



September 11, 2026

Via Email Only

Honorable David Greenwood
Administrative Law Judge
NYS Department of Environmental Conservation
Office of Hearing and Mediation Services
625 Broadway, First Floor
Albany, NY 12233-1550
david.greenwood@dec.ny.gov

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

Dear Judge Greenwood:

The purpose of this letter is to address Attorney Sullivan's August 28, 2026, submission. The contention advanced by the Intervenor and echoed in substantial part by Adirondack Park Agency ("APA") Attorney Sullivan, that Applicants Unconventional Concepts, Inc. and Michael Hopmeier ("Applicants") and I as their counsel have pursued a deliberate course of delay or a strategy of avoidance is unsupported by a fair examination of the procedural history of this proceeding. At the outset, the argument rests upon a false equivalence: the passage of time is not synonymous with dilatory conduct. A contested administrative proceeding may take considerable time for any number of legitimate reasons, particularly where, as here, the proceeding involves multiple parties, expert testimony, discovery, questions concerning the scope of the project and hearing, procedural motions, jurisdictional issues, and related judicial review. The relevant inquiry is therefore not simply how much time has elapsed. The appropriate inquiry is why the time elapsed, who was responsible for particular adjournments or extensions, whether the Applicants deliberately sought to obstruct the proceeding, and what actual prejudice resulted from any specific procedural noncompliance. Measured by those standards, the charge of intentional delay cannot be sustained.

Indeed, Attorney Sullivan's own August 28, 2026, submission establishes that several significant adjournments were jointly requested, consented to by Attorney Sullivan, or affirmatively requested by Attorney Sullivan. On December 12, 2025, Agency Hearing Staff and Applicants' counsel jointly requested an adjournment. On January 21, 2026, Attorney Sullivan, the Intervenor and I jointly requested another adjournment. On February 11, 2026, an adjournment requested by the Applicants was expressly consented to by Attorney Sullivan. Most significantly, on April 29, 2026, *Attorney Sullivan requested that the evidentiary hearing be adjourned until October 28, 2026,*

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explaining that the additional time was necessary to afford all parties ample opportunity to complete discovery, develop expert reports, and prepare for the evidentiary hearing.

This is not merely a dispute over characterization. Attorney Sullivan expressly conceded that the Applicants' failure to comply with the August 12 scheduling deadline, considered independently, would be unlikely to constitute conduct that was "willful, contumacious, or in bad faith." She instead attempts to convert that discrete scheduling issue into evidence of improper intent by combining it with the Applicants' prior motions, challenges to the hearing process, the Article 78 proceeding, disputes concerning the project site, and other legal advocacy. That reasoning should be rejected. Legitimate litigation activity does not become misconduct simply through aggregation. An unsuccessful motion is not necessarily a frivolous motion. A jurisdictional objection does not become obstruction merely because the APA disagrees with it. Seeking judicial review does not establish an intent to frustrate an administrative proceeding. And disagreement concerning the proper scope of an administrative hearing cannot fairly be converted into evidence of bad faith merely because resolving that disagreement takes time.

Finally, your August 12 ruling undermines the theory that the Applicants' missed deadline justified termination of the proceeding. Although you denied the Applicants' particular 21-day extension request because it did not comply with the procedural requirements of the Third Revised Scheduling Order, you 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 that was mutually agreeable.

For these reasons, any contention that the Applicants or I engaged in sanctionable dilatory conduct should be rejected. Kindly include this letter in the official record for the above-referenced proceeding.

Respectfully,

Norfolk Beier PLLC

By:



Matthew D. Norfolk, Esq.

cc: Attorneys of Record