NORFOLK BEIER PLLC
ATTORNEYS AT LAW

March 11, 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 Scheduling Order; Reply to Motion for Stay
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 reply letter in further support of Applicants' cross-motion to stay the public hearing, and in opposition to the joint motion to revise the First Revised Scheduling Order, dated February 11, 2026 (hereinafter referred to as the "Scheduling Order"), making reference to:

1. Applicants' notice of cross-motion for a stay of proceedings, dated March 4, 2026, with supporting affirmation of Matthew D. Norfolk, Esq., affirmed March 4, 2026 (hereinafter referred to as "Applicants' Cross-motion");
2. Emails:
    a. Dated March 5, 2026, from Christopher Amato, of Protect the Adirondacks (hereinafter referred to as "Protect"), proposing a revised scheduling order;
    b. Dated March 5, 2026, from Grace Sullivan, Esq., of Adirondack Park Agency (hereinafter referred to as "APA"), proposing modification to the proposed revised scheduling order;
    c. Dated March 5, 2026, from Todd Ommen, Esq., on behalf of Sierra Club, in support of either proposed scheduling orders;
    d. Dated March 6, 2026, from Paul Van Cott, Esq., on behalf of Adirondack Council, in support of the revised scheduling order as proposed by APA;
    e. Dated March 9, 2026, from Dave Gibson, of Adirondack Wild: Friends of the Forest Preserve;
3. Letter dated March 6, 2026, from Christopher Amato, Esq., on behalf of the Protect, Adirondack Council, Sierra Club, and Adirondack Wild: Friends of the Forest Preserve (hereinafter collectively referred to as "Intervenors");
4. Letter dated, March 10, 2026, from Christopher Amato, Esq. of Protect;
5. Letter dated March 10, 2026, of Todd Ommen, Esq., on behalf of Sierra Club.

Applicants hereby incorporate their arguments on Applicants' Cross-motion in opposition to the Intervenors' motion to revise the scheduling order. The hearing and pre-hearing proceedings

should be put on hold until the issues presented in the Article 78 proceeding are resolved. Applicants' motion for a stay should be granted, mooting Intervenors' motion to revise the scheduling order. Subject to and without waiving the foregoing, Applicants' object to Intervenors' proposed revised scheduling order. Witness lists should be produced simultaneously as currently ordered, and making a change to the sequence of their production is a pointless request. Indeed, it is apparent Intervenors are looking for any reason to make a motion in attempt to gain some "advantage" in this hearing and to tactically keep Applicants' bill running. To the extent that Intervenors are attempting to gain some advantage by submitting their own witness lists a week after Applicants, such request should be denied as causing prejudice to Applicants.

In its opposition to Applicants' Cross-motion, Protect refers to Applicants' request as one for an "indefinite stay." Protect and Sierra Club argue this is because the date a decision will be handed down in the Article 78 proceeding is unknown and therefore indeterminate. This is disingenuous and nonsense. Applicants clearly requested a stay to a date, time, and place certain of June 24, 2026, at 10:00 AM, at APA headquarters. Moreover, Supreme Court Justice Allison McGahay purposely scheduled oral argument on the Applicants' Article 78 petition—originally on February 20, 2026 (*see* NYSCEF Doc. No. 19; Index No. CV26-0063)—before commencement of the public hearing—which at the time was scheduled for February 25, 2026—to render a decision on the Applicants' petition to reverse the Agency's Board's decision to hold a public hearing expeditiously. To the extent a decision may take longer, the stay can continue to be extended to a date, time, and place certain as needed.

Protect states that Applicants' estimation that a decision will be rendered within 60 days is "pure conjecture" and "unsupported." However, "an order determining any other motion **shall be made within sixty days**, after the motion is submitted for decision." CPLR R. 2219(a) (emphasis added). An Article 78 proceeding is a special proceeding. CPLR §7804(a). "A special proceeding is a civil judicial proceeding in which a right can be established or an obligation enforced in summary fashion. Like an action, it ends in a judgment (CPLR 411), but the procedure is similar to that on a motion (CPLR 403, 409). Speed, economy and efficiency are the hallmarks of this procedure." Vincent C. Alexander, *Practice Commentaries*, McKinney's Cons Laws of NY, CPLR C401:1. Thus, as Article 78 proceeding procedure is akin to that of a motion, it is reasonable and supported by statute that a decision can be expected within 60 days.

To the extent Protect argues an appeals process might drag on for years, this is an argument in favor putting the public hearing on hold so as not to waste months' worth of time and money developing a record in this public hearing that could eventually be undone. A stay is clearly needed. As evidenced by their recent motions, Intervenors are creating endless, frivolous busywork in an attempt to drain Applicants' resources. In doing so, Intervenors have disrespectfully hijacked the proceedings from Your Honor. It is not for Intervenors to dictate the issues, the schedule, the sequence of production of evidence, or the Applicants' choice of counsel. Their unchecked conduct has resulted in the Intervenors assertion of the role of prosecutor in this hearing where Applicants have the burden of proof and are to present the trial-analogous case-in-chief. Applicants ask Your Honor to reestablish some order and issue a stay. The longer these proceedings continue while Applicants' legitimate concerns regarding conflicts of interest are pending, the longer Intervenors will impose time-wasting motion practice, usurpation of the hearing process from Your Honor, and prejudice upon Applicants.

Protect and Sierra Club present a gross mischaracterization in stating that Applicants sought and failed to obtain a stay from Supreme Court in the Article 78 proceeding. The Court declined to grant the stay because it refused to do so *ex parte*, and the reason the issue was presented *ex parte* was because the parties stipulated to a briefing schedule pushing back the return date. This was done contingent on the public hearing commencement date being adjourned. However, in the time since, the other dates of the Scheduling Order were not adjourned and Intervenors continued an aggressive motion practice campaign. These changes in circumstances necessitate revisiting the need for a stay.

Despite Protect's assertion, Applicant's cross-motion for a stay was not addressed in Your Honor's February 11, 2026, ruling. On February 9, 2026, Applicants requested all dates of the original scheduling order be adjourned 30 days. Protect is attempting to conflate requests to modify the scheduling order with the injunctive relief of a stay of proceedings. These are different and distinct remedies. A motion for a stay is not a motion to modify or amend and order. Applicants effectively seek injunctive relief, not a procedural changing of dates in the Scheduling Order, as they did in said February 9, 2026, email. Applicants therefore did not fail to comply with the procedures of the Scheduling Order by not meeting and conferring in advance of Applicants' Cross-motion, and Applicants' Cross-motion is its first formal request to Your Honor seeking relief of a stay.

In reply to the argument relating to collateral estoppel in Sierra Club's response letter, dated March 10, 2026, that doctrine is completely irrelevant here. The "doctrine of *res judicata* which holds that, as to the parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action." *Gramatan Home Invs. Corp. v Lopez*, 46 N.Y.2d 481, 485 (1979). "This principle, so necessary to conserve judicial resources by discouraging redundant litigation, is grounded on the premise that once a person has been afforded a full and fair opportunity to litigate a particular issue, that person may not be permitted to do so again." *Id*. There is absolutely no application of this legal doctrine in the present situation. Supreme Court's declining to issue a stay at that time was not a judgment on the merits, nor a decision on a matter of fact or law. It was a procedural direction following a stipulation by the parties that was in no way determinative, binding, or even guiding in this administrative proceeding. Sierra Club is not even a party to the Article 78 proceeding.

Therefore, Applicants' Cross-motion should be granted, and Intervenors' motion to revise the Scheduling Order should be denied.

Respectfully,

Norfolk Beier PLLC

By: 
Matthew D. Norfolk, Esq.

cc: Service List