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THIS IS A TWO SIDED DOCUMENT

 <p>NEW YORK STATE <b>Adirondack</b> parkagency P.O. Box 99 • Ray Brook, New York 12977 (518) 891-4050 www.apa.ny.gov</p>	<p><b>APA Project Permit 2012-185</b></p>
<p>In the Matter of the Application of <b>BEAR POND RANCH, LLC and FRENCH MOUNTAIN BEAR POND LLC</b>  for a permit pursuant to §809 of the Adirondack Park Agency Act</p>	<p>Date Issued:</p>  <p>To the County Clerk: This permit must be recorded on or before _____. Please index this permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. Bear Pond Ranch, LLC</b></li><li><b>2. French Mountain Bear Pond LLC</b></li></ol>

SUMMARY AND AUTHORIZATION

Bear Pond Ranch, LLC and French Mountain Bear Pond LLC are granted a permit, on conditions, authorizing a new and modified existing tourist attraction in an area classified Moderate Intensity Use and Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Towns of Lake George and Queensbury, Warren County.

This project may not be undertaken, and no transfer deed shall be recorded, until this permit is recorded in the Warren County Clerk's Office. This permit shall expire unless so recorded on or before \_\_\_\_\_ in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within two years from the date the permit is recorded. The Agency will consider the project in existence when the Zip-Flyer towers and take off platform and landing pad have been installed.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

#### **AGENCY JURISDICTION**

The portion of the proposed project located in the Town of Lake George (zip line lower tower and landing platform, restaurant, wastewater treatment system, parking areas associated with The Wild West Ranch and Western Town) is located in a Moderate Intensity Use land use area on the Adirondack Park Land Use and Development Plan Map. A new tourist attraction constitutes a Class A project pursuant to Section 810(1)(b)(6) of the Adirondack Park Agency Act.

The portion of the proposed project located in the Town of Queensbury (zip line upper tower, take off platform, composting toilet) is located in a Rural Use land use area. Pursuant to Section 810(2)(c)(15) of the Adirondack Park Agency Act, a tourist attraction is a Class B project that is not listed on the list of primary or the list of secondary uses in Rural Use. 810(2)(c)(15) of the Adirondack Park Agency Act allows local governments and the Agency to agree that any class of land use or development will be reviewed by the agency. The Town of Queensbury administers an Agency-approved local land use program that designates a tourist attraction as a Class A project requiring a permit from the Agency.

In addition, conditions of prior permits retained jurisdiction over further expansion and new uses.

Condition 3 of Agency permit 97-25 states: *No construction of buildings or structures and no new land use or development as defined in Section 802(28) of the Adirondack Park Agency Act which is not expressly authorized by this permit and no subdivision of the project site shall be undertaken without an additional Agency permit. The applicant shall not change the size or location of any sign, the stormwater management plan or the wastewater treatment plan without the prior approval of the Agency, notwithstanding any approval or variance which may be obtained from the Planning Board, Zoning Board of Appeals, Town Board or any other agency.*

Condition 9 of permit 97-25 states: *Parking shall be accommodated on-site and shall not exceed the 232 vehicle capacity shown on the plans.*

**PROJECT SITE**

The project site is a 652.14 acre parcel of land located on NYS Route 9 and Bloody Pond Road in the Towns of Lake George and Queensbury, Warren County, in an area classified Moderate Intensity Use and Rural Use on the Adirondack Park Land Use and Development Plan Map. The southern boundary of the project site corresponds with the boundary of the Park. Both towns administer Agency-approved local land use programs. The project site is identified as the following tax map parcel numbers:

Town of Lake George - 278.00-3-1, 277.02-1-42 and 59, 277.04-2-22

Town of Queensbury - 278.00-1-13, 74, 75, 76 & 77

Tax parcels 278-1-74, 75 and 76 are owned by French Mountain Bear Pond, LLC as described in a deed recorded on August 18, 2005 in Liber 1462 of Deeds, page 206. Tax parcel 278-1-77 is owned by Bear Pond Ranch, LLC as described in a deed recorded on September 22, 2005 in Liber 1468 of Deeds, page 197. Tax parcels 278-1-13 and 278-3-1 are owned by French Mountain Bear Pond, LLC as described in a deed recorded on August 18, 2005 in Liber 1462 of Deeds, page 211. Tax parcels 277.02-1-42 and 277.04-2-22 are owned by Bear Pond Ranch, LLC as described in a deed recorded September 1, 2005 in Liber 1468 of Deeds at page 197. Tax parcel 277.02-1-59 is owned by Bear Pond Ranch, LLC as described in a deed recorded October 25, 2005 in Liber 1468 of Deeds at page 201.

**PROJECT DESCRIPTION AS PROPOSED**

The project as proposed is summarized as follows: Construction and operation of a new tourist attraction, "The Bear Pond Zip Flyer", a zip line ride that will launch from a platform proposed on French Mountain and end 3,450± feet away and 800± feet below in the developed area of Bear Pond Ranch. Up to four riders will travel simultaneously on parallel lines at speeds of up to 50 MPH. The ride will take approximately 1 minute. Development associated with the zip line will include two new 34± towers; one at the take off area near the top of the mountain and one at base of mountain near existing buildings. The trolleys will be outfitted with rubber wheels to reduce noise. Installation of 3/4 inch cables connecting the towers and vegetative clearing and planting near top of mountain are proposed.

Riders will be transported to the launch at the top of the mountain on an existing gravel road in AWD vehicles during spring, summer and fall and in the winter by tracked vehicles. During peak summer operations, there will be 6 to 8 shuttle trips per hour. No upgrades are proposed for the access road.

A composting toilet and a generator contained within a noise-abatement compartment are proposed near the take off platform. The generator is necessary to operate the safety gates on the launch. No lighting will be installed on the mountain or the zip line.

A 6,000 square foot area will be cleared at the upper tower location to facilitate construction of the tower and take off platform, and an area of approximately 1,950 square feet will be subject to disturbance during construction of the take off platform. Silt fence will be installed and maintained during construction down-slope of the take off platform and the upper tower. Down-slope of the take off platform, trees that exceed specified heights will be selectively cut from an area 900± feet long and from 36± feet to 50± feet in width. Once installed, the four cables ("the ride") will be 25 feet wide.

To prevent damage to trees, soils, shrubbery, and ground cover that will be retained in this area, trees will be cut by hand, and no heavy machinery will be used. Also in this area, a variety of native coniferous seedlings will be planted in clusters with irregular edges and maintained to specific heights allowed for safety.

Before becoming operational, the existing on-site wastewater treatment system serving the restaurant will be upgraded and expanded to accommodate the increased customer visitation. No new signs are proposed, however, the existing sign at the property entrance will be altered to include text relevant to the new Zip-Flyer® zip line attraction.

The existing parking areas will be reconfigured and expanded for a total of 342 spaces. New stormwater management controls are also proposed.

Operating hours of the restaurant and other facilities at the Wild West Ranch will be 8 AM to 1 AM, year round.

The proposed hours of operation of the Zip-Flyer® will be during daylight hours, only, and vary by season as follows:

- Winter, (November through March) by reservation only,
- Spring and Fall, (October and April) 9 AM to 4:30 PM,
- Summer, (May through September) 9 AM to 7 PM.

The project is illustrated by the following maps, plans and reports:

- Fourteen sheets of plans depicting the Zip-Flyer® zip line structure entitled, "Bear Pond Zip-Flyer", drawings 00 through 10 dated 10/7/11 and drawings S1 and S2 dated 10/6/11, prepared by Mark W. Glynn, P.E.;

- Eleven sheets of plans prepared by Van Duesen and Steves Land Surveying or Hutchins Engineering.
  - Sheet C1, "Cover Sheet" prepared by Hutchins Engineering, dated 5/6/2013, last revised 9/5/13
  - Sheet S-1, "Map of a Topographic made for Bear Pond Ranch LL" prepared by Van Duesen and Steves Land Surveying, dated August 26, 2010, last revised 10/4/10;
  - Sheet S-2, "Map of a Topographic made for Bear Pond Ranch LL" prepared by Van Duesen and Steves Land Surveying, dated August 26, 2010, last revised 10/4/10;
  - Sheet S-3, "Map of a Topographic made for Bear Pond Ranch LL" prepared by Van Duesen and Steves Land Surveying, dated August 26, 2010, last revised 7/3/12;
  - Sheet S4, "Overall Site Plan" prepared by Van Duesen and Steves Land Surveying, dated 11/17/2010, last revised 9/5/13;
  - Sheet S5, "Detailed Site Plan" prepared by Hutchins Engineering, dated 11/17/2010, last revised 9/5/13;
  - Sheet S6, "Upper Site Plan" prepared by Hutchins Engineering, dated 11/17/2010, last revised 11/28/13;
  - Sheet S7, "Grading & Stormwater Plan" prepared by Hutchins Engineering, dated 11/17/2010, last revised 9/5/13;
  - Sheet S8, "Erosion Control & Phasing Plan" prepared by Hutchins Engineering, dated 11/17/2010, last revised 9/5/13;
  - Sheet S9, "Wastewater Treatment System Plan" prepared by Hutchins Engineering, dated 11/17/2010, last revised 9/5/13;
  - Sheet S10, "Details" prepared by Hutchins Engineering, dated 11/17/2010, last revised 9/5/13.
- A "Stormwater Management Report and Stormwater Pollution Prevention Plan Narrative", prepared by Hutchins Engineering dated October 10, 2011, last revised April 19, 2013.

In addition, the following materials were submitted in support of the application:

- A "Noise Assessment - French Mountain ZipFlyer", dated August 30, 2013, prepared by Scott Manchester of O'Brien & Gere Engineers, Inc.;
- A letter to Michael O'Connor from Scott Manchester of O'Brien & Gere Engineers, Inc. dated December 13, 2013;
- A "Visual Impact Assessment For The Bear Pond Zip Flyer" prepared by The LA Group, PC dated April 2012, last revised January, 2013;
- "August 2013 Addendum to Visual Impact Assessment For The Bear Pond Zip Flyer" prepared by The LA Group, PC received on September 9, 2013;
- Two additional sheets of Visual Simulations prepared by The LA Group, PC received on January 30, 2014;

- The "Zip-Flyer© Operator & Maintenance Manual" received on November 14, 2012;
- The "Zip-Flyer's Design & Building Zip Line Standards" containing 22 itemized headings, received at the Agency on November 14, 2012.
- Three videos showing the Bromley Mountain Zip-Flyer® zip line in operation in August, 2013, prepared by The LA Group, PC, received on September 16, 2013.

A reduced scale copy of Sheet S4, "Overall Site Plan" is attached as a part of this permit for easy reference. The original, full-scale maps and plans referenced in this permit are the official plans for the project.

### CONDITIONS

#### BASED UPON THE FINDINGS BELOW, THE PROJECT IS APPROVED WITH THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This permit is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and the site plan map(s) referred to herein shall be furnished by the applicant to all subsequent owners or lessees of the project site prior to sale or lease, and by the applicant or any subsequent owner or lessee undertaking construction to any contractors undertaking any portion of this project. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2012-185 issued \_\_\_\_\_, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

**Structure Location and Size**

4. This permit authorizes the construction of the Zip-Flyer® zip line ride with two 34-foot tall towers, a take off platform with access ramp and landing platform to accommodate four riders on parallel cables in the location shown on the project plans. The authorized take off platform with access ramp shall not exceed a footprint of 1,000 square feet in size. The towers shall be no greater than 34 feet in height. The height shall be measured from the highest point on the structure, to the lowest point of existing grade or finished grade, whichever is lower.
5. No change in the locations, design, or height of the towers or take off platform shall occur without prior Agency review and approval.

**Structure Color**

6. The upper tower, including cross member, and the take off platform, including all railings and gates, and the generator containment structure shall be painted dark charcoal grey with a non-reflective flat or matte finish. The painting shall be completed within 60 days of installation.

**Open Space Protection**

7. Other than the cutting approved herein, no trees or other vegetation on the project site shall be cut, culled, trimmed, pruned, or otherwise removed from the project site without prior agency review and approval. This condition shall not be deemed to prevent the removal of dead or downed trees, provided there is two weeks prior written notice to the Agency of the proposed cutting that includes verification by a forester or landscape architect of the condition of the tree(s) to be removed. In the event of emergency tree removal to prevent equipment damage or personal harm, said notice to the Agency shall be provided within 72 hours of removal.

**Erosion Control and Stormwater Management**

8. All erosion control devices, including silt fence shall be installed, and all stormwater management facilities, including stormwater detention and siltation basins, shall be constructed before any other ground disturbance takes place. All silt fence shall be maintained in working condition through the duration of the construction period and shall not be removed until all upslope areas have been stabilized and established with permanent groundcover.

**Blasting**

9. No blasting shall occur on the project site without prior Agency review and approval of a detailed blasting plan.

**Generator**

10. The proposed generator shall be installed and operated inside an insulated structure and shall be properly muffled to reduce noise. The generator will be located within fifty feet of the take off platform.

**Outdoor Lighting**

11. No lighting shall be used on the upper tower, take off platform, or otherwise above 600 feet above mean sea level (MSL) without prior Agency review and approval of a site-specific lighting plan which would include the type, location and orientation of all fixtures, hours of operation, and bulb wattage/lumens. This condition is not intended to prevent use of motor vehicle lighting during operation, or as needed in an emergency.
12. Below 600 feet in elevation, any new free-standing or building mounted outdoor lights shall employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward the sky or adjoining property. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow).

**Signage**

13. Any new or modified signage on the project site shall comply with Appendix Q-3 of Agency regulations.

**Hours of Operation**

14. No increase in operating hours beyond those proposed shall occur without prior Agency review and approval.

**Wastewater Treatment**

15. Any on-site wastewater treatment system installed on the project site shall comply with local wastewater treatment regulations.



16. The proposed on-site wastewater treatment system shall be constructed in complete conformity with the location and design shown on the plans referenced herein. Installation of the system shall be under the supervision of a licensed design professional (licensed Professional Engineer, Registered Architect, or exempt Licensed Surveyor). Within 30 days of complete system installation and prior to utilization, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans. The new system components shall be installed prior to operating the zip line.

#### **Noise**

17. If within one year after the commencement of zip line operations the Agency receives *bona fide* complaints from nearby landowners, it will evaluate the noise levels generated and impacts to nearby landowners. If the Agency determines there are apparent undue adverse noise impacts, the applicants will be required to submit a noise abatement plan for Agency approval within 45 days of written notification by the Agency. The plan shall include use of best practical noise control measures, including devices, methods, equipment technology and procedures which reduce the generation, transmission or reception of noise, to reduce noise to reasonable, acceptable levels, given the setting. The Agency reserves the right to conduct a public hearing and the applicant may request a hearing, prior to implementation of the plan. The final approved noise abatement plan must be implemented by the applicants within the time specified in the Agency approval of the plan.

#### **Legal Interests of Others**

18. This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project or subdivision, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

#### **Agency Review of Future Subdivision and Development**

19. No construction of buildings or structures and no new land use or development as defined in Section 802(28) of the Adirondack Park Agency Act which is not expressly authorized by this permit and no subdivision of the project site shall be undertaken without an additional Agency permit. The applicant shall not change the size or location of any sign, the zip line, the stormwater management plan or the wastewater treatment plan without the

prior approval of the Agency, notwithstanding any approval or variance which may be obtained from the Planning Board, Zoning Board of Appeals, Town Board or any other agency.

### **Accessory Uses and Structures**

20. In the Rural Use land use area, no new structures or expansion of structures authorized herein shall be installed without a new or amended Agency permit. In the Moderate Intensity Use land use area, accessory structures less than 40 feet in height may be constructed without further Agency review.

### **Other Permits**

21. Prior to undertaking the project, the applicant shall obtain all necessary permits from the NYS Department of Health, the NYS Department of Environmental Conservation, and the Town of Queensbury and shall provide the Agency with complete copies of each.

### **Discontinuance of Use**

22. If the use of the zip line is discontinued for more than one year, Bear Pond Ranch LLC, and French Mountain Bear Pond LLC its successors and assigns, shall remove the zip line, towers, and all associated structures from the site within the following year and discontinue all vegetative cutting and limbing associated with the ride.

## **FINDINGS OF FACT**

### **Existing Environmental Setting**

1. The project site is located east of NYS Route 9 and the Adirondack Northway, at the Park's primary entrance. A portion of the southerly property line corresponds with the boundary of the Adirondack Park. The site is located less than 2 miles south of the Village of Lake George and 1.5 miles north of the French Mountain Commons outlet shopping center. The entrance to the property is from Bloody Pond Road, off NYS Route 9. The immediate area surrounding the site, along NYS Route 9 and Bloody Pond Road, is heavily developed by commercial, residential and tourist-based uses including a private campground (at the Bloody pond Road entrance), an automobile dealership, a theme park, restaurants, motels and retail stores. The Warren County Bike Path runs between the project site and Route 9. To the south and east, the neighboring properties include large tracts of undeveloped forestlands. NYS Route 149 is approximately 1 mile south of the proposed upper tower. Other than scattered

residences along Bloody Pond Road and Route 9, the nearest residential development is located approximately  $\frac{3}{4}$  mile west of the zip line, and west of the Northway, consisting of approximately 35 dwellings sited on 1 to 3 acre wooded lots.

2. The site is generally flat in the 23+-acre area in the portion of the Moderate Intensity Use land use area containing the existing development and business operations known as "The Wild West Ranch and Western Town". The site rises up in elevation to the south and east and includes portions of a long ridgeline known as French Mountain reaching an estimated elevation of 1,420 feet. A gravel road traverses these slopes leading to Bear Pond and to the rocky outcrop near the proposed upper tower and take off area of the zip line.
3. In the southwesterly quadrant of the project site, in Rural Use, there is an exposed rock face approximately 250 feet tall located on project site and on adjoining lands of the Lake George RV Park, Inc. The outcrop provides views to the north and west, including Lake George. The primary look-out that is accessible by foot is located on the project site and approximately 450 feet north of the project site's shared property line with Lake George RV Park where a public hiking trail is located. This geologic feature is highly visible from many off-site public viewpoints including the Adirondack Northway and is back-dropped by the undeveloped and forested French Mountain ridgeline.
4. The hiking trail is open to the public and is shown on the Lake George RV Park's website as an activity for its guests. The trail is accessed from a trailhead along the Warren County bike path, north of Route 149, and traverses lands of the Lake George RV Park, Inc. For liability reasons, Bear Pond Ranch, LLC has posted the property line in the location of the trail against trespassing since 2005 or 2006. As a result, hikers are not permitted to access the top of the rock outcrop in the area providing views of Lake George to the north. However, there have been occasions when hikers have walked past the posted signs to the rock outcrop.
5. The tree canopy in the area surrounding the upper tower and take off platform is generally 48 feet in height. Vegetation includes mature northern hardwoods, scattered balsam and white pine and deciduous shrubs.

#### **Background/Prior History**

6. A complete property history is recited in J2007-92 dated Feb. 15, 2007 and is summarized below.

7. The project site is developed by a number of structures and has been operated as a tourist attraction since 1990 and subject to several Agency actions. Currently, facilities and operations include the following all located in the Town of Lake George, in the Moderate Intensity land use area: A restaurant, dance hall/meeting space, animal barns, storage and maintenance buildings, two single family dwellings, a riding stable, snowmobile trails, outdoor drama/concert stage, an on-site wastewater treatment system serving the restaurant and 232 parking spaces. In 2004-2006, the applicant built a gravel logging road from the developed area of the property up the side of French Mountain to the rock outcrop and another spur to Bear Pond and points east. This road is used and maintained in the winter by local snowmobile clubs.
8. The project site has been subject of several prior Agency actions as follows:
- Project and permit 81-198 authorized a sawmill.
  - Permits 94-234, 95-299, 97-25 and -25A issued to Beadland Development, Inc. for commercial and tourist attraction uses in the Town of Lake George, including after-the-fact development of the site since 1990 as a "Western Theme Park".
  - Permit 97-25, authorized modifications and expansions of the commercial use and tourist attractions in the Town of Lake George. Condition 3 states: *No construction of buildings or structures and no new land use or development as defined in Section 802(28) of the Adirondack Park Agency Act which is not expressly authorized by this permit and no subdivision of the project site shall be undertaken without an additional Agency permit. The applicant shall not change the size or location of any sign, the stormwater management plan or the wastewater treatment plan without the prior approval of the Agency, notwithstanding any approval or variance which may be obtained from the Planning Board, Zoning Board of Appeals, Town Board or any other agency.*
  - Enforcement case 97-122 was concerned with undertaking a tourist attraction which was resolved by settlement agreement.
  - Jurisdictional determination 2007-92 and Enforcement case 2006-98 determined that no violation had occurred when the gravel road was constructed.
  - Jurisdictional Determination 2011-604 determined that the proposed zip line subject of the instant permit was a Tourist Attraction subject to Agency review jurisdiction.

**Local Land Use Programs**

9. The project is located in the Towns of Lake George and Queensbury. Each Town administers a local land use plan program approved by the Agency pursuant to Section 807 of the APA Act. As a result, the Agency must determine that the project meets all of the pertinent requirements and conditions of each Town's approved program. These include the pertinent factors contained in the statutory development considerations and provided for in the approved local programs and addressed herein. The upper tower and take off platforms are located in Queensbury; the lower tower, landing area, proposed replacement on-site wastewater treatment system, and all existing development is located in the Town of Lake George.
10. Following a public hearing held by the Town of Lake George's Planning Board, the original project was approved by the planning board on February 5, 2013. Conditions of the approval include: requirement to obtain approval of Town Engineer,<sup>1</sup> or re-apply to the Planning Board; obtain necessary approvals from Town of Queensbury, APA and other agencies; and a vehicle designed for EMS/Fire Personnel's use shall be on premises at all times.
11. The Town of Queensbury discussed and opened a public hearing on the original project on November 17, 2011. It was subsequently tabled awaiting an application to the Agency and now a revised application to the Planning Board. It is scheduled to be heard again on March 18, 2014. Under the Town of Queensbury's plan, the project is classified as an outdoor recreation use (LC-10A) and is an allowable use in the Land Conservation zone, subject to site plan approval as described in a letter from Craig Brown, Zoning Administrator to Michael O'Connor dated March 21, 2011.

**Local Government Comment**

12. The Adirondack Park Agency sent notice of the above permit application completion to the Planning Boards of Queensbury and Lake George by letters of consultation dated February 3 and 7, 2014. Neither the Planning Board of the Town of Lake George nor the Town of Queensbury submitted written recommendations to the Agency. In the absence of such written recommendations, the Agency has reviewed the various discussions and decisions of the Planning Boards to date, as well as all records of the Town Board regarding the project.

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<sup>1</sup> For stormwater management details.

**Public Notice and Comment**

13. The Agency notified all adjoining landowners and those parties as statutorily required by Section 809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. Comment letters received include:
- From Gary Koncikowski and Jack Gillette dated November 15, 2012 regarding an agreement between three parties, including the prior owner of the project site, Tod Beadnell of Beadland Development Corporation. The "Agreement and Declaration of Covenants and Representations" which was filed in the Warren County Clerk's Office on December 4, 2002 specifies that the project site is perpetually restricted from the use thereon of mechanical/carnival amusement rides.
  - From Claudia Bramer, Esq. of Caffrey & Flower representing David King, owner of Lake George RV Park, Inc., adjoining landowner to the south. The letters are dated 12/7/12, 10/13/13, 10/21/13 and 2/20/14 and seek a public hearing and denial of a permit, raise concerns regarding impacts to the adjoining landowners and the users of the hiking trail, visual impacts and noise. A noise study and a visual assessment conducted by Peter Loyola, CLA Site, P.C. were submitted with the letters.
  - From Christopher Navitsky, Lake George Waterkeeper, to the Chairman of the Lake George Planning Board, dated December 3, 2013, citing ongoing concerns regarding the gravel road and stormwater management.
  - From Steven Thompson, adjoining landowner, dated February 20, 2014, has no opposition to the project while stating concern whether access to the zip line might affect his property. In a telephone conversation with staff, Mr. Thompson stated he had no concern regarding the use of the existing gravel road and had no objections to the new zip line.

**Other Regulatory Permits and Approvals**

14. Citing a traffic evaluation dated October 10, 2011, the NYS Department of Transportation determined on May 13, 2013 that no Highway work permit would be required for the new/expanded uses.
15. On November 16, 2012, the Warren County Planning Board determined that the project did not have any county-wide impact.
16. The existing restaurant and wastewater treatment system are permitted by the NYS Department of Health. A SPDES permit for the expanded system and for stormwater may be required by The NYS Department of Environmental Conservation. Currently, Bear Pond Ranch, LLC is authorized to discharge treated sewage to groundwater at their Wild West Ranch facility under the authority

of SPDES General Permit 0-05-001. A SPDES permit authorizing the discharge of stormwater from construction activities will only be needed if one or more acres of land will be disturbed. The Department does not currently have any applications associated with this project under review.

17. The Town of Lake George approved the project by a permit issued February 11, 2013.
18. The Town of Queensbury has not yet completed its review of the project proposal.

### Alternatives

19. The applicant considered a number alternatives to the proposed zip line location and have concluded that the current proposal is "the most un-intrusive and functional location on the property of the applicant"<sup>2</sup>. The first location considered was directly at the top of the exposed western-facing rock outcrop. This location was rejected by the applicant as having too great a potential visual impact. As a second, and preferred alternative by the Project Sponsor the zip-line was shifted west of the rock outcrop. Additional adjustments were made to this alignment of the ride and the positioning of the upper tower and take-off platform to reduce tree cutting and to make use of the existing road network. A third alternative was considered having a launch area further down the mountain to shorten the ride and reduce the extent of visibility of the project. The Project Sponsor did not believe this alternative would meet their objectives and would make the proposed zip-line less competitive with similar facilities. This alternative would likely result in the construction of new access roads and increased tree removal. The applicant concludes that the current, preferred proposal "presents the smallest area of clearing and is the least visible location" on the project site.

### Zip-Flyer® Operations and Safety Procedures

20. For the safety of the riders, the Zip-Flyer® company requires that a minimum area surrounding the riders and cables be clear of all trees and limbs between the take off and landing platforms. Specifically, there must be a minimum 8-foot vertical clearance between tree tops and the rider, and there must be a minimum 5-foot clearance on both sides of a rider. The company's Operator & Maintenance Manual includes detailed procedures for supervising riders, equipment maintenance and repair and rescue protocols.

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<sup>2</sup> Letter from Michael O'Connor to the Agency dated September 26, 2013

**Tree cutting, Limbing and Planting**

21. Down-slope of the take off platform, trees that exceed specified heights will be selectively cut from an area 900± feet long and from 36± feet to 50± feet in width. The width of the cut varies in order to create a more irregular, organic, edge. Due to the topography and height of the mature vegetation on the project site, an area below the take off platform 900± feet by 50± feet will be subject to select tree removal and limbing to provide the required clear-zone around the riders. Trees below height limits will be retained in the proposed clear zone. The height of trees to be retained increases as one descends the slope. For example, at Station 100, near the take off platform, trees less than 12 feet in height will be retained, and any which are greater than 12 feet will be removed; at station 500, which is 400 feet downslope from Station 100, trees less than 18 feet in height will be retained. At station 900, at the end of the cut-zone, trees less than 53 feet in height will be retained. Trees whose trunks are outside the cut-zone but have limbs which have grown into the cut-zone will be removed. Any limbs which intrude or encroach on the clear zone around the riders will be removed.
22. As shown on Sheets S6 and S10, areas of the cut-zone under the ride will be planted with a variety of native coniferous seedlings and, as they grow, they will be maintained to the allowable tree height. The plantings are clustered in groups having irregular shapes in an attempt to blend in with the natural pattern of vegetation in the vicinity of the zip line project.

**Visual Impact Assessment (VIA) and Noise Studies**

23. "Visual impact is assessed in terms of the anticipated change in visual resources, including whether there would be a change in character or quality of the view with respect to significant and aesthetic resources".<sup>3</sup> The applicant provided a visual assessment of the proposed zip line structures, including numerous computer-generated visual simulations. Fifteen public viewpoints within a five-mile radius of the proposed zip line were analyzed, including three locations on the Adirondack Northway, and seven locations within the hamlet of Lake George. Ten of these locations were selected for a more detail assessment of potential visual impact including the preparation of photo simulations. During field studies, the assessment of potential visual impacts as seen from several of the viewpoints was determined to be very limited or non-existent due to screening

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3 "Visual Impact Assessment For The Bear Pond Zip Flyer" prepared by The LA Group, PC dated April 2012, last revised January, 2013.



from existing vegetation, distance, or intervening development. It is noted that while the simulations provided in the VIA do represent the tree cutting, limbing, and planting proposed for the 900 foot section downslope of the take off platform, the impact assessment narrative does not discuss any potential impacts resulting from the cutting and planting.

The project may have an adverse impact to the visual resources of the Adirondack Park as seen from viewpoints along the northbound and southbound lanes of the Adirondack Northway. While the upper tower, take off platform and cables may be very well screened or blend in from most viewpoints during leaf on conditions, and partially screened during leaf off conditions, the cut zone below the take off platform will be visible during all seasons.

Viewpoint #14 is located North of Exit #20 of the Northway at the Adirondack Park Entrance. It is 0.7 miles southwest of the project site. The view of the project is at nearly a right angle to the northbound direction of travel on the Northway and may be seen for a duration of approximately 12 seconds from a vehicle traveling 65 MPH. The upper tower and take off platform would be visible as a filtered view largely screened by foreground vegetation in all seasons. The cables however will be skylighted and visible above the treeline with the rock outcrop in the foreground. This view will be screened during leaf-on conditions by deciduous trees on the easterly side of the northbound lanes.

Viewpoints #3 and #15 are along the Northway's southbound lanes. Viewpoint #3 is located 2.3 miles northwesterly of the project site, between Exits 22 and 21. Travelers moving at 65 MPH will have a view of the project for a duration of approximately 20 seconds. Viewpoint #15 is 0.8 miles westerly of the project, between exits 21 and 20. The duration of the view will be approximately 12 seconds. Due to the orientation of the Northway in this segment, the sequence will be seen as a direct, nearly straight-ahead view beginning from a distance of 2.3 miles and ending at a distance of 1.5 miles from the project.  
Conclusion [effect of distance]

In response to the Agency's request, additional information was provided by the Project Sponsor regarding the riders' movement along the zipline and its potential effect on the significance of the project's visual impact. The videos of the Bromley Mountain Zip-Flyer®, 4-rider zip line in operation indicate that, when viewed backdropped against the mountainside, the cables and riders are not readily visible. The movement of the riders does not appear to draw attention to the facility.

24. The consultant's summary states: "The proposed location of the project below the summit and away from the rock outcrop on the west side of the mountain, will allow the mature trees to create a backdrop of vegetation behind the upper tower and launch platform. The upper tower will not be silhouetted against the sky and will only be minimally visible against the trees. The ¾" cables will be difficult to detect with the naked eye from longer distances."

A noise assessment report was also prepared for the Project Sponsor by O'Brien & Gere dated August 30, 2013 regarding potential noise impacts from the zip line operation. The closest sensitive noise receptors were identified and analyzed including: the hiking trail located south of the project, the Warren County Bike Path located west of the project, and an RV camping area located north of the project. The potential noise generated by four simultaneous screaming riders has the highest potential to adversely impact the surrounding community.

25. There are several potential noise impacts associated with the proposed project beyond those which were the focus of the noise assessment report. These would include: motorized traffic use of the roadway, the generator located at the launch platform necessary for the safe operation of the zip line, an increase in generic crowd noise resulting from the anticipated larger on-site crowds, etc. These noise impacts have been evaluated by Agency staff during the review of this application. The O'Brien & Gere report was prepared in conformance with the NYSDEC Program Policy document "Assessing and Mitigating Noise Impacts", revised February 2, 2001. Agency staff agree with the conclusion of the report that the proposed project will not create noise impacts to the surrounding community requiring further mitigation. To accommodate public comment and the potential for noise impacts beyond those characterized during the application review process, a condition allowing the Agency to investigate noise complaints and potentially require further mitigation once the ride is in operation has been included.

#### **Access Road**

26. A 3-mile long gravel road was constructed in 2004 to 2006 to the mountaintop and across French Mountain, past Bear Pond, to Bay Road. The landowner's stated intention for the road was for logging use. In the following years, several State and local entities conducted investigations into the construction. While the Town of Queensbury and the NYS Department of Environmental Conservation did find violations under their jurisdiction, the Agency found none subject to Agency regulation. As a result of

the violations, numerous modifications were made to the road, including abandonment and revegetation of one spur which was highly visible from off-site, reduction of the overall width, and installation and maintenance of stormwater management facilities. Currently, the road has a driving surface approximately 10 feet wide plus ditches and is well maintained. No additional improvements to the access road are anticipated or considered necessary to accommodate the proposed shuttle use and other operational needs. A letter dated November 15, 2011 from David Wick, District Manager, Warren County Soil and Water Conservation District concluded the road was in good condition and that undue impact to the road surface would not result from the proposed use.

### **Economic/Fiscal Factors**

27. According to research by the firm ConsultEcon, Inc., attraction venues such as tourist attractions must re-invest to just stay competitive and maintain baseline visitation. Bear Pond Ranch currently employs 8 full-time staff and 4 part-time staff at its restaurant and an additional 8 seasonal jobs at its riding stable. Expansion of the facility will help retain these existing jobs.
28. The Project Sponsor projects to employ an additional 12 full-time workers and 8 part-time workers as a result of the zip line project. The average annual wage for an employee in the Amusement, Gambling and Recreation Industry in Warren County in 2012 was \$19,702 (average annual wage is determined through an average of both full-time and part-time wages).
29. The Project Sponsor also estimates the employment of 10 full-time workers during the expected 4-week construction period. The average annual wage for an employee in the Construction Industry in Warren County in 2012 was \$44,997 (average annual wage is determined through an average of both full-time and part-time wages).
30. The Project Sponsor anticipates \$1,500,000 in upgrades to the facility. Local property taxes have not yet been estimated for the site, but it is anticipated that a portion of the project components will be taxed as real property.
31. The Project Sponsor projects yearly usage of the zip line to be 43,340 people. While no ticket price has yet been set, based upon the Project Sponsor's suggested ticket price of \$40.00 per person, the gross revenue to the facility generated by the zip line is anticipated to achieve an estimated \$1,733,600 per year. These revenues would lead to sales taxes of \$69,344.00 to the State of New York and \$52,008 to Warren County. These new

revenues would also help to retain sales tax revenues already generated by the facility's other components including the existing horse stable and restaurant on the project site. These numbers are based upon "an aggressive estimate that is very much market sensitive" (Project Sponsor May 24, 2013 letter). While this attraction may draw new spending from outside the region and State, some of these sales may be redirected from existing businesses within the taxing jurisdictions and may not represent 100% net positive sales tax increases to the County and State.

32. Visitation-dependant economic regions rely upon new investment in new attractions to drive return visitation as well as to attract new audiences.

### **PROJECT IMPACTS**

#### **Water Resources**

33. The expansion of the onsite wastewater treatment system is necessary to insure that the system does not fail and can address additional volumes as visitation increases. The new stormwater management systems will contain stormwater on-site, protecting water resources of the area. Installation of all erosion control fence in the locations depicted on the plans, prior to earth disturbance and maintained in functional condition is necessary to protect water resources.

#### **Land Resources**

34. Selective cutting of trees by hand under the zip line, without the use of heavy machinery, will protect soils, retained trees, and groundcover on steep slopes.

#### **Wildlife Resources**

35. By letter dated October 20, 2011, the NYS Department of Environmental Conservation issued a determination that there are no known Timber Rattlesnake dens in the area of the proposed project, so the project would not result in a taking of this protected species.

#### **Open Space/Aesthetics**

36. The Agency's February 15, 2002 "Policy on telecommunications towers and other tall structures" states in part: *...towers located within the Adirondack Park will be located to avoid undue adverse impacts in such a manner as to be substantially invisible.*

The policy also states:

*Preferred methods to reduce visibility include: avoiding locating facilities on mountain tops and ridge lines; concealing any structure by careful siting, using a topographic or vegetative foreground or backdrop; minimizing structure height and bulk; using color to blend with surroundings; using existing buildings to locate facilities whenever possible and otherwise using best available technology that avoids or minimizes visual impacts.*

At 34 feet in height, the upper tower will be 14+ feet below the surrounding average tree canopy and will be screened by the existing trees. The tower site is approximately seventy five feet lower than the nearby ridgeline. As a result, the tower will not be silhouetted, will be wholly below the tree canopy and, if un-lighted and painted a dark color in a non-reflective finish, will blend in with the surrounding vegetation in all seasons.

37. While the design of the project will minimize most of the visual impacts from the zip line's tower, take off platform and cables, the vegetative cutting proposed under the zip line will be visible from off site locations. The proposal includes cutting only those trees which are taller than allowed for rider safety and thus leaving trees, shrubs and groundcover under the ride, cutting trees by hand, cutting in a manner that results in an irregular, more natural edge, and planting and maintaining coniferous trees in clusters under the ride. These techniques will soften the potential visual impact, but will not eliminate it them.

#### **Travel Corridors/Park Entrance**

38. The zip line will be located 0.7 miles easterly of the northbound lanes of the Adirondack Northway from which there will be a limited, filtered view during the leaf-off months. As shown by the visual simulations, the tree cutting associated with the zip line will be highly visible to travelers on the southbound lanes of the Adirondack Northway, and less visible to travelers on northbound lanes of the Northway and NYS Route 9.

#### **Unique Geologic Formations**

39. The rock outcrop faces west and is highly visible from off site viewpoints, including the Adirondack Northway. It is currently seen in the context of a forested mountainside. The take off platform will be built approximately 300 feet easterly and 50 feet higher in elevation. After construction of the zip line,

the outcrop will be seen from some off-site public viewpoints, backdropped by some elements of the zip line structure, including the cables. Visitors to the outcrop during zip line operations will see the structures and hear the riders, and shuttle vehicles at the take off area.

#### **Operational Issues Affecting Nearby Land Uses**

40. The proposed activities on the project site will generate noise which will carry off the site. The activities will primarily be conducted during normal daytime business hours and the traffic noise from the Northway, Route 9 and Bloody Pond Road provides a significant level of ambient background noise levels.
41. The proposed project may produce noise impacts on the surrounding environment which have been addressed through mitigative factors incorporated into the design of the project. These include: maintaining and planting vegetation around the tourist attraction, the use of rubberized wheels, housing and maintenance of the generator, the location & elevation of the launch platform, proper maintenance of the vehicles used to transport riders.
42. While the Lake George RV Park, Inc. is an adjoining landowner, the campground facilities are located more than 1 mile away, 900 feet lower in elevation and on the opposite side of Route 149 from the zip line, therefore, any noise generated by the zip line operations will not impact the campground. Campground guests and others who hike the trail up French Mountain will see elements of the zip line and, during times the zip line is in operation, will hear shuttle vehicles, staff and riders at the take off area.

#### **Historic Sites or Structures**

43. By letter dated October 25, 2011, the NYS Historic Preservation Office determined that the project would have no impact. The project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

