hearing.
- **APA Act:** Says project hearings are conducted under the Act, the Agency's regulations and SAPA.
- **Layers:** SAPA sets the baseline. The Act adds rules for projects. Agency Regulations (Part 580) fill in the detail.

SAPA art. 3; Executive Law § 812(1); 9 NYCRR Part 580

Administrative Proceedings – Generally

- **SAPA:** All parties shall be afforded an opportunity for hearing within reasonable time.
- **SAPA:** A proceeding may be resolved "by stipulation, agreed settlement, consent order, default, or other informal method."
- **APA Act:** "The parties shall be afforded the opportunity to present evidence and argument."

SAPA § 301(5); Executive Law §§ 809(3)(d), 809(10), 812(6)

Administrative Proceedings – Burden of Production & Proof

- **SAPA:** “Burden of proof shall be on the party who initiated the proceeding.”
- **Agency Regulations:** “The burden shall be on the project sponsor to present testimony concerning the matters alleged in the application.”
- **Agency Regulations:** “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.”

SAPA § 306(1); 9 NYCRR 580.11(b); 580.14(b)(6)(i)

Administrative Proceedings – Order of Proceeding

- **Agency Regulations:** "As a general rule, the project sponsor shall proceed first, followed by the agency staff, other governmental agencies, and other parties."

Executive Law § 812(6); 9 NYCRR 580.14(b)(4)

Administrative Proceedings – Participants

- **Administrative Law Judge:** Independent hearing officer from DEC. May "do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing."
- **Applicants:** Michael Hopmeier and Unconventional Concepts, Inc.
- **Agency Staff:** Obligated to develop the record on the required findings.
- **Intervenors:** Each granted party status January 12, 2026:
  - Adirondack Council
  - Adirondack Wild: Friends of the Forest Preserve
  - Protect the Adirondacks!
  - Sierra Club, Atlantic Chapter

9 NYCRR 580.6(a), 580.14(a)(4)(xi); ALJ ruling on party status (item 7.1)

This Proceeding's History

General Timeline

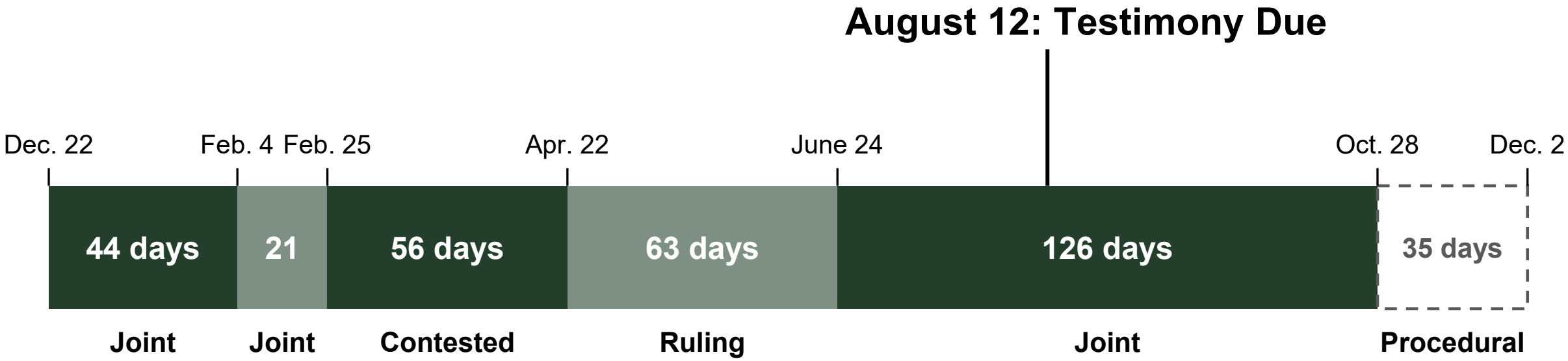
Nov. 14, 2025	Board Orders Hearing
Nov. 20, 2025	ALJ appointed
Jan. 12, 2026	Party Status Granted
Jan. 23. 2026	First Scheduling Order
Mar. 24, 2026	Hearing Scope Revised
Apr. 8, 2026	Discovery Exchanged
June 24, 2026	Third Rev. Scheduling Order
July 15, 2026	Site Visit
Aug. 12, 2026	Applicants' Testimony Due

The full procedural history is on R-2 to R-7.

000019 to 000027. Detail: R-2 to R-7

Adjournments

Hearing Dates: December 22, 2025, to December 2, 2026
(Reasonable Scale, in days)



Agency regulations require an adjournment to a specific date.
A 6th date, December 2, permits the Board to consider the referral.

000021 to 000026; 001803; 000078 to 000079; 9 NYCRR 580.12(c). Detail: R-2

Project Site Visit

- **July 7:** Applicants set terms to site visit.
- **July 8 to 9:** Adirondack Council's counsel and Agency Staff objected to some terms. The ALJ had "no objections."
- **July 9:** Offer to intervenors withdrawn.
- **July 15:** Visit held with Agency Staff only.
- **August 10:** Intervenors state "unjustifiably excluded" from the visit.
- No Order requiring a site visit was requested or issued by ALJ.

000772 to 000773; 000779; 000784 to 000785; 000886; 000888; 000983. Detail: R-6

Third Revised Scheduling Order

Signed and Consented to by All Participants

Pre-filed Testimony Schedule:

August 12
Applicants' testimony

August 26
Agency Staff

September 9
Intervenors

October 28
Hearing

Process to Modify the ALJ Ordered Scheduling Order:

- Written request
- At least 10 days ahead
- After conferring with the other parties

Third Revised Scheduling Order, June 24, 2026 (000074 to 000076; item 1.13). Detail: R-9

Applicants' Extension Request

- **Deadline:** August 12 at 5:00 p.m.
- **Request:** August 11 at 3:38 p.m.

  "I request a 21-day extension to file written witness testimony and exhibits. I simply need more time to complete the submission."

Applicants' letter (000793); time of receipt (000794)

August 12: ALJ Denied Applicants' Request

ALJ

- Not made "at least 10 days before the established due date."
- No indication the parties conferred
- No indication of "good cause" for the extension
- No indication of consent of staff (9 NYCRR 580.20)
- **ALJ:** "Nonetheless, the hearing in this matter must proceed," and he proposed a conference to develop a Fourth Revised Scheduling Order.

ALJ email, Aug. 12, 2026 (000794)

Joint Motion to Dismiss (JMTD)

JMTD – Motion and Briefing Schedule

- **August 17:** Prior to Conference, Intervenors filed a JMTD.
- **August 19 Conference:** ALJ set deadlines for briefs.
  - Responses August 28
  - Replies September 4
- The October Hearing Date was not changed.

000801; items 14.10, 14.11 (001827); ALJ ruling (000973 to 000974)

JMTD – The Six Filings

No.	Date	Filed by	What it is
1	August 17	Intervenors	Joint motion to dismiss the hearing
2	August 28	Agency Staff	Response to the motion to dismiss
3	August 28	Applicants	Opposition to the motion to dismiss & cross-motion
4	September 3	Intervenors	Reply on their motion & opposition to the cross-motion
5	September 4	Agency Staff	Reply to the Applicants' response and cross-motion
6	September 11	Applicants	Letter answering Agency Staff (after briefing closed)

Record items 5.31.1 to 5.31.6

JMTD – Two Motions Before the ALJ

- **Filing 1: Motion to Dismiss (Intervenors, August 17)**
  - Filing 2: Agency Staff response (August 28)
  - Filing 3: Applicants' opposition (August 28)
  - Filing 4: Intervenors' reply (September 3)
  - Filing 6: Applicants' letter answering staff (September 11)
- **Filing 3: Cross-motion: Bar Intervenors (Applicants, August 28)**
  - Filing 4: Intervenors' opposition (September 3)
  - Filing 5: Agency Staff reply (September 4)

Record items 5.31.1 to 5.31.6

JMTD – 1: Intervenors (Aug. 17)

Filing 1 of 6

Intervenors

Ask: Dismissal of Hearing & Referral to Board "for final action"

Arguments:

1. **Three Grounds**: Lot 29 (Silo) not acknowledged; no site access; no testimony by August 12.
2. **No 4th Scheduling Order:** Would "effectively reverse" the August 12 ruling; the Applicants "have not stated any reason, much less good cause."
3. **Burden:** Applicants "have had a full and fair opportunity to present their case for permit issuance and have failed to do so."

000801 to 000812; exhibits to 000865. Detail: R-11

JMTD – 2: Agency Staff (Aug. 28)

Filing 2 of 6

Agency Staff

Ask: What the ALJ "deems appropriate to move towards a final resolution."

Arguments:

1. **ALJ's Authority:** Broad, to manage the hearing, including dismissal.
2. **Earlier Challenges:** "Attorney for the Applicant has done just about everything but introduce evidence that demonstrates the proposed project is approvable. To be clear, Agency staff are not suggesting that any of the above actions would be inappropriate if grounded by evidence."
3. **Schedule:** "The delay – in and of itself – is a harm that cannot be fully be redressed by shifting the hearing schedule."
4. **Options:** Four possible sanctions; Agency Staff "do not advocate for a specific sanction."

000890 to 000895. Detail: R-11

JMTD – 3: Applicants (Aug. 28)

Filing 3 of 6

Applicants

Ask: Deny the JMTD and bar the Intervenors from pre-hearing proceedings.

Arguments:

1. **Participation:** Intervenors "may only participate in the public hearing," which "has yet to start."
2. **Compliance:** "largely complied with ALJ Greenwood's directives, with the exception of untimely requesting more time to file pre-hearing testimony." "Applicants can no longer tolerate this."
3. **Site Visit:** No right to inspect; the Applicants' offer was voluntary.
4. **Lot 29 (Silo):** Not part of the project.
5. **Federal Contract:** "immune to state regulation, including the APA Act."

000866 to 000882; exhibits 000883 to 000889. Detail: R-11

JMTD – 4: Intervenors (Sept. 3)

Filing 4 of 6

Intervenors

Ask: Deny the Cross-Motion & Dismiss Application & Refer to the Board.

Arguments:

1. Applicants “have not even attempted to establish good cause.”
2. Missing owner consent for Lot 29 (Silo) is “a separate ground.”
3. The Cross-Motion is too late - party status was granted January 12, 2026.
4. An intervenor “is a full party to the hearing.”
5. Preemption is not before the ALJ and is premature.
6. Lesser steps would “serve no useful purpose.”

000898 to 000907. Detail: R-11

JMTD – 5: Agency Staff (Sept. 4)

Filing 5 of 6 | Agency Staff

Position: If the Applicant "does not intend to present evidence, address the hearing issues identified by the Agency Board, and participate in good faith, the Application should be returned to the Board for a determination."

Arguments:

1. Applicants' Submission: It "further supports the conclusion that the Applicant's failure to comply with the scheduling order is part of a broader disregard for the Agency's hearing process."
2. Part 580 covers the whole process; the Applicants' reading would create "an absurd procedural vacuum."
3. Preemption is "improperly raised and premature."

000908 to 000910. Detail: R-11

JMTD – 6: Applicants (Sept. 11)

Filing 6 of 6 | Applicants

Ask: “any contention that the Applicants or I engaged in sanctionable dilatory conduct should be rejected.”

Arguments:

1. “[T]he passage of time is not synonymous with dilatory conduct”; several adjournments were joint or requested by staff.
2. Staff “expressly conceded” that the missed deadline, considered independently, would be unlikely to be “willful ... or in bad faith.”
3. “Legitimate litigation activity does not become misconduct simply through aggregation.”
4. The ALJ said “the hearing in this matter must proceed.”

000911 to 000912. Detail: R-11

JMTD – Recap: Intervenor Participation

Filed by	Position
Applicants	Intervenors “may only participate in the public hearing” “Applicants can no longer tolerate this”
Intervenors	Too late after “more than ten months” A party is “a full party to the hearing”
Agency Staff	580.7(a) “is not a limitation; it is a catchall”

JMTD – Recap: Lot 29 (Silo) and the Site Visit

Filed by	Position
Intervenors	Lot 29 (Silo) is part of the Project Site & in application Not given site access
Applicants	Lot 29 (Silo) is not part of the site No legal right to a visit An offer was made but not accepted
Intervenors	Missing owner consent is “a separate ground”
Agency Staff	Denying the visit limited the intervenors’ participation

JMTD – Recap: Federal Contract

Filed by	Position
Applicants	The project “is immune to state regulation”
Intervenors	Not properly raised Premature without a contract
Agency Staff	Agree it is “improperly raised and premature”

JMTD – Recap: August 12 Deadline

Filed by	In their words
Intervenors	Applicants “have had a full and fair opportunity to present their case for permit issuance and have failed to do so.”
Agency Staff	“The delay – in and of itself – is a harm that cannot be fully be redressed by shifting the hearing schedule.”
Applicants	“largely complied with ALJ Greenwood’s directives, with the exception of untimely requesting more time to file pre-hearing testimony”
Intervenors	Applicants “have not even attempted to establish good cause for this failure”
Agency Staff	“Neither argument addresses the Applicants' failure to comply with the scheduling order or to submit pre-filed testimony.”
Applicants	The ALJ “simultaneously stated that ‘the hearing in this matter must proceed’”

Administrative Law Judge Greenwood's Decision

ALJ Decision (Sept. 14)

ALJ

- **Cross-Motion Bar Intervenors Pre-Hearing Participation:** Denied.
- **Joint Motion to Dismiss:** “Granted in part.” The application is referred to the Agency Board.
- **Dismissal Itself:** Recommended to the Agency Board.

ALJ ruling (000974, 000983 to 000984)

ALJ Decision: Addressed Cross-Motion First

ALJ

- **Order ALJ Approached in Decision:**
  - (1) Intervenor Participation
  - (2) Lot 29 (Silo) Site
  - (3) Federal Contract
  - (4) The Motion to Dismiss
- **Reason:** The cross-motion "could result in a determination that the Intervenors do not have the power to move to dismiss the adjudicatory proceeding."

ALJ Decision – Intervenor Participation

ALJ

- **ALJ:** Applicants' argument is "thoroughly unconvincing" and "I find no reasonable basis to support Applicants' Cross-Motion."
- **Reason:** "The simplest reading of [580.7(a)] is that the wording 'public hearing' is just a reference to the proceeding in general."
- Where regulations create classes of participants, they say so.
- "[N]o classes of parties with individualized powers and responsibilities in the definition" and "otherwise participate" in Agency Regulation is "a catch-all."
- Intervenors took part in pre-hearing steps in earlier Agency hearings (ACR) and in hearings before other State agencies.

000978 to 000979

ALJ Decision – Lot 29 (Silo): No Shared Understanding

ALJ

- The parties “do not have a common or mutual understanding of the parcels at issue.”
- **Staff’s Position (July 13):** Both lots are “necessary and integral”; without the Lot 29 (Silo) owner’s consent the Agency “will be unable to continue processing the application as currently proposed.”
- Applicants confirmed consent “has not and will not be provided.”
- The disagreement “is an independent basis to refer the proceeding to the APA Board for further action.”

ALJ Decision – Federal Contract: Not Ripe

ALJ

- "Without an executed federal contract for this project, these arguments are not ripe for review."
- No preemption ruling is needed to decide the motions.
- If the Applicants do not believe the Agency has jurisdiction, they "are free to withdraw the Project Application."
- "[W]hile this proceeding is ongoing, it is the law of the case that Applicants' Project Application is subject to APA jurisdiction."

ALJ Decision – JMTD: What Applicants Did Not Say

ALJ

- "The Applicants' response to the Joint Motion to Dismiss is more telling in what it does not say than in what it does."
- Three arguments made, "but none addressed the underlying bases for the Joint Motion to Dismiss."
- **Notably:** No reason for the missed deadline, "no plan for submitting the pre-filed testimony, and no recommendation for how to cure the prejudice caused to the other parties."

ALJ Decision – JMTD: Missed Deadline Context

ALJ

- **Authority:** The ALJ agreed with Agency Staff's description of his authority to dismiss as a sanction.
- **Quoted Agency Staff:** "Independently, failure to comply with the scheduling order would be unlikely to be read as 'willful ... or in bad faith', however, in the broader context of this application and these proceedings, it is hard to separate this failure from what appears to be a larger strategy of avoidance."
- **Agreed:** "I agree. Moreover, here the Applicants have not presented arguments otherwise."
- **Applicants' September 11 Letter:** Received after the briefing schedule ended & made part of the record.

000982 and fn. 3

ALJ Decision – JMTD: Site Visit

ALJ

- A visit was agreed for July 15 but parties did not agree on time, length or which lots.
- The Applicants “rescinded their permission for the Intervenors to enter the property.”
- “No party has requested I, as the Hearing Officer, order a site visit, and I have not done so.”
- Still, the ALJ found the Applicants’ refusal “has negatively impacted their ability to present evidence and information to the APA Board.”

000982 to 000983

ALJ Decision – JMTD: Holding

ALJ

- “Applicants’ conduct demonstrates that they are not interested in obtaining approval of the Project Application by presenting evidence to the APA Board.”
- The failure to file testimony “is part of a broader pattern of disregard for the Agency’s hearing process.”
- The Applicants “have violated the Scheduling Order, have not proceeded with the conduct of this hearing in good faith, and have failed to present evidence or address the hearing issues identified by the Agency Board and therefore failed to meet their burden.”
- “I recommend that the APA Board dismiss this proceeding for lack of prosecution and deny the Project Application.”

ALJ Decision – Decisions, Recommendations, & Remainder

Decided by the ALJ	Recommended to the Board	Left open
Cross-motion Denied: Intervenors Are Full Parties	Dismiss Proceeding for Lack of Prosecution Thereby Denying Application	Lot 29 (Silo) Site Status
Referral to Board		

000979 to 000984

The Record

Compiling the Record

- **October 8:** The ALJ certified the record and provided it to the parties.
- **October 26:** Agency Staff circulated a summary of the record and asked for comments by November 5 at 5:00 p.m.
- **Regulations:** When a summary is made, parties may comment on "the completeness of the summary." Comments "shall not consist of argument or reference to matters outside the record."
- **November 5:** The Applicants, Adirondack Council and Protect commented.

Items 1.14, 1.15 (000078 to 000079); 001782; 000001; Nov. 5 submissions

Compiling the Record

- **ALJ's Certified Record:** The ALJ certified 13 groups of documents.
- **Agency Staff Supplement:** Added other materials that are required to be made part of the record as required by Agency Regulation.
- Notably: Compiled Application Materials (Application)

ALJ certification (001782 to 001787); staff summary (000017, 000019); ALJ conference summary, Feb. 4, 2026 (item 12.4); Applicants' cross-motion fn. 4 (000878)

Comments on the Record: Applicants

Applicants

- “no hearing has been conducted,” so no “record of the hearing” under 580.14(g) and no basis for a staff summary under 580.18(a).
- May only rely on “evidence formally admitted into the hearing record.”
- “demand that it not be presented to, received by, or considered by the Agency Board.”
- **Later Email:** The application “is automatically part of the record”; they ask that it be included “in its entirety.”

Applicants’ letter, Nov. 5, 2026; Applicants’ email, Nov. 5, 2026, 7:19 p.m.

Comments on the Record: ADK Council & Protect

Adirondack Council
Protect

- **Adirondack Council:** The compiled application materials were not in the ALJ's certified contents and should be excluded; they have "no probative value" because they were never received by the ALJ or tested.
- **Adirondack Council:** Summary should also state the issues for the Board, including whether the application is incomplete as to the two parcels and whether the burden was met.
- Protect joins ADK Council's letter.
- The Applicants asked that Protect's letter be struck as late (sent 6:12 p.m.); Protect answered that the 5:00 p.m. time was Agency Staff's request, not an Order.

Adirondack Council letter, Nov. 5, 2026; Protect letter and emails, Nov. 5, 2026

Decisions Before the Board

What the Board Is Deciding – Core Decision

- **Issue:** Whether to accept, reject or modify the ALJ's recommendation to dismiss the proceeding for lack of prosecution, thereby denying the application.
- **What That Means:** The Applicants did not, in good faith, pursue their case. The proceeding is dismissed. It is not a decision on the Act's approval criteria.

ALJ ruling (000983); Project Order at 6 (000035); Executive Law § 812(4)

How the Committee Will Proceed

- **Step 1 – Preliminary Decisions:**
  - 1. What is the record?
  - 2. The Applicants' September 11 letter
  - 3. Protect's late comment
- **Step 2 – Core Decision:** Accept, reject or modify the ALJ's recommendation.
- **Step 3 – Project Site and Lot 29 (Silo):** Only if needed or desired.
- **November 20:** The full Board addresses each decision.

9 NYCRR 572.12; Project Order at 6 (000035); Executive Law § 812(4)

Preliminary Decision 1: What Is the Record?

- **Applicants** (Nov. 5 letter): There is no record (no hearing held)
- **Adirondack Council; Protect joins:** ALJ's certified record only
- **Agency Staff (record summary):** The ALJ's certified record plus the items the regulation requires, including the compiled application materials

- **My Advice:** The record consists of the ALJ's Certified Record and those materials added pursuant to Agency Regulation.

- **Committee Consensus?**

Nov. 5 comments; staff summary (000017, 000019); ALJ certification (001782); 9 NYCRR 580.14(g)(2)

Has a Hearing Been Held?

- **APA Act:** “No project may be disapproved without a public hearing first being held thereon.”
- **Applicants:** “no hearing has been conducted.”
- **Intervenors:** The Applicants have had their opportunity; further proceedings would place a burden on parties that do not carry it.
- **Agency Staff:** If the Applicants do not intend to participate in good faith, the application “should be returned to the Board for a determination.”
- **My Advice:** The opportunity for hearing requirement has been satisfied.
- **Committee Consensus?**

SAPA § 301(5); Executive Law § 809(3)(d); 9 NYCRR Part 580

Preliminary Decision 2: Sept. 11 Letter

- **Applicants' September 11 Letter:**
  - Filed after the ALJ's briefing schedule had ended
  - Answers Agency Staff's response to the motion
  - Asked the ALJ to include it in the record
  - The ALJ made it part of the record. His ruling describes it in a footnote.

- **My Advice:** You may consider the letter. ALJ included record.
- **Committee Consensus?**

Applicants' letter, Sept. 11, 2026 (000911 to 000912); ALJ ruling fn. 3 (000982)

Preliminary Decision 3: Protect's Late Comment

- **Applicants:** Do not consider it. It was sent after 5:00 p.m. and no extension was requested or granted.
- **Protect:** Consider it. The 5:00 p.m. time was set by Agency Staff, not by an ALJ order.

- **My Advice:** Do not have to consider the comment. The deadline was clearly communicated and no request to alter was made.

- **Committee Consensus?**

Applicants' email and Protect's reply, Nov. 5, 2026; 9 NYCRR 580.18(a)

Framework

Legal Recap: Permit to Hearing

- **Land Use and Development:** A regional project needs an Agency permit before it is undertaken.
- **Ordering a Hearing:** The Board weighed the regulation's criteria and found the information "insufficient" to decide the approval criteria.
- **Notice of Intent:** Stated decision "does not constitute an approval or a disapproval." Applicants had 15 days to "submit a new application to the Agency, submit a modified application, or waive this right."
- **Nothing Received:** No new or modified application received.

Executive Law §§ 802(28), 809(2)(a), 809(3)(e); 9 NYCRR 580.2; Project Order (000032 to 000035, 000037); Notice of Intent (000039); staff summary (000019)

Adjudicatory Proceedings

- **Burden:** The project sponsor has it and goes first.
- **The ALJ:** May "do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing."
- **The Schedule:** Applicants' testimony ordered by August 12.
- **The Record vs. Evidence:** The record includes the application and motions. Findings of fact rest "exclusively on the evidence and on matters officially noticed."

SAPA §§ 302(1), (3), 306(1); Executive Law § 809(3)(d); 9 NYCRR 580.11(b), 580.14(a)(4)(xi), (b)(4), (g)(2); Third Revised Scheduling Order (000074 to 000076)

The ALJ's Reasoning: Three Strands

- **Strand 1 – The Deadline Failure:** Applicants "violated the Scheduling Order."
- **Strand 2 – The Burden:** They "have failed to present evidence or address the hearing issues identified by the Agency Board."
- **Strand 3 – The Conduct:** Their response "is more telling in what it does not say than in what it does." The failure "is part of a broader pattern of disregard for the Agency's hearing process."
- **ALJ's Conclusion:** The Applicants "have not proceeded with the conduct of this hearing in good faith."

ALJ ruling (000982 to 000983)

Strand 1: The Deadline Failure

- **August 11, 3:38 p.m.:** “I simply need more time to complete the submission.”
- **August 12:** Request denied. 5:00 p.m.: no testimony filed.
- **ALJ:** No reason & “no plan for submitting the pre-filed testimony, and no recommendation for how to cure the prejudice.”
- **My Advice:** A missed deadline is a fact, not a finding of bad faith in and of itself. Its weight depends on its quality, character, and timing.
- **Board to Consider:** Was deadline missed without reason or plan to cure?

Applicants’ letter (000793); ALJ email, Aug. 12, 2026 (000794); joint motion (000808); Applicants’ opposition (000876); ALJ ruling (000982)

Strand 2: The Burden

- **SAPA:** “[T]he burden of proof shall be on the party who initiated the proceeding.”
- **Agency Regulations:** “The burden shall be on the project sponsor to present testimony concerning the matters alleged in the application.”
- **Agency Regulations:** “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.”

SAPA § 306(1); 9 NYCRR 580.11(b), 580.14(b)(6)(i); ALJ certification (001782 to 001787); Agency Staff response (000894); ALJ ruling (000983)

Strand 2: The Burden – Applicants' Position

When	What they said about the testimony
August 28 opposition	"largely complied with ALJ Greenwood's directives, with the exception of untimely requesting more time to file pre-hearing testimony" "no hearing has been conducted"

Applicants' opposition and cross-motion (000876); Applicants' letter (000912); Applicants' comments on the record, Nov. 5, 2026

Strand 2: The Burden

- **ALJ:** The Applicants "are not interested in obtaining approval of the Project Application by presenting evidence to the APA Board."
- **My Advice:** The compiled application materials are only in the record as what the Applicants allege. Agency regulations separate "the allegations of the application" from proof. There is no evidence in the record to support a finding that the project meets the approval criteria.
- **Board to Consider:** Is the failure of Applicants to meet their burden self created?

ALJ ruling (000983); 9 NYCRR 580.14(b)(6)(i)

Strand 3: Conduct – Site Visit

- **July 7:** The Applicants set terms for a visit to Lot 31 (Range).
- **July 8 to 9:** Adirondack Council and Agency Staff objected to some terms.
- **July 9 and 10:** The Applicants withdrew the offer; "law enforcement will be called" for unauthorized individuals.
- **Applicants' Argument:** No legal right to inspect. The offer was voluntary and on "reasonable terms and conditions."
- **ALJ:** The parties did not agree on time, length or lots. No visit was ordered. The refusal "has negatively impacted" the intervenors' ability to present evidence.
- **My Advice:** No visit was required or ordered. The ALJ did not call the refusal bad faith, but found it prejudiced the Intervenors.
- **Board to Consider:** Legitimate advocacy, or part of proceeding in bad faith?

000776; 000779; 000784 to 000785; 000787; 000790; Applicants' opposition (000876 to 000877); ALJ ruling (000982 to 000983). Detail: R-6

Strand 3: Conduct – Response to JMTD

- **January 12, 2026:** The ALJ granted party status. The Applicants had opposed only Adirondack Wild, on its capacity to take part in the proceeding.
- **January to August:** In conferences, discovery and scheduling.
- **August 28:** The Applicants "can no longer tolerate" pre-hearing participation by the Intervenors.
- **Sept 11:** "An unsuccessful motion is not necessarily a frivolous motion."
- **My Advice:** Party status was decided January 12. The Board affirmed it on February 19 on the single appeal, by the Applicants, as to Adirondack Wild.
- **Board to Consider:** Legitimate advocacy, or part of proceeding in bad faith?

Ruling on party status (000921 to 000922, 000927); Board resolution (001804); Applicants' opposition (000876); ALJ ruling (000978, 000982); Applicants' letter (000912); R-4

Strand 3: Conduct – "No Permit Is Required"

- **August 28:** "Any argument or proof submitted against the application is irrelevant."
- **The Same Filing:** The project "is immune to state regulation, including the APA Act." The Applicants continued "in good faith to demonstrate transparency."
- **ALJ:** No federal contract, "these arguments are not ripe for review." If no permit is needed, the Applicants "are free to withdraw the Project Application."
- **Applicants:** "A jurisdictional objection does not become obstruction merely because the APA disagrees with it."
- **My Advice:** The Board does not need to decide the federal question. Challenge to APA jurisdiction 1 year into this proceeding.
- **Board to Consider:** Legitimate advocacy, or part of proceeding in bad faith?

Applicants' opposition (000881); ALJ ruling (000981); Applicants' letter (000912)

Applicants' Conduct - Isolated Lapse or Pattern? (1 of 2)

- **Agency Staff:** "Attorney for the Applicant has done just about everything but introduce evidence that demonstrates the proposed project is approvable. To be clear, Agency staff are not suggesting that any of the above actions would be inappropriate ***if grounded by evidence***."
- **Agency Staff:** "Independently, failure to comply with the scheduling order would be unlikely to be read as 'willful ... or in bad faith', however, in the broader context of this application and these proceedings, it is hard to separate this failure from what appears to be a larger strategy of avoidance."
- **ALJ:** "I agree."

Agency Staff response (000893 to 000894); ALJ ruling (000982)

Applicants' Conduct - Isolated Lapse or Pattern? (2 of 2)

- **Applicants:** Staff "expressly conceded" that the missed deadline alone was unlikely to be "willful ... or in bad faith."
- **Applicants:** "Legitimate litigation activity does not become misconduct simply through aggregation."
- **My Advice:** It is not the number of challenges. It is quality, character, and timing of the challenges and delays.
- **For the Board to Consider:** An isolated scheduling lapse, or part of a course of conduct?

Applicants' letter (000912); Agency Staff response (000893 to 000894)

Dismissal

- **Agency Staff:** Did “not advocate for a specific sanction”:
  - 1. Dismissal and return to the Board
  - 2. Preclude the testimony and continue the hearing
  - 3. Admit the testimony on conditions & automatic default for another failure
  - 4. Any other sanction the ALJ finds appropriate
- **Intervenors:** Opposed options 2 and 3. Without testimony, the Applicants cannot meet their burden; further proceedings would “serve no useful purpose.”
- **ALJ:** Chose not adopt option 2 or 3, noting Applicants had “no plan for submitting the pre-filed testimony” and referred the matter to the Board.
- **My Advice:** The Board has discretion but should articulate why.
- **For the Board to Consider:** Is dismissal proportionate, or would a lesser step serve a purpose?

Agency Staff response (000894); intervenors’ reply ¶¶ 27 to 29 (000905 to 000906); ALJ ruling (000982 to 000983)

Committee and Future Board Action

How the Committee Will Proceed

- **Step 1 – Preliminary Decisions:**
  - 1. What is the record?
  - 2. The Applicants' September 11 letter
  - 3. Protect's late comment
- **Step 2 – Core Decision:** Accept, reject or modify the ALJ's recommendation.
- **Step 3 – Project Site and Lot 29 (Silo):** Only if needed or desired.
- **November 20:** The full Board addresses each decision.

9 NYCRR 572.12; Project Order at 6 (000035); Executive Law § 812(4)

Lot 29 (Silo): An Optional Decision

- **The ALJ:** Did not decide whether Lot 29 (Silo) is part of the project.
- **ALJ Finding:** The disagreement "is an independent basis to refer the proceeding to the APA Board for further action."
- **A Reason to Refer, Not to Deny:** He did not recommend denial on this ground.
- **Accept or Modify:** Decision on Lot 29 (Silo) is discretionary.
- **Reject:** The parcels must be settled before a new schedule. The Board decides it or directs the ALJ to.

ALJ ruling (000980, 000983)

If the Board Returns the Matter to the ALJ

My Advice: If the matter is returned, the Board should:

- Decide whether Lot 29 (Silo) is part of the project, or direct the ALJ to decide it first
- Direct a new schedule in sequence: Applicants, then Agency Staff, then Intervenors
- Say whether the Applicants may file testimony, by when, and on what conditions
- Address any renewed request for site access
- Say what happens if a new deadline is missed

ALJ ruling (000980); Agency Staff response (000894); Third Revised Scheduling Order (000074 to 000075)

Next Steps

- **Today:** The Committee should deliberate and recommend a decision to the full Agency Board.
- **Tomorrow:** The Full Agency Board deliberates and decides. It may ratify, modify or reverse the Committee's Recommendation.
- A written Order will follow and will state the Agency Board's reasons.
- No public or party comment until Agency business concludes.
- Questions?

R-1. Application History

Date	Event	Cite
Nov. 19, 2021	Application received	000030
Dec. 6, 2021	First notice of incomplete application	Item 14.1 at 65
Jan. 13, 2022	Second notice of incomplete application	Item 14.1 at 107
June 6, 2022	Third notice of incomplete application	Item 14.1 at 171
Mar. 16, 2023	Fourth notice of incomplete application	Item 14.1 at 316
Jan. 2, 2024	Fifth notice of incomplete application	Item 14.1 at 746
July 25, 2025	Sixth notice of incomplete application	Item 14.1 at 1117
Sept. 11, 2025	Applicants' response to the sixth notice	000031; Item 14.1 at 1119
Sept. 26, 2025	Staff deemed the application complete	000031

Item 14.1 at 65, 107, 128, 171, 316, 401, 746, 936, 1117; Project Order (000031 to 000033)

R-2. Adjournments of the Hearing Date

#	Dates	Days	Submitted by	Others	Cite
1	Dec. 22 to Feb. 4	44	Staff & Applicants	No intervenors were parties yet	000046
2	Feb. 4 to Feb. 25	21	Staff, Applicants and intervening parties	Joint.	000022, 000048
3	Feb. 25 to Apr. 22	56	Applicants asked Staff consented	Adirondack Council objected by letter; Protect, Sierra Club and Adirondack Wild joined	000055, 000060 to 000062, 000065
4	Apr. 22 to June 24	63	ALJ ruling on competing motions	Protect, Sierra Club, Adirondack Council and staff opposed the stay request	000007 to 000008, 000025
5	June 24 to Oct. 28	126	Staff letter	ALJ: “at the request of all the parties”	000973, 001803
6	Oct. 28 to Dec. 2	35	Staff, after the referral	Procedural hold to a date certain (580.12)	000078 to 000079

R-3. ALJ Appointment

Date	Action	Outcome	Record item
Nov. 20, 2025	Executive Director appoints ALJ Greenwood	n/a	11.2
Nov. 24	Applicants ask the ALJ to recuse voluntarily	Treated as a challenge under 580.8(b)	11.3, 11.5
Dec. 1	ALJ disclosure letter	Ex. Dir. upholds	11.7, 11.8
Dec. 5 and 11	Applicants reserve a formal challenge	Directed to 580.8(b)	11.9 to 11.11
Jan. 20, 2026	Applicants file formal challenge and ask for a stay	Denied by Executive Director order, Jan. 27	4.1, 4.5, 14.8, 14.9
Nov. 25, 2025	Applicants online comments investigation	Agency response Dec. 11: not substantiated	11.4, 11.12

Source: Agency Staff Summary of the Record (000001 to 000028)

R-4. Challenges to Parties and Counsel

Date	Action	Outcome	Record item
Dec. 17-19, 2025	Petitions for party status	Staff took no position; Applicants opposed; Adirondack Wild only	2.1 to 2.4, 2.8, 2.9
Jan. 12, 2026	ALJ ruling - party status	All four granted	7.1
Jan. 20	Applicants appeal as to Adirondack Wild	Board Affirmed Feb. 19	7.2.1, 14.6 (001804)
Jan. 20	Adirondack Council moves to disqualify Applicants' law firm	ALJ Denied Feb. 20	5.6, 5.11, 7.4
Aug. 28	Applicants cross-move: bar intervenors from pre-hearing	ALJ Denied Sept. 14	5.31.2, 7.7 (000979, 000984)

Source: Agency Staff Summary of the Record (000001 to 000028)

R-5. Issues, Record and Schedule (1 of 2)

Date	Action	Outcome	Record item
Jan. 14 and 20, 2026	Applicants and intervenors ask for a central record	Web posting stipulation so-ordered Feb. 18; staff compiled the application	5.1, 5.3, 7.3, 12.4
Jan. 21	Pre-hearing conference	Scheduling Order, Jan. 23	12.1 to 12.3, 1.6
Jan. 20 to Feb. 9	Proposed revised issues list; no stipulation reached	ALJ: issues remain as in the Board's order	5.4, 5.9, 1.7 (000056)
Feb. 3 and Mar. 6	Protect offer of proof on federal contract issue	Considered in issues ruling	5.12, 5.18
Feb. 11	First Revised Scheduling Order	Issued	1.11

Source: Agency Staff Summary of the Record (000001 to 000028). Adjournments are on R-2.

R-5. Issues, Record and Schedule (2 of 2)

Date	Action	Outcome	Record item
Feb. 24	Adirondack Council motion to revise issues; staff, Sierra Club and Adirondack Wild support; Applicants oppose	Granted, Mar. 24	5.13 to 5.17, 5.25, 7.6
Mar. 4	Applicants cross-move to stay the hearing pending the court case	Indefinite stay denied, Mar. 13	5.17, 7.5
Mar. 6	Intervenors ask to modify the schedule; staff consent; Applicants oppose	Granted; Second Revised Scheduling Order, Mar. 13	5.19, 5.22, 5.23, 1.12
Apr. 8 and 29	Discovery demands, witness lists and responses exchanged	Staff disclosure complete June 26	9.1 to 9.3, 10.1 to 10.5
May 26 to June 15	Staff and intervenors exchange letters on staff's role under 580.6(a); conference	Third Revised Scheduling Order, June 24	11.17 to 11.19, 12.6, 1.13

Source: Agency Staff Summary of the Record (000001 to 000028). Adjournments are on R-2.

R-6. Site Visit Correspondence (1 of 6)

Date	What happened	Cite
June 24, 2026	Scheduling order: the parties "are proposing a site visit to occur July 15-17 or the week of July 27, 2026"	000074
July 7	Applicants' letter sets terms for a visit to Lot 31 (Range) on July 15	000776; 000888
July 8	Adirondack Council's counsel: limits on people and time not "reasonable"; "I thought the visit was to include both properties"	000779
July 8	Agency Staff: some terms "unreasonable and unclear"	000784

Sources: record correspondence, Third Revised Scheduling Order and ALJ ruling, as cited

R-6. Site Visit Correspondence (2 of 6)

Date	What happened	Cite
July 8 to 9	ALJ: “I have no objections to the terms and conditions. I do not speak for APA hearing staff or any of the intervenors”	000785
July 9	Applicants: “I hereby withdraw the offer extended to the intervening parties to perform an inspection of the project site.”	000787; 000886
July 10	ALJ: “there is no legal requirement for one to be conducted as part of the hearing process”	000885; 000876

Sources: record correspondence, Third Revised Scheduling Order and ALJ ruling, as cited

R-6. Site Visit Correspondence (3 of 6)

Date	What happened	Cite
July 10	Applicants: “law enforcement will be called if any unauthorized individuals attempt to enter upon the land”	000790
July 10	Protect: prepared to attend with 2 or 3 people	000791
July 15	Visit held with Agency Staff only	000886; 000888

Sources: record correspondence, Third Revised Scheduling Order and ALJ ruling, as cited

R-6. Site Visit Correspondence (4 of 6)

Date	What happened	Cite
Aug. 10	Letter “on behalf of the Intervenors”: they were “unjustifiably excluded”	000772 to 000774
Aug. 28	Applicants: no legal right to inspect; the offer was voluntary	000876 to 000877
Sept. 14	ALJ: no visit requested or ordered; the refusal “negatively impacted” the intervenors	000982 to 000983

Sources: record correspondence, Third Revised Scheduling Order and ALJ ruling, as cited

R-6. Motion Through Referral (5 of 6)

Date	Action	Outcome	Record item
July 21	Three intervenors ask the Executive Director to suspend the hearing	No Action	5.26
Aug. 11	Applicants ask for 21 more days for testimony	Denied, Aug. 12	5.28, 5.29
Aug. 17	Intervenors' joint motion to dismiss	Briefing set at Aug. 19 conference	5.31.1, 14.10, 14.11
Aug. 28 to Sept. 11	Responses, cross-motion, replies, Applicants' letter	Summaries: slides 33 to 38; detail: R-11	5.31.2 to 5.31.6
Sept. 9	Applicants ask for oral argument	Denied, Sept. 10	5.30.3, 5.30.4

Source: Agency Staff Summary of the Record (000001 to 000028)

R-6. Motion Through Referral (6 of 6)

Date	Action	Outcome	Record item
Sept. 14	ALJ ruling and referral to the Board	Pending before the Board	7.7
Sept. 25 to 28	Staff ask for certified record and adjournment	Adjourned to Dec. 2	1.14, 1.15
Oct. 8	Certified record provided to Agency Staff and the parties	n/a	13.2
Oct. 26 and Nov. 5	Staff summary; parties' comments	Before the Board	000001; comments

Source: Agency Staff Summary of the Record (000001 to 000028)

R-7. Court Proceeding (1 of 2)

Date	Action	Cite
Jan. 30, 2026	Article 78 petition in Supreme Court, Essex County (Index No. CV26-0063). Respondents: Agency Board, an Agency member, Executive Director and the ALJ.	000023, 000678
	Relief sought: annul the Board's hearing order and the Executive Director's denial of the disqualification challenge	000670 to 000671
Feb. 2	Assigned to Justice Allison M. McGahay	11.14
Feb. 4	Order to show cause; return date Feb. 20. The court did not issue a stay.	000693, 000703
Feb. 13	Court scheduling order; papers to be fully submitted by Apr. 20	000672, 000678 to 000679

R-7. Court Proceeding (2 of 2)

Date	Action	Cite
Mar. 13	ALJ notes no court stay is in place and continues the hearing	7.5
Aug. 28	Staff report the State moved to dismiss and a decision is pending	000891
Sept. 14	ALJ: the court “has not issued a ruling or decision”	000972

R-8. Lot 29 (Silo) in the Application Materials (1 of 3)

Document	What it shows	Cite
Application form, § 4	Lists only parcel 38.1-1-31.000 (handwritten); no Diversified signature	Item 14.1 at 6
Application Supplement	Between test series, trailers and equipment "will be removed from the site at 195 Hale Hill Lane and stored at the 87 Hale Hill Lane address"; "preparation, support, and data collection will occur at the missile silo site"; the range "is an extension of the effort currently ongoing at 87 Hale Hill Lane"	Item 14.1 at 29, 31, 32
Agency notices and letters	Each captions both tax map numbers	Item 14.1 at 65, 107, 128, 171, 316, 401, 746, 936, 1117
First notice and response	Agency asked about Parcel 29; Applicants responded	Item 14.1 at 66, 70
February 2022 response	"impractical to move the testing to a location farther from our existing facility"	Item 14.1 at 113

R-8. Lot 29 (Silo) in the Application Materials (2 of 3)

Document	What it shows	Cite
Third Notice & Response	Diversified principals' signatures requested "as necessary" Response: "Diversified Upstate Enterprises, LLC is a wholly owned subsidiary of UCI. Mr. Hopmeier is the principal for both entities"	Item 14.1 at 172, 194
Applicants' Final Comments Nov. 6, 2025	Captioned with both parcels	Item 14.1 at 1122
Project Order, Nov. 14, 2025	The range "utilizes two parcels"	000030 to 000031
Notice of Public Hearing	Names both landowners	000040
3/22 public notice	Refers to Parcel 31 only	001790

R-8. Lot 29 (Silo) in the Application Materials (3 of 3)

Document	What it shows	Cite
Staff memo, May 8, 2024	Site is Parcel 31; silo “just over a mile to the east”	000303
June 2023 separate application	Signed “Michael Hopmeier, Single Member” of Diversified	000737
July 9, 2026	Applicants: the silo property “is not part of my clients’ application”; staff: “only Lot 31 ... is listed”	000816, 000814
July 13, 2026	Staff seek the Lot 29 (Silo) owner’s consent	000835

R-9. Third Revised Scheduling Order

Date	What the order says
Aug. 12, 2026	“The applicant will file and serve pre-filed testimony of witnesses and related exhibits on or before 5:00 p.m. on August 12, 2026.”
Aug. 26, 2026	“APA staff shall file and serve pre-filed direct testimony and related exhibits on or before 5:00 p.m. on August 26, 2026.”
Sept. 9, 2026	“Intervenors shall file and serve pre-filed direct testimony and related exhibits on or before 5:00 p.m. on September 9, 2026.”
Oct. 28, 2026	The hearing “shall now commence on Wednesday October 28, 2026, at 10:00 A.M.”
10-day rule	“Any requests to modify or amend this Scheduling Order must be filed in writing at least 10 calendar days before the established due date. Prior to filing the request, the parties must confer and attempt to resolve the conflict before filing the request”

000074 to 000076 (item 1.13)

R-10. Text of the Law: SAPA

Provision	Text
§301(5)	“Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.”
§302(1)	“The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered.”
§302(3)	“Findings of fact shall be based exclusively on the evidence and on matters officially noticed.”
§306(1)	“Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence.”

Source: statute and regulation text as supplied (current through November 2026)

R-10. Text of the Law: APA Act, Part 1

Provision	Text
§803	“There is hereby created in the executive department, the Adirondack park agency”
§802(28)	“Land use or development” or “use” means “any construction or other activity which materially changes the use or appearance of land or a structure or the intensity of the use of land or a structure.”
§809(2)(a)	A person proposing a regional project “shall make application to the agency for approval of such project and receive an agency permit therefor prior to undertaking the project.”
§809(3)(c)	“In the case of an application for a permit for which a public hearing has been held, the agency decision shall be mailed on or before sixty calendar days after receipt by the agency of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.”
§809(3)(d)	“No project may be disapproved without a public hearing first being held thereon.”
§809(10)	“The agency shall not approve any project proposed to be located in any land use area not governed by an approved local land use program, or grant a permit therefor, unless it first determines that such project meets the following criteria:”

Source: statute text as supplied and as posted by the Agency (current through November 2026)

R-10. Text of the Law: APA Act, Part 2

Provision	Text
§812(3)	“Parties to a public hearing shall be the project sponsor and any person or agency entitled to individual notice and any other person or agency as may be authorized under the agency’s project review rules and regulations.”
§812(4)	“[A]ny findings, decision, order, permit or certificate of the agency shall be adopted by the agency, all members voting having familiarized themselves with the record.”
§812(6)	“[P]arties shall be afforded the opportunity to present evidence and argument and, in the case of the project sponsor, any person or agency entitled by law to individual notice and any other public agency, to cross-examine witnesses on all relevant issues, but the member or designee presiding may impose reasonable limitations as to time and number of persons heard.”

Source: statute and regulation text as supplied (current through November 2026)

R-10. Text of the Law: Agency Regulations, Part 1

Provision	Text
§580.1(a)	“Except as provided in subdivision (b) of this section, this Part applies to public hearings held on all projects.”
§580.5(c)	“In addition to the project sponsor and the persons named in section 809(3)(e) of the Adirondack Park Agency Act, the parties to the hearing shall be: ... (c) persons granted intervention pursuant to section 580.7 of this Part.”
§580.6(a)	“The agency staff, while not a party to the hearing, shall have the right to participate fully in the hearing and shall act as an advocate for a full and complete record upon which an informed decision can be made.”
§580.7(a)	“Any person may seek to become a party in order to present evidence, cross-examine witnesses, and otherwise participate in a public hearing by filing a written petition with the executive director or, if he has been selected at the time of its filing, the [ALJ].”
§580.11(b)	“The burden shall be on the project sponsor to present testimony concerning the matters alleged in the application.”
§580.12(c)	“Hearings shall be adjourned to a time, day and place certain.”

Source: statute and regulation text as supplied (current through November 2026)

R-10. Text of the Law: Agency Regulations, Part 2

Provision	Text
§580.14(b)(4)	“The hearing officer may determine the sequence of participation, taking into account the convenience of parties or witnesses, clarity of the record, and similar considerations. As a general rule, the project sponsor shall proceed first, followed by the agency staff, other governmental agencies, and other parties.”
§580.14(b)(6)(i)	“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.”
§580.14(g)(2)(i)	“The official record of the hearing shall be filed with the agency and shall include: (i) the application and all notices (including the notice of hearing and any notices of appearance) and motions”
§580.18(a)	“The agency staff may summarize the record of any hearing for the aid of the agency. The parties participating in the hearing shall be provided an opportunity to make written comment with respect to the completeness of the summary. Comments shall be directed to the record and shall not consist of argument or reference to matters outside the record.”
§580.20	“Any time period specified in this Part may be extended for good cause by written mutual consent of the project sponsor and the agency staff.”

Source: statute and regulation text as supplied (current through November 2026)

R-11. The Six Filings in Detail

JMTD – Intervenors: Three Grounds

Intervenors

- Applicants “refused to acknowledge” that Lot 29 (Silo) is part of the application.
- Applicants “failed to provide Intervenors and their experts access” to the site.
- Applicants “failed to submit pre-filed testimony in support of the application by August 12, 2026.”

Affirmation ¶ 2 (000803 to 000804)

JMTD – Intervenors: Opposed a 4th Scheduling Order

Intervenors

- It would “effectively reverse” the August 12 ruling
- Applicants “have not stated any reason, much less good cause”
- It would “significantly prejudice the Intervenors,” whose witnesses planned around the schedule

Affirmation ¶¶ 3, 8, 33 (000804, 000805, 000809)

JMTD – Intervenors: Applicants' Burden of Proof

Intervenors

- The Board ordered the hearing because information was "insufficient"
- The Applicants have the burden
- The failure to file "effectively constitutes a default on their application"
- Applicants "have had a full and fair opportunity to present their case for permit issuance and have failed to do so"
- Denial "may only be by vote of the full APA Board."

Affirmation ¶¶ 36 to 41 (000810 to 000811)

JMTD – Agency Staff: ALJ's Authority

Agency Staff

- ALJ may "do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing."
- Default rules reflect that a party "has an obligation to participate in the proceedings in good faith."
- Court cases on dismissal ask whether conduct was "willful, contumacious, or in bad faith"; they are "instructive but not controlling."
- Failure to file pre-filed testimony "is more akin to failure to appear."

000892 to 000893

JMTD – Agency Staff: Earlier Challenges

Agency Staff

- **Staff listed:** challenges to the hearing order and the ALJ's objectivity; the site visit; the intervenors' party status; the federal contract.
- "Attorney for the Applicant has done just about everything but introduce evidence that demonstrates the proposed project is approvable."
- "To be clear, Agency staff are not suggesting that any of the above actions would be inappropriate if grounded by evidence."

000893 to 000894

JMTD – Agency Staff: The Scheduling Order

Agency Staff

- The schedule “was carefully constructed and intentionally staggered.”
- A three-week extension “compresses the timeline that all parties, including the Applicant, must work within.”
- “The delay – in and of itself – is a harm that cannot be fully be redressed by shifting the hearing schedule.”
- “Independently, failure to comply with the scheduling order would be unlikely to be read as ‘willful ... or in bad faith’, however, in the broader context of this application and these proceedings, it is hard to separate this failure from what appears to be a larger strategy of avoidance.”

JMTD – Agency Staff: ALJ Options

Agency Staff

- “Agency hearing staff do not advocate for a specific sanction, though some form of admonishment is proper.” Options:
  - Dismissal and return to the Agency Board
  - Preclude the testimony and continue
  - Admit the testimony on conditions
  - Other Sanction
- “The Agency can only provide the opportunity for due process; it cannot compel participation.”
- The Applicants “may withdraw at any time.”

000894 to 000895

JMTD – Applicants' Response/Motion: Participation

Applicants

- Agency Regulations: a person may become a party "to present evidence, cross-examine witnesses, and otherwise participate in a public hearing."
- The Intervenors therefore "may only participate in the public hearing."
- The public hearing "has yet to start."
- They "may not participate in pre-hearing proceedings," so they could not file this motion.

¶¶ 2 to 3 (000869 to 000870)

JMTD – Applicants' Response/Motion: Participation

Applicants

- Part 580 "created the distinction"
- Every Scheduling Order separates the two.
- The Agency's website has "Pre-Hearing Materials" and "Hearing Materials"
- Pre-hearing proceedings "have not been public."

¶¶ 3 to 5 (000870)

JMTD – Applicants' Response/Motion: Participation

Applicants

- SAPA "does not equate the 'adjudicatory proceeding' with 'hearing.'"
- **SAPA 301(5):** a proceeding may end "by stipulation, agreed settlement, consent order, default, or other informal method."
- **SAPA 302(1):** the record includes "all notices, pleadings, motions, intermediate rulings."
- "The hearing is only one component or stage of the adjudicatory proceeding."

¶¶ 6 to 14 (000871 to 000873)

JMTD – Applicants' Response/Motion: Compliance

Applicants

- "Applicants and I have largely complied with ALJ Greenwood's directives, with the exception of untimely requesting more time to file pre-hearing testimony."
- The Applicants "tolerated" the intervenors' participation "until now" and "hereby object"
- The ALJ "must grant" the cross-motion and "strike or deny" the Motion to Dismiss.

¶¶ 20 to 21 (000876)

JMTD – Applicants' Response/Motion: Site Visit

Applicants

- The Act and regulations "do not give [the intervenors] the right to enter upon and inspect the project site."
- The ALJ said there is "no legal requirement" for a site visit.
- The Applicants "acted in good faith" and "voluntarily offered" a visit to Lot 31 (Range) on terms.
- The intervenors "rejected the offer."

¶¶ 22 to 23 (000876 to 000877); Exhibits A and B

JMTD – Applicants: Lot 29 (Silo) Not Part of Site

Applicants

- The application form identifies the site by one tax parcel, 38.1-1-31.000: Lot 31 (Range), 195 Hale Hill Lane.
- The deed, property report and site plans attached are for Lot 31 (Range).
- No owner consent was provided for Lot 29 (Silo), 87 Hale Hill Lane.
- The Agency never asked for that consent over five years.

¶¶ 24 to 26, fn. 5 (000877 to 000878)

JMTD – Applicants: Preemption

Applicants

- The range is not “just a commercial shooting range”
- All activities “will be performed under and subject to a federal contract”
- The Applicants continued “in good faith to demonstrate transparency”
- “Any argument or proof submitted against the application is irrelevant”
- “The proposed project is immune to state regulation, including the APA Act and the rules and regulations promulgated thereunder”

¶¶ 28 to 31 (000880 to 000881)

JMTD – Motion to Dismiss Should be Granted

Intervenors

- The Applicants “unjustifiably failed to submit pre-filed testimony”
- “have not even attempted to establish good cause for this failure”
- No “dispute that they have failed to meet their required burden of proof”
- SAPA 301(5) permits disposition “by default.”

¶¶ 2, 6, 11 (000898 to 000901)

JMTD – Intervenors: Lot 29 (Silo) Site Access

Intervenors

- The Applicants “confirm that they have failed to submit the required consent” for Lot 29 (Silo) - “a separate ground” for the motion.
- The owner is Diversified Upstate Enterprises, LLC, “whose sole owner and principal officer is Michael Hopmeier.”

¶¶ 7 to 10 (000900 to 000901)

JMTD – Intervenors: Cross-Motion Made Too Late

Intervenors

- The Intervenors were granted party status January 12, 2026.
- “At no time during the more than ten months” did Applicants object
- The Applicants “demanded that the Intervenors participate in pre-hearing discovery”

¶¶ 13 to 14 (000901 to 000902)

JMTD – Intervenors: Regulations and SAPA

Intervenors

- Once granted, an intervenor “is a full party to the hearing” (580.5[c], 580.9, 580.14[f])
- SAPA “makes clear that pre-hearing procedures are an integral component” of the process
- SAPA sections cited by the Applicants “directly undermine” their own claim
- Their reading “would thus render the granting of full party status to an intervenor largely meaningless.”

¶¶ 15 to 19 (000902 to 000904)

JMTD – Intervenors: Preemption Not Before ALJ

Intervenors

- It “should be raised, if at all, by a motion to dismiss for lack of jurisdiction”
- It is “premature because” counsel “conceded during the August 19, 2026, pre-hearing conference that the Applicants do not have a federal contract”
- The cases cited “are either distinguishable, inapposite, or do not support the Applicants’ position.”
- The preemption position shows “no intention of providing the required information.”

¶¶ 21 to 24 (000901; 000904 to 000905)

JMTD – Intervenors: Agency Staff's ALJ Options

Intervenors

- The Intervenors "agree with APA staff that 'admonishment is proper'" and that dismissal is appropriate
- **Precluding Testimony but Continuing:** Applicants "necessarily will be unable to meet that burden," so further proceedings "would therefore serve no useful purpose."
- **Conditional Admission:** "would, in substance, reverse" the August 12 ruling.
- "Only the APA Board can rule that the Applicants have failed to meet their burden of proof."

¶¶ 25 to 30 (000905 to 000906)

JMTD – Agency Staff: Applicants' Arguments

Agency Staff

- "Applicant's latest submission further supports the conclusion that the Applicant's failure to comply with the scheduling order is part of a broader disregard for the Agency's hearing process."
- The response and cross-motion "raise novel arguments concerning the intervening parties' right to participate in the proceedings and the Agency's review authority."
- "Neither argument addresses the Applicant's failure to comply with the scheduling order or to submit pre-filed testimony."

000908 to 000909

JMTD – Agency Staff: Regulation 580.7(a)

Agency Staff

- **Agency Regulation:** Parties "may seek to become a party in order to present evidence, cross-examine witnesses, and otherwise participate in a public hearing"
- "Otherwise participate" is "not a limitation; it is a catchall."
- Intervenors are therefore "parties to the hearing." "This is not an interpretation of the regulations; it is a definition."

JMTD – Agency Staff: Regulation Part 580

Agency Staff

- Part 580 governs “public hearings held on all projects,” including notice, selection of the hearing officer and pre-hearing conferences.
- These sections are “all part of and inextricable from the hearing”
- The regulations also provide for party participation post-hearing
- “Party status is not an honorary title reserved solely for the day of testimony”
- The Applicants’ reading is “contrary to any reasonable interpretation” and would create “an absurd procedural vacuum.”

JMTD – Agency Staff: Preemption

Agency Staff

- Staff “agree with the intervenors” that the argument is “improperly raised and premature”
- The cases cited “are not on point”
- If the Applicants obtain a federal contract, staff “reserve the right to make further arguments”

JMTD – Applicants' Letter: Time Passing is not Delay

Applicants

- "[T]he passage of time is not synonymous with dilatory conduct"
- The questions are "why the time elapsed, who was responsible," whether there was deliberate obstruction, and "what actual prejudice resulted."
- Several adjournments "were jointly requested, consented to by Attorney Sullivan, or affirmatively requested by Attorney Sullivan."

JMTD – Applicants' Letter: No Misconduct

Applicants

- Staff "expressly conceded" that the missed deadline, "considered independently, would be unlikely to constitute conduct that was 'willful, ... or in bad faith.'"
- "Legitimate litigation activity does not become misconduct simply through aggregation."
- "A jurisdictional objection does not become obstruction merely because the APA disagrees with it."
- The ALJ's ruling "undermines the theory that the Applicants' missed deadline justified termination of the proceeding" because the ALJ "simultaneously stated that 'the hearing in this matter must proceed' and determined that the appropriate course was to convene the parties promptly to develop a Fourth Revised Scheduling Order."

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