


**STAFF DRAFT-NOT APPROVED BY AGENCY  
THIS IS A TWO-SIDED DOCUMENT**

 <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 <a href="http://www.apa.ny.gov">www.apa.ny.gov</a></p>	<p><b>DRAFT</b> APA Project Permit <b>2017-0211</b></p>
<p>In the Matter of the Application of</p> <p><b>DANE MORTON</b> <b>Permittee</b></p> <p>for a permit pursuant to § 809 of the Adirondack Park Agency Act</p>	<p>Date Issued: <b>XXXX</b></p> <p>To the County Clerk: This permit must be recorded on or before <b>XXXX</b>. Please index this permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>Adirondack Adventure Properties, LLC</b></li><li><b>Adirondack Tubing Adventures, LLC</b></li></ol>

**SUMMARY AND AUTHORIZATION**

This permit authorizes a treetop adventure course tourist attraction in an area classified Low intensity Use on the Adirondack Park Land Use and Development Plan Map in the Town of Lake Luzerne, Warren County.

This permit shall expire unless recorded in the Warren County Clerk's Office on or before **XXXX**, in the names of all persons listed above and in the names of all owners of record of any portion of the project site on the recordation date.

The project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the parking lot authorized herein has been constructed.

The project shall be undertaken in compliance with all conditions stated herein. Failure to comply with this permit is a violation and may subject the permittee, successors, and assigns to civil penalties and other legal proceedings.

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

Nothing contained in this permit shall be construed to satisfy any legal obligations of the permittee to comply with all applicable laws and regulations or to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

## **PROJECT SITE**

The project site is comprised of four tax parcels identified on Town of Lake Luzerne Tax Map Section 285.20, Block 1 as Parcels 38.1, 38.3, 44 and 45, located in the Town of Lake Luzerne, Warren County, in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. The portion of the project site to be developed by the treetop adventure course is a 3.27± acre parcel of land (Tax Parcel 45) located on Old Stage Road (County Route 60). Tax parcel 45 is described in a deed from Damon Baker and Diane Wood to Adirondack Adventure Properties, LLC, dated February 12, 2018, recorded February 15, 2018 in the Warren County Clerk's Office as Instrument 2018-1016. Tax Parcels 38.1 and 38.3 are described in a deed from Damon Baker to Adirondack Adventure Properties, LLC, dated February 9, 2018, and recorded February 15, 2018 in the Warren County Clerk's Office as Instrument 2018-1017. Tax Parcel 44 is a 0.66± acre parcel of land containing an existing commercial use located on NYS Route 9N in the Town of Lake Luzerne, Warren County, in an area classified Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. This Parcel is described in a deed from Christopher J. Schuh and Diane Schuh to Adirondack Tubing Adventures, LLC, dated March 14, 2013 and recorded April 22, 2013 in the Warren County Clerk's Office as Instrument 2013-00003252.

## **PROJECT DESCRIPTION**

The project as conditionally approved herein involves the re-development of an existing residential property for the construction of a treetop adventure course tourist attraction, parking lot and restroom building with an attached picnic pavilion. The treetop adventure course consists of 36 platforms and 44 obstacle features suspended from mature trees within the existing forest, including an approximately 300-foot long zip-line. The existing residential development located on the project site, consisting of a 1998 mobile home and small accessory structures, will be removed and a gravel parking lot and restroom building with an attached open-sided picnic pavilion will be constructed on the project site to serve the tourist attraction. The existing on-site wastewater treatment system associated with the 1998 mobile home will be replaced with a new on-site wastewater treatment system that will be connected to the restroom building. If the replacement on-site wastewater treatment system is not installed prior to the 2018 operating season, then portable, self-contained toilets will be used temporarily.

As described in a legal agreement between the project sponsor and nearby landowners, the project will include new vegetative plantings to help screen the development, restrictions on vegetative removal, no outside lighting and no new outdoor PA/amplification system (other than for emergencies). The agreement also sets limits on signage, the hours of operation, the maximum number of customers per day, and the number of vehicles allowed to be parked on the site.

The project is shown on the following maps and plans:

- “Proposed Conditions with Septic Replacement Area,” prepared by Elizabeth Arabadjis, and dated January 31, 2018 (“Site Plan”);
- “Adirondack Adventures - Lake Luzerne, Full Course Layout,” 12 Sheets prepared by John Ireland of Absolutely Experiential, and dated December 8, 2017 (“Course Layout”); and
- “Plan for Wastewater Treatment,” prepared by Dane Morton and Mountaintop Portable Toilets and Septic Service, received by the Agency February 13, 2018 (“Plan for Wastewater Treatment”).

A reduced-scale copy of the Site Plan is attached as a part of this permit for easy reference. The original, full-scale maps and plans described in this paragraph are the official plans for the project, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

### **AGENCY JURISDICTION**

The project requires an Agency permit pursuant to §§ 809(2)(a) and 810(1)(c)(5) and (1)(c)(6) of the Adirondack Park Agency Act [Executive Law, Article 27], because the tree-mounted platform and support bracket for the free-fall feature will exceed 40 feet in height and the treetop adventure course establishes a new tourist attraction on Low Intensity Use lands.

### **CONDITIONS**

#### **THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project shall not be undertaken until this permit has been recorded in the Warren County Clerk's Office.
2. This permit is binding on the permittee, all present and future owners or lessees of the project site, and all persons undertaking all or a portion of the project, for as long as the tourist attraction continues on the site. Copies of this permit, Site Plan and Course Layout shall be furnished by the permittee to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittee and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
3. In addition to complying with all terms and conditions of this permit, all future activities on the project site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].

4. 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 P2017-0211, issued **XXXX**, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

### **Development**

#### **Construction Location and Size**

5. This permit authorizes the construction of a treetop adventure course and associated parking lot and restroom building with an attached restroom facility and picnic pavilion in the location and as depicted on the Site Plan and Course Layout. Any change to the location, dimensions, or other aspect of this tourist attraction shall require prior written Agency authorization.

#### **Structures**

6. Any other new structures on tax parcels 38.1, 38.3, or 45 shall require prior written Agency authorization.

#### **Building Color**

7. All exterior building materials, including roof, siding and trim, of the picnic pavilion and attached restroom building shall be a dark shade of green, grey, or brown.

#### **Outdoor Lighting**

8. There shall be no new outdoor lights on tax parcels 38.1, 38.3, or 45 without prior written Agency authorization.

#### **Signage**

9. There shall be no new signs on tax parcels 38.1, 38.3, or 45 without prior written Agency authorization.

#### **Tree Cutting/Vegetation Removal**

10. Outside of the limits of clearing shown on the Site Plan, within 10 feet of all property boundaries and within 35 feet of the centerline of Old Stage Road, no trees, shrubs, or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed on tax parcels 38.1, 38.3, or 45 without prior written Agency authorization, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.

### **Plantings**

11. All proposed vegetation depicted on the Site Plan shall be planted no later than the first spring or fall planting season after final grading related to the construction of the parking lot and restroom structure on the project site. The proposed plantings shall be a mix of deciduous and coniferous native species and shall be a minimum of six feet in height when planted. Trees, shrubs or other vegetation that do not survive shall be replaced annually until established in a healthy growing condition.

### **Density**

12. There shall be no more than one principal building located on tax parcel 285.20-1-45 at any time. The Agency makes no assurances that the maximum development mathematically allowed can be approved.

### **Project Operations**

#### **Hours of Operation**

13. The treetop adventure course shall only operate during the first weekend in May to the third weekend in June, and from the second weekend in September to the third weekend in October from 10am to 6pm. During the summer season, the tourist attraction shall only operate from 9am to 7pm as approved by the Town of Lake Luzerne Planning Board. Any project operation outside of these hours shall require prior written Agency authorization.

### **Noise**

14. There shall be no outdoor sound amplification or intercom systems associated with the tourist attraction authorized herein.

### **Infrastructure**

15. Prior to construction of the replacement on-site wastewater treatment system to serve the restroom building, on-site wastewater treatment design plans prepared by a New York State design professional (licensed engineer or registered architect) that complies with applicable New York State Department of Environmental Conservation and Health wastewater treatment standards shall be submitted to the Agency for prior written authorization.
16. Installation of any on-site wastewater treatment system authorized by the Agency shall be under the supervision of a licensed design professional. Within 30 days of complete system installation and prior to use, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans.

17. Installation of the replacement on-site wastewater treatment system shall be completed prior to use of the treetop adventure course by the public during the 2019 operating season. During the 2018 operating season, if the replacement on-site wastewater treatment system and restroom building is not completed, not more than six portable self-contained toilets shall be provided on the project site to service the tourist attraction prior to operation in the location and as described in the Plan for Wastewater Treatment. Any use of portable, self-contained toilets after the 2018 operating season shall require prior written Agency authorization.

## **FINDINGS OF FACT**

### **Project Site**

1. The project site is currently improved by residential development including a mobile home, on-site wastewater treatment system and driveway installed in 1998. The site is served by a municipal water supply system. The project site (tax parcel 44) also contains a pre-existing commercial use that is currently operating as a tubing guide service. This commercial use is owned by the permittee and transports customers from the site to the Hudson River up to four times a day during its operating season. The parking area and restroom building authorized herein will also be used by customers of the tubing guide service.

### **Wetlands**

2. Wetlands not described herein or depicted on the Site Plan may be located on or adjacent to the project site.

### **Vegetation**

3. The area surrounding the existing residential development on the project site contains little vegetation. The area to be developed by the treetop adventure course is forested primarily with mature white pine trees. No vegetation removal is required to construct the tourist attraction.

### **Soils and Slopes**

4. The soils at the project site are mapped as Oakville loamy fine sands with slopes between zero and three percent.

### **Historic Sites or Structures**

5. By letter dated December 28, 2017, the New York State Office of Parks, Recreation and Historic Preservation determined that the project will have no impact upon the cultural resources in or eligible for inclusion in the State and National Registers of Historic Places.

### **Operational Standards**

6. The Treetop Adventure course will operate from May through October. The project sponsor projects the anticipated average number of customers during the operating season to be 10,800.

### **Nearby Land Uses**

7. The project site is located along NYS Route 9N, a major north-south artery for which the NYS Department of Transportation reported an average traffic volume of 3,778 vehicles per day in 2015. The project site is located across NYS Route 9N from the NYS Department of Environmental Conservation Luzerne Campground and Day Use Area consisting of approximately 850 acres of public lands including the majority of Fourth Lake, a non-motorized waterbody. The main entrance to the public campground and respective beach access parking, car-top boat launch, and picnic recreation facilities are located opposite the project site. Other nearby public lands include the summit of Potash Mountain which is a designated portion of the Lake George Wild Forest and is accessed over adjacent local land trust land.
8. In addition to the existing commercial use operating on the project site, a small grocery and retail store is located at the intersection of NYS Route 9N and Old Stage Road across from the project site. Other tourist attractions and seasonal commercial uses operate within two miles of the project site.
9. Residential development north of the project site on NYS Route 9N and along Old Stage Road is relatively sparse and consists of Low Intensity Use and Rural Use lands. South of the project site the land use area changes to more developed Moderate Intensity Use. This area is characterized by a mix of year-round and seasonal dwellings and includes the Fourth Lake Community Association which owns a private beach at the southern end of Fourth Lake. The Hamlet of Lake Luzerne is located approximately two and a half miles south of the project site.

### **Access**

10. Existing access to the project site is from NYS Route 9N and Old Stage Road (County Route 60). A December 12, 2017 Warren County Department of Public Works letter stated that no work permit is required for the proposed parking lot entrance off Old Stage Road as shown on the Site Plan as the existing access and egress location will remain the same. No work is proposed within the right-of-way of NYS Route 9N.



**Infrastructure**

**Wastewater**

11. Use of portable, self-contained toilets for wastewater generated as a result of the tourist attraction as described in the Plan for Wastewater Treatment will ensure proper treatment and disposal under all New York State Department of Environmental Conservation and Department of Health standards until a replacement on-site wastewater treatment system has been approved and installed in the location shown on the Site Plan and as described in the Plan for Wastewater Treatment.

**Economic/Fiscal Factors**

12. The Project Sponsor projects to employ five full-time workers during the construction period. The average annual wage for an employee in the "Construction of Buildings" Industry in Warren County in 2016 was \$46,470.
13. The Project Sponsor projects to employ 10-15 full-time workers during the summer season. The average annual wage for an employee in the Amusement, Gambling and Recreation Industry in Warren County in 2016 was \$22,162. The project sponsor anticipates an average annual usage of 10,800 customers.
14. The Project Sponsor anticipates \$450,000 in total project costs. It is anticipated that a portion of the project components will be taxed as real property.

**Public Notice and Comment**

15. The Agency notified all adjoining landowners and other parties and published a Notice of Complete Permit Application in the Environmental Notice Bulletin, as required by the Adirondack Park Agency Act. The Agency received 24 letters in opposition to this project citing concerns about increased traffic, noise, visual impacts and change in neighborhood character. The Agency also received 17 letters and a petition with 216 electronic signatures, which included 13 additional comments in favor of the project.

**Town of Lake Luzerne**

16. The proposal is located in an area designated as Hamlet/Commercial on the Town of Lake Luzerne Zoning Map and requires site plan approval and a Special Use Permit for Tourist Attraction. The Town of Lake Luzerne Planning Board held a special meeting on April 2, 2018 and approved the project.



## **PROJECT IMPACTS**

### **Visual**

17. Constructing the majority of the treetop adventure course and zip-line within the existing forested canopy without the use of free-standing support elements, and limiting vegetation removal on tax parcels 38.1, 38.3, or 45 will help to mitigate any adverse visual impacts.
18. Restricting the location, size and color of the restroom building and attached picnic pavilion, as well as restricting any new lighting or signage on tax parcels 38.1, 38.3, or 45 will further reduce visual impacts.
19. Adequate off-street parking will be available for the tourist attraction, avoiding the potential visual impacts caused by vehicles parking along the roadways.

### **Soils/Surface Waters/Groundwater**

20. Construction of a parking lot and picnic pavilion with attached restroom facilities in an area of zero to three percent slopes will reduce potential for erosion and adverse impacts to surface water.
21. Requiring Agency authorization of any on-site wastewater treatment system constructed in the location and as described in the Plan for Wastewater Treatment will provide adequate treatment for the tourist attraction and will mitigate any potential adverse impacts to groundwater and water quality degradation.

### **Historic Sites or Structures**

22. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR § 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980.

### **Nearby Land Uses**

23. Continued use of existing site access and the construction of adequate off-street parking, restrictions on vegetation removal and the addition of new vegetation will protect against impacts to NYS Route 9N and other nearby land uses.
24. Restricting the hours of operation and the operating season of the tourist attraction will further reduce potential impacts to nearby public and private land uses.
25. Restricting the use of any portable, self-contained toilets and outdoor sound amplification or intercom systems associated with the tourist attraction will limit possible adverse impacts to nearby residential uses.

**Economic/Fiscal Factors**

26. The project sponsor projects that the new recreation amenities provided by this project will diversify the entertainment offerings of the Lake Luzerne region and help to attract new and repeat visitors.

**CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act and 9 NYCRR Part 574. The Agency hereby finds that the project authorized as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Low Intensity Use land use area;
- c. will be consistent with the overall intensity guidelines for the Low Intensity Use land use area;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act; and
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project.

PERMIT issued this        day  
of                                , 2018.

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_  
Terry Martino, Executive Director

STATE OF NEW YORK  
COUNTY OF ESSEX

On the        day of                                in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Terry Martino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

TM:DFK:slp

