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Via Email

January 22, 2026

Barbara Rice
Executive Director
Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977

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

Dear Executive Director Rice:

Attached please find an Affidavit submitted on behalf of Protect the Adirondacks in opposition to the request by counsel for the applicants in the above-referenced proceeding that Administrative Law Judge David N. Greenwood be disqualified from presiding over the adjudicatory hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Amato", with a stylized flourish at the end.

Christopher A. Amato, Esq.
Conservation Director and Counsel

Cc: Hon. David N. Greenwood
Matthew Norfolk, Esq.
Shane Kelly, Esq.
Grace Sullivan, Esq.
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Philip H. Gitlen, Esq.
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Protect the Adirondacks

PO Box 48, North Creek, NY 12853 518.251.2700

www.protectadks.org info@protectadks.org

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Paul Van Cott, Esq.
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Roger Downs
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STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter of the Application of

UNCONVENTIONAL CONCEPTS, INC.
and MICHAEL HOPMEIER

AFFIDAVIT

For a Permit Pursuant to Section 809 of the
Adirondack Park Agency Act and
9 NYCRR Parts 573 and 574

Project No. 2021-0276

STATE OF NEW YORK)

COUNTY OF ALBANY) SS.:

CHRISTOPHER A. AMATO, being duly sworn, deposes and says:

1. I am Conservation Director and Counsel for Intervenor Protect the Adirondacks! Inc. (PROTECT). I respectfully submit this affidavit pursuant to 9 NYCRR § 580.8(b) and Section 303 of the State Administrative Procedure Act (SAPA) in further response to the January 20, 2026 submission from Matthew Norfolk, Esq., counsel for the applicants in the above-referenced proceeding, which purports to challenge the qualifications of Administrative Law Judge (ALJ) David N. Greenwood.
2. Although Mr. Norfolk has now resubmitted his challenge in affidavit form, the submission remains fatally deficient. It is untimely and fails to present any evidence that ALJ Greenwood is affected by personal bias. Because both a timely filing and a showing of bias are required under Part 580.8(b) and SAPA § 303 before an ALJ may be disqualified, Mr. Norfolk's demand that ALJ Greenwood be removed must be denied.
3. Moreover, Mr. Norfolk's latest submission is nearly identical to the challenge he filed in November 2025—one that you have already denied. He offers no grounds, new facts, or

justification for revisiting or overturning that prior determination. Accordingly, this attempt to revive a previously disallowed challenge should be rejected.

The Latest Challenge is Untimely

4. Mr. Norfolk acknowledges in his affidavit that he initially challenged ALJ Greenwood's designation as hearing officer and requested his recusal by letter to you dated November 24, 2025. He omits, however, that you responded by letter dated November 26, 2025, explaining that his submission failed to comply with the requirements of Part 580.8 and SAPA § 303; failed to identify any disqualifying relationship or connection between ALJ Greenwood and the Adirondack Council; failed to offer evidence that ALJ Greenwood was involved in the Adirondack Council's submissions to the Adirondack Park Agency regarding the proposed project; and that, "without more," the challenge was therefore "insufficient to create an appearance of bias." Your letter nevertheless afforded Mr. Norfolk additional time to cure these deficiencies, or raise any other issues. A copy of your November 26, 2025 letter is annexed hereto as **Exhibit A**.
5. Mr. Norfolk also fails to acknowledge his November 26, 2025 response to your letter, in which he rejected your offer of additional time, characterizing it as "an abuse of discretion" and asserting that it demonstrated bias against his clients. He further stated that, "I will not be filing papers at this time to challenge ALJ Greenwood's designation as the hearing officer and I object to and reject your unauthorized, extra-jurisdictional attempt to convert my letter of November 24, 2025, to ALJ Greenwood to a challenge of his designation as the hearing officer pursuant to 9 NYCRR § 580.8." A copy of Mr. Norfolk's November 26, 2025 letter is annexed as **Exhibit B**.

6. Despite expressly declining to pursue a challenge at that time, Mr. Norfolk waited nearly two months—until the day before the pre-hearing issues conference scheduled by ALJ Greenwood—to renew his request. He offers no explanation for this delay. Filing a renewed challenge on the eve of the issues conference, after expressly refusing the opportunity to supplement the earlier submission, renders this challenge untimely. On this basis alone, it must be denied.

The Challenge is Unsupported by Any Evidence of Bias

7. Mr. Norfolk’s affidavit also omits the fact that, by letter dated December 1, 2025, ALJ Greenwood advised you and counsel that he had “considered potential parties or intervenors to the Agency’s hearing on the project application and ensured that I have no current or recent professional or financial connections that might raise an issue of bias or other disqualification.” A copy of ALJ Greenwood’s letter is annexed as **Exhibit C**.
8. Mr. Norfolk offers no evidence to rebut this representation by the ALJ. Instead, he merely asserts that ALJ Greenwood has an “inherent conflict of interest” based solely on prior employment with the Adirondack Council more than twenty years ago. He cites no legal authority for the proposition that past employment in the remote past, without more, constitutes a *per se* conflict requiring disqualification.
9. The cases cited by counsel do not support his position. In *Johnson v. Hornblass*, 93 AD2d 732 (1st Dept. 1983), the presiding judge personally visited a criminal defendant during a pending proceeding to assess compliance with court orders. Although the Appellate Division denied the requested writ of prohibition, it suggested recusal to avoid an appearance of impropriety based on the judge’s direct, case-specific involvement. Mr.

Norfolk has shown no comparable involvement by ALJ Greenwood in the Adirondack Council's review of or opposition to this project. *Johnson* is therefore readily distinguishable.

10. In addition, *Janczewski v. Janczewski*, 169 AD3d 773 (2d Dept. 2019), is inapposite. That case concerned disqualification of opposing counsel based on prior representation of an adversary and turned on attorney-ethics rules, not judicial disqualification standards. It has no bearing here.
11. By contrast, controlling authority makes clear that disqualification requires record evidence of actual bias or a demonstrable conflict of interest. The Court of Appeals has held that “[t]o establish Hearing Officer bias as a matter of fact, there must be support in the record for bias and proof that the outcome flowed from the alleged bias.” *Hughes v. Suffolk Cty. Dep’t of Civil Serv.*, 74 NY2d 833, 834 (1989) (allegation that hearing officer was respondent’s employee held insufficient). *See also Flores v. N.Y. State Educ. Dep’t*, 146 AD2d 881, 881 (3d Dept. 1989) (holding that member of Health Department hearing panel’s prior employment by Department of Health was insufficient to establish bias due to “absence of proof of a personal or financial conflict of interest”); *Grant v. Senkowski*, 146 AD2d 949, 950 (3d Dept. 1989) (rejecting challenge to administrative tribunal “absent a demonstrable conflict of interest or record evidence of real bias”).
12. Mr. Norfolk has offered no such proof here, and his bald assertion of an “inherent conflict” finds no support in law or fact.

No Grounds Exist for Revisiting the Prior Ruling

13. Counsel attempts to draw a distinction between his November 2025 request for recusal and his present demand for disqualification, but this is a distinction without a difference. Both

submissions rest on the same allegations of “implicit bias,” “inherent conflict,” and an asserted “appearance of impropriety.” Indeed, the third paragraph of Mr. Norfolk’s January 20, 2026 affidavit seeking disqualification is identical to the second paragraph of his November 24, 2025 letter seeking recusal.

14. You have already ruled that these allegations are insufficient to warrant disqualification. *See* Exhibit A. Mr. Norfolk’s renewed submission presents no new facts, no new legal authority, and no basis for reconsideration. Accordingly, there are no grounds to revisit, let alone reverse, your prior determination.

WHEREFORE, Intervenor Protect the Adirondacks respectfully requests that the applicants’ demand that ALJ Greenwood be disqualified be denied.



CHRISTOPHER A. AMATO

Sworn to Before Me
This 22nd Day of January 2026



Notary Public

Nathan S. Carlson
Notary Public, State of New York
Qualified in Albany County
No. 01CA6342135
Commission Expires May 16, 2028

EXHIBIT A



November 26, 2025

(By E-Mail: mnorfolk@norfolkbeier.com)

Matthew D. Norfolk, Esq.
Norfolk Beier PLLC
The Outpost
55 Barn Road, Suite 201
Lake Placid, New York 12946

Re: APA Project 2021-0276
Recusal Request

Dear Mr. Norfolk,

I am in receipt of your letter dated November 24, 2024 to Administrative Law Judge David Greenwood requesting his voluntary recusal for the above project.

While your letter does not follow the requirements set out in section 508.8 of the Agency's regulations, including the form and standard required under Section 303 of the State Administrative Procedure Act, I am deeming your November 24th letter as a challenge under section 580.8 to my decision to appoint Judge Greenwood as hearing officer. As set out below, please submit any additional materials you wish me to consider in reviewing Judge Greenwood's selection by November 28, 2025 at 3 P.M. Responding affidavits, if any, including any submitted by Judge Greenwood, must be received by Monday, December 1, 2025 at 3 P.M. I shall issue my decision thereafter pursuant to 580.8(d).

I note that your letter suggests Judge Greenwood be disqualified because he was employed with the Adirondack Council from 1993 to 2000, and that the Adirondack Council has taken public positions on your client's proposed project. Further, you state that "applicable judicial ethical standards" require his disqualification, however, none of those standards are cited.

Even accepting your unsworn statements as true, they do not appear to identify a disqualifying connection or relationship to the Adirondack Council's public comments on the project, nor any fact upon which to suggest that Judge Greenwood was involved in the Council's submissions to the Agency about the project. Without more, prior employment with an organization that has taken a position – one way or the other – on an adjudicatory hearing would appear insufficient to create an appearance of bias. Your

November 26, 2025

Matthew D. Norfolk

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letter also does not seem to include any specific information that challenges Judge Greenwood's impartiality.

Accordingly, as noted above, I am providing you with additional time to submit any information you believe might address these deficiencies, or to raise any other issues you wish to address, so I have a complete record upon which to render my decision. Please submit any additional materials you wish me to consider in reviewing Judge Greenwood's selection by November 28, 2025 at 3 P.M. Responding affidavits, if any, including any submitted by Judge Greenwood, must be received by Monday, December 1, 2025 at 3 P.M. I shall issue my decision thereafter pursuant to 580.8(d).

Sincerely,



Barbara Rice

Executive Director

cc: Hon. David Greenwood (By E-Mail)
Chief Administrative Law Judge Michele M. Stefanucci (By E-Mail)
Damion K. L. Stodola, Counsel (By E-Mail)

EXHIBIT B



November 26, 2025

Via Email Only

N.Y.S. Adirondack Park Agency
Attn: Ms. Barbara Rice, Executive Director
1133 NYS Route 86
Ray Brook, New York 12977
barbara.rice@apa.ny.gov

Re: APA Project 2021-0276
Request for Recusal of David Greenwood as Hearing Officer

Dear Ms. Rice:

I am in receipt of your letter of November 26, 2025, in response to mine of November 24, 2025, *which is addressed to Administrative Law Judge (“ALJ”) David Greenwood* wherein I request he voluntarily recuse himself as the hearing officer to preside over the public hearing to be scheduled in the above-referenced proceeding. I did not submit a request to you or anyone at the Adirondack Park Agency. I had no obligation to even copy you on the letter. ALJ Greenwood has been directly asked to recuse himself. He is the one that my clients and I expect to respond to the request for his recusal. ALJ Greenwood has an independent duty as an administrative law judge and attorney to assess whether he should recuse himself.¹ In light of the foregoing, I will not withdraw my request to ALJ Greenwood that he voluntarily recuse himself. If ALJ Greenwood voluntarily recuses himself, my clients will have no need to consider filing a challenge of his designation as the hearing officer pursuant to 9 NYCRR §580.8.

Furthermore, I stated in my November 24, 2025, letter that the request sent to ALJ Greenwood seeking his voluntary recusal is not a challenge of ALJ Greenwood’s designation as the hearing officer pursuant to 9 NYCRR §580.8 or State Administrative Procedure Act (“SAPA”) §303. Indeed, I have not filed a challenge or application of any kind to date, nor do I wish to do so at the moment. You have no authority to convert my request to ALJ Greenwood to voluntarily recuse himself to a challenge pursuant to 9 NYCRR §580.8 or SAPA §303, or otherwise. You cannot compel me to file challenges and other applications of any kind. That would be unlawful, as is the case now. Accordingly, I object to your attempt to do so and repeat that I have not filed a challenge on my clients’ behalf.

Additionally, even if you had the authority to unilaterally convert my November 26, 2025, letter to ALJ Greenwood to a challenge under 9 NYCRR §580.8, to do so now would prejudice my

¹ I will not waste my clients’ financial resources citing to the ethical standards ALJ Greenwood must follow. I am sure he is well-aware of them, and the APA should have competent legal counsel that can provide you with the standards I reference above and in my letter of November 24, 2025.

clients and be contrary to the procedural structure for challenging a hearing officer's designation under 9 NYCRR §580.8. Pursuant to 9 NYCRR §580.8(a), ALJ Greenwood is required to "make full disclosure, as part of the record, of all information he deems relevant to the issue of bias or other disqualification." ALJ Greenwood has yet to make such disclosure. To file a challenge of his designation before he makes full disclosure of all information he deems relevant to the issue of bias or other disqualification, frankly, would be a stupid thing to do. Any challenge of ALJ Greenwood's designation will not be submitted until after ALJ Greenwood's disclosure of all information he deems relevant to the issue of bias or other disqualification; that is, if he does not recuse himself.

Also, pursuant to 9 NYCRR §580.8(b), "any issue concerning the disqualification of the hearing officer shall be resolved in a pre-hearing conference, if possible." Notably, the filing of a challenge is not needed to have a pre-hearing conference. Here, it is undoubtedly possible to have a pre-hearing conference to address issues concerning ALJ Greenwood's disqualification – if, of course, ALJ Greenwood does not voluntarily recuse himself as I have requested on behalf of my clients. Notwithstanding the foregoing, if ALJ Greenwood does not voluntarily recuse himself, a conference should not be had until he complies with 9 NYCRR §580.8(a) and makes "full disclosure, as a part of the record, of all information he deems relevant to the issue of bias or other disqualification."

Finally, 9 NYCRR §580.8(b) states, in pertinent part, "[a]ll parties *shall be given sufficient opportunity to challenge* his [the hearing officer's] designation by the filing the affidavit referred to in section 303 of the State Administrative Procedure Act with the executive director, on notice to the hearing officer and other parties." (Emphasis added.) For you to direct me to submit papers in support of a challenge, notably which I did not file, in just two days, one of which is Thanksgiving, is absurd. It is an abuse of discretion, seriously prejudices my clients, demonstrates a bias in general, and gives the appearance that you are punishing my clients for requesting ALJ Greenwood voluntarily recuse himself, or, perhaps for filing the application for an APA permit in the first place. I am certain the NYS Supreme Court would agree with me on all fronts.

In closing, I will not be filing papers at this time to challenge ALJ Greenwood's designation as the hearing officer and I object to and reject your unauthorized, extra-jurisdictional attempt to convert my letter of November 24, 2025, to ALJ Greenwood to a challenge of his designation as the hearing officer pursuant to 9 NYCRR §580.8. If and when I file such a challenge, I will follow the rules and regulations governing such an application, and I expect you, as the Executor Director, to do the same.

Kindly include this letter in the official record of the above-referenced project application.

Nothing in this letter is intended to waive any claim or defense Mr. Hopmeier and Unconventional Concepts, Inc. possess or may possess in the future.

[SIGNATURE ON FOLLOWING PAGE]

Ms. Barbara Rice
November 26, 2025
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Sincerely,

Norfolk Beier PLLC

A handwritten signature in blue ink, appearing to read "M. Norfolk", with a long horizontal flourish extending to the right.

By: Matthew D. Norfolk, Esq.

cc: Michael Hopmeier

EXHIBIT C



**Department of
Environmental
Conservation**

KATHY HOCHUL
Governor

AMANDA LEFTON
Commissioner

December 1, 2025
(Via Email Only)

Barbara Rice
Executive Director
Adirondack Park Agency
1133 State Route 86
Ray Brook, NY 12977

Re: APA Project 2021-0276
Sponsor/Applicant: Michael Hopmeier/Unconventional Concepts, Inc.

Dear Executive Director Rice,

By letter dated November 20, 2025, I was appointed to serve as hearing officer for the Agency's hearing on the above referenced project application pursuant to section 580.8(a) of the Agency's regulations. By this letter I make full disclosure, as part of the record, of all information relevant to the issue of bias or disqualification. Prior to accepting the appointment as hearing officer in this matter I ensured that I had no professional or financial connection with Michael Hopmeier, Unconventional Concepts, Inc., Diversified Upstate Enterprises, LLC, Pulsifer Logging, LLC and James Pulsifer and determined that there was no issue of bias or other disqualification pursuant to 9 NYCRR 580.8 of the Agency Regulations. Additionally, I considered potential parties or intervenors to the Agency's hearing on the project application and ensured that I have no current or recent professional or financial connections that might raise an issue of bias or other disqualification.

The role of hearing officer in this matter, as set forth in APA Project Order 2021-0276 issued November 14, 2025, is to develop an evidentiary hearing record on the three issues identified in the Order. The Agency is not requesting that the hearing officer make findings of fact or conclusions of law and reserves to itself the exclusive right to make its own findings of fact and conclusions of law as part of its final Agency determination and order pursuant to 9 NYCRR 580.18. I am confident that I can fulfil the duties of hearing officer in this matter impartially and without any bias to any current or future party with respect to any determination I may make during the hearing.

Sincerely,

Hon. David Greenwood
Administrative Law Judge

cc: Matthew D. Norfolk, Attorney for the applicant
Michele M. Stefanucci, Chief Administrative Law Judge
Damion K. L. Stodola, APA Counsel
Shane Kelly, Norfolk Beier PLLC
Angela Bates, APA