



## **Lake Lure Parks & Recreation Board Meeting**

### **December 7, 2017 Minutes**

#### **Call to Order**

Chairman Jim Walters called to order the December 7, 2017 meeting of the Parks & Recreation Board at 1:30pm

#### **Roll Call**

Board Members present:

Jim Walters

Ed Dittmer

Diane Barrett

Bill Massey

Dale Minick

Town Officials present:

Town Council Liaison Stephen Webber

Others present:

Town Manager—Ron Nalley

Town Environmental Management Officer – Clint Calhoun

#### **APPROVAL OF AGENDA AND MEETING MINUTES**

The Agenda for the December 7, 2017 meeting was reviewed. **Diane Barrett made a motion to approve the agenda; Ed Dittmer seconded.**

The Minutes of the November 2, 2017 meeting were reviewed. **A motion was made by Ed Dittmer to approve the minutes; the motion was seconded by Bill Massey; all were in favor.**

#### **PARK PRESENTATION AND DISCUSSION**

##### **Buffalo Creek Park/Weed Patch Mountain-**

Jim Walters gave a summary of an e-mail sent by Larry Czajkoski. Final inspection of the trail system has been conducted by the Asheville Regional Office Land Quality Staff and the project has been closed out. Big thanks to Peter Barr for his work in building the trail and being such a great partner working

with the Town. The BCP Parking Lot Agreement (between the Town, State of North Carolina, and RBR Fairfield Resort has been amended and signed by the State and RBR. It now awaits approval of Town Council and appropriate signatures. **Larry Czajkoski made the following motion via e-mail which was read into the record by Jim Walters: Parks and Recreation Board recommends the "BCP Parking Lot Agreement UPDATED by State and signed by RBR Fairfield sent to Town for review and signature 10192017" agreement be sent to Town Council for approval at the December 12, 2017 Town Council meeting and subsequent signing by Town official. Diane Barrett seconded; all were in favor. Larry then made a motion to cost share the second kiosk. There was no second. The Parking Lot Agreement is included in these minutes as Attachment 1.** Per a request from the P & R Board at the November meeting, Larry secured a second quote/proposal for the trailhead tri-panel kiosk. Jim was not able to secure any additional quotes, so we have a total of two quotes. One from Oakstone Builders for \$10,680 which was presented at the November meeting. The second quote from Knight Strategies came in at \$6, 145. Larry recommends that the Board accept the quote from Knight Strategies considering that Conserving Carolina has conditionally agreed to fund 50% of the quote, providing \$3,072.50 towards the cost. If Conserving Carolina cannot confirm their funding commitment by the end of December, 2017, then the P & R Board's decision to provide the other 50% is cancelled/rescinded and can be re-addressed at the January 2018 meeting, and there will be no release of funds for this project unless Conserving Carolina does indeed provide their 50%. **Larry Czajkoski made the following motion via e-mail which was read into the record by Jim Walters: The Parks and Recreation Board agrees to use \$3,072,50 from the P & R Board General Budget Fund in the current 2017-2018 FY budget towards the purchase and installation of a tri-panel information kiosk at the Buffalo Creek Park main public trailhead as long as Conserving Carolina can confirm by the end of December, 2017 that they will also fund \$3,072.50 towards the project...and as long as that happens the P & R Board will award the project to Knight Strategies. Diane Barrett seconded the motion; all were in favor.**

#### **Luremont Trail-**

Nothing to report.

#### **Dittmer-Watts-**

Ed Dittmer reported that leaves have covered the trail. The fences at the ends of the trail have still not been put up as agreed to by the school. Clint will push this issue with them.

#### **Pool Creek Park-**

Diane Barrett reported that Destination By Design is working on plans that will incorporate Pool Creek Park.

#### **Flowering Bridge-**

Bill Massey said that the decorations are finished. Timers have been installed. They are experimenting with LED lighting to save on energy expenses. Still working towards getting a security system. Vandalism, most of it minor, is still occurring.

#### **Golf Course-**

Dale Minick reported that play was up in November compared to 2016 which was impacted by the Party Rock Fire. Still a little behind for the year compared to last year. Good crowd over the Thanksgiving weekend. Foot golf had 16 for November, compared to 20 last year. #8 bunker is

complete. Working on #5 bunker. Membership renewal letters went out. Dale is evaluating how additional sports facilities can be integrated at the golf course. A plan will be needed.

#### **Morse Park Plan Presentation-**

Jim Walters reported that the plan was unanimously approved by Town Council. EV charging center is already being installed. Progress is being made on the visitor center refinement for which Shannon has proposed a meeting. The Morse Park Plan seemed to be well received by the public and there were no public comments.

#### **Discussion Concerning Town Waterfront Concessionaire RFP and Morse Park Improvement Progress-**

Received three proposals: 1 withdrew, and one did not comply with the RFP. The last one standing is being negotiated with. Residents of Chimney Rock Village have been asked for inclusion in local citizen admission rate at the L.L. Beach. **Bill Massey made a motion to allow free beach access for residents for Chimney Rock Village upon provision of valid I.D. Motion was seconded by Ed. Dittmer; all were in favor. This will be passed on to George Wittmer as negotiations move forward.**

#### **Council Liaison Report -**

Commissioner Stephen Webber said security lights had been repaired and the Town has been reimbursed after paying for them while not working. The tennis court light is the only one left that is not working. Someone will need to look at making sure EV station signs have time limits for parking and charging. The sign for boat permit requirement still needs to be placed by the river. The policy for vendors in Morse Park also needs to be re-visited now that such activities have been approved as part of the Morse Park Plan.

#### **Parks and Recreation Supervisor-**

Melodie Potter was absent but Public Works was given kudos for their work getting the decorations up.

#### **Environmental Management Officer-**

Clint Calhoun had nothing to report

#### **Adjournment**

**Diane Barrett made a motion to adjourn, Ed Dittmer seconded the motion, the board was unanimously in favor and Chairman Walters formally adjourned the meeting at 2:30pm.**

**Minutes were transcribed by Town Environmental Management Officer Clint Calhoun. The next regular meeting of the Parks & Recreation Board meeting will be January 4, 2018 at 1:30pm.**

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

## PARKING LOT AGREEMENT

THIS PARKING LOT AGREEMENT (the "Agreement"), is made effective on the date of the last signature by and between the Fairfield Mountains Property Owners Association, Inc., a North Carolina corporation ("Fairfield") and the State of North Carolina (the "State"), and the Town of Lake Lure, North Carolina, a North Carolina body politic (the "Town"). Fairfield, the State and the Town may collectively be referred to herein as the "Parties."

### WITNESSETH:

WHEREAS, the North Carolina Division of Parks and Recreation ("DPR") is a subdivision of the State under the management of the North Carolina Department of Natural and Cultural Resources; and

WHEREAS, DPR's purpose it is to preserve, interpret, and manage the State Park System for the benefit, education and enjoyment of the people of North Carolina, as provided for in the State Parks Act (N.C.G.S. Chapter 143B, Article 2, Part 32), and this purpose is accomplished in part by the management, conservation and restoration of the State Park System's natural resources; and

WHEREAS, the State intends to purchase property located within Fairfield for the purpose of constructing and maintaining a parking lot (the "Parking Lot") for public ingress, transgress and egress at Bald Mountain Lake East Lot 56, as shown in Exhibit A, and more specifically identified as Rutherford County Tax ID 1618084 (the "Subject Tract").

WHEREAS, the Parking Lot will provide public parking and access to the Buffalo Creek Park Trail System (the "Trail System"), through Buffalo Creek Park, which will eventually connect via a planned trail system to Chimney Rock State Park; and

WHEREAS, the State intends to lease the Parking Lot to the Town to manage and maintain; and

WHEREAS, the Subject Tract is subject to the restrictions applicable to the property by virtue of being located within Fairfield's boundaries,

WHEREAS, Fairfield desires to utilize the Trail System's common amenities, cooperate with the State and Town, and increase business visibility to the public using the Trail System.

NOW THEREFORE, in consideration of the mutual agreements and promises contained herein, and for other good and valuable consideration, the receipt or consideration of which is hereby acknowledged, the Parties do agree as follows:

1. **Parking Lot Permitted.**

- (a) Fairfield hereby permits the State, acting through DPR, and the Town to construct the Parking Lot on the Subject Tract, for the purpose of parking motor vehicles for ingress, egress and transgress of its lawful visitors for recreational use of the Trail System. Notwithstanding the foregoing, Fairfield expressly retains and reserves for itself, its successors and its assigns, all the rights and privileges afforded to it, as described in Declaration of Covenants and Restrictions of Fairfield recorded in the Rutherford County Registry in Deed Book 386, Page



404, Rutherford County, North Carolina ("Fairfield's Governing Documents"), and under applicable law in regards to the Subject Tract.

- (b) Fairfield shall in no way be responsible for any cost or expense of construction, maintenance, or management related to the Parking Lot.
2. **Term.** The term of this Agreement shall be only for so long as the Parking Lot is a necessary part of the Trail System, and upon condition that the Trail System remains operative and the Parking Lot is used solely for the purposes stated herein, as determined in the sole discretion of DPR.
  3. **Maintenance.** The State and/or Town shall maintain any improvements constructed, installed or associated with the Parking Lot in a good and workmanlike manner. The operation and maintenance of such improvements and of the Parking Lot shall be at the State and/or Town's sole cost and expense, but all major maintenance, repair or alteration shall be mutually agreed upon by the Parties prior to beginning any work. No reasonable request regarding major maintenance, repair, or alteration shall be unreasonably denied.
  3. **Signs.** Fairfield will have the right to install up to two informational signs in the Parking Lot at locations mutually agreed upon by the Parties. The State and/or Town will have the right to install informational and directional signs, as well as other signs that recognize sponsors, donors, and any other type recognition in the Parking Lot, at locations mutually agreed upon by the Parties. All signs must comply with all applicable State statutes, rules and regulations and must be reviewed and approved by the Parties prior to erection. No reasonable request for signage at the Subject Tract by any of the Parties shall be unreasonably denied.
  4. **Commercial Use.** No commercial or business use shall be allowed in the Parking Lot without prior approval by the Parties. This restriction includes, but is not limited to, the sale of concessions, tours, rentals, merchandise, food or beverage, timeshares, and real estate.
  5. **Compliance.** The State and/or Town shall construct and maintain the Parking Lot in compliance with all applicable federal, State and local laws, ordinances, rules and regulations, including but not limited to, all applicable regulatory, environmental and safety requirements, at their sole cost and expense. Specifically, the State and/or Town shall construct and maintain the Parking Lot in compliance with all rules and regulations set forth by the North Carolina Office of State Construction ("State Construction"). Where reasonable and not in conflict with the rules and regulations set forth by State Construction, the State and Town will use their best efforts to comply with the rules and regulations set forth by Fairfield's Architectural Control Committee ("ACC") and permit the ACC to review all construction and major maintenance on the Subject Tract prior to beginning any work. The ACC's rules and regulations are attached as Exhibit B. Specifically, the Parties agree:
    - (a) **Set-backs.** The State and Town will follow all Town mandated set-back regulations which do not conflict with the rules and regulations as set forth by State Construction. The State and Town are exempt from the ACC set-back regulations stipulated in Section 302.2.3 of Exhibit B.
    - (b) **Tree Removal.** The State and Town will seek ACC approval prior to the removal of trees in the Subject Tract. No reasonable request for the removal of trees at the Subject Tract by the State or Town shall be unreasonably denied, though Fairfield encourages the State and/or Town to preserve as many trees as reasonably possible.
  6. **Hazardous Substances; Debris.** The State and/or Town shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Parking Lot or

on any other real property of Fairfield adjacent to the Parking Lot. The Parking Lot shall be kept clean and maintained by the State and/or Town. At its sole expense, the State and/or Town will be responsible for providing and maintaining a reasonable number of trash and recycling receptacles. During construction of the Parking Lot or its associated improvements only, the State and Town may provide an adequate container for the placement of large trash and excess building materials and ensure that the general contractor, its employees and subcontractors makes use of such container. Otherwise, use of a dumpster or large container is prohibited at the Parking Lot.

7. **Roadside Natural Screen.** At the State and/or Town's sole expense, the State and/or Town will be required to maintain a natural screen which will run the length of the Parking Lot along Buffalo Creek Road, except where the entrance is located. The natural screen will be created to provide a buffer strip of natural vegetation by leaving current trees in place that will screen the parking area from passing traffic and neighboring properties. The Parking Lot is exempt from the ACC restriction which limits hedge height to not exceed four feet (Section 310.1). All other portions of Section 310.1 remain in force.

If the Parking Lot becomes a hazard through the increase of crime in the area facilitated by the natural screen, the State and the Town, taking into account recommendations from Fairfield, will jointly work together to determine a solution, which may include removal of the natural screen.

8. **Fairfield Amenities Use and Rights.** Except as provided herein, the property interest, rights, title and ownership vested in the State and/or Town in regards to the Parking Lot and/or the Subject Tract does not provide the State, the Town or any of their respective employees, agents, assigns or lawful visitors any rights to access or use Fairfield's amenities, grounds, or common property, any voting rights arising out of Fairfield's corporate activities or business, or any other rights, privileges, discounts, or benefits provided by Fairfield. The State, the Town, nor any of their respective employees, agents, assigns or visitors will be considered "members of the POA", as defined in Fairfield's Governing Documents, by virtue of their property interest in the Subject Tract.
9. **Usage of State Property.** Unless noted otherwise in this Agreement, usage of State property, specifically including the Subject Tract, the accompanying Parking Lot, and any State trail system, by Fairfield or any of its employees, agents, assigns or lawful visitors, shall be the same as is afforded to the general public in accordance with State statutes, rules and regulations, including, but not limited to, access and usage of the Subject Tract and adherence to posted hours of operation.
10. **Dues Consideration.** In consideration for the rights and privileges afforded to Fairfield through this Agreement and through use of the Buffalo Creek Trail System, the State and/or Town will receive a credit from Fairfield towards all assessments, special assessments, initiation fees, impact fees, administrative fees, and dues charged. The credit provided by Fairfield will always be equal to the amount of the assessments, special assessments, initiation fees, impact fees, administrative fees, or dues charged.
11. **Restroom Facilities.** Should the State determine that a sufficient need exists at the Subject Tract, the State and/or Town may, at their sole cost and expense, construct restroom facilities at the Subject Tract. The Parties will coordinate regarding the location, type of restroom (i.e. permanent or temporary), quality of construction, and design of the restroom facility prior to construction. If the State and/or Town elects to employ the use of temporary restroom facilities, the State and/or Town will be required to build, at their sole expense, a screen which will provide sufficient concealment of the restroom facilities. If the Parking Lot becomes a hazard through the increase of crime in the area

facilitated by said screen, the State and the Town, taking into account recommendations from Fairfield, will jointly work together to determine a solution, which may include removal of the screen. All construction, whether permanent or temporary, must comply with Section 5 of this Agreement. At its sole cost and expense, the State and/or Town will be responsible for the regular maintenance, cleaning, and upkeep of the restroom facilities. The State and/or Town agree to take all reasonable measures to ensure that any smell from the restroom facilities does not impact neighboring properties.

12. **Liability.** This Agreement is subject to the express condition that Fairfield is released from all liability by the Town by reason of injury or death to persons or property loss or damage from any and all causes arising out of the exercise of rights granted pursuant to this Agreement or use of the Parking Lot or of the improvements thereto or property of the Town thereon by the Town or its respective contractors, agents, officers, employees, or lawful visitors, including, but not limited to, any and all liability for injury or death to persons or damage or loss of property of the Town or any of its respective contractors, agents, officers, employees, or lawful visitors. The Town is required to maintain a reasonable amount of liability insurance on the Parking Lot at all times, to name Fairfield as an additionally insured, and to provide to Fairfield proof of this insurance on an annual basis. The Parties acknowledge that the State is an immune sovereign and is not subject to suit, except as expressly permitted in Article 31 of Chapter 143 of the North Carolina General Statutes, and may be liable only as therein provided. The Town and Fairfield acknowledge and agree that the State's decision to self-insure satisfies any and all insurance requirement of Fairfield.

Should any member of the public enter onto property of Fairfield for the purposes contemplated in this Agreement (i.e., recreational and educational uses of the Buffalo Creek Trail), Fairfield is afforded the statutory limitations upon liability of an "owner" under N.C.G.S. §38A-4, as may be amended from time to time.

13. **Default and Termination.** This Agreement shall terminate upon the earlier of the following: (i) a determination by the State that the conditions extending the term of the Agreement are not being met and subsequent notification to the other parties, or (ii) if, during the term hereof, either party gives ninety (90) days written notice of termination to the other party, or (iii) if either party fails to perform any of its obligations under this Agreement, which failure is not cured after thirty (30) days written notice to the obligated party (or if such failure cannot be cured within thirty (30) days, then within such reasonable period of time, provided the party proceeds promptly and diligently to cure such breach and notifies the other parties of such delay). Conduct by a party to this Agreement under subpart (iii) of this paragraph shall be considered default hereunder; and, in addition to any lawful right or remedy which it may have, the non-defaulting party, at its option, may terminate this Agreement if the conduct is not cured.

In the event of termination of this Agreement, the Parking Lot and any improvements, fixtures, signs, or structures associated therewith shall not be required to be removed by virtue of termination of this Agreement alone. If removal or changes are determined to be needed at the Subject Tract by the State in its sole discretion, such removal or changes will be coordinated between the Parties.

14. **Remedies.** Each party shall have all remedies available at law or equity, including specific performance and injunctive relief, for enforcement of this Agreement. The remedies are cumulative and may be exercised singularly, cumulatively, independently or successively.
15. **Liens.** The State and/or Town shall, at all times, keep the Parking Lot free from any liens or claims arising on account of any act or on behalf of the State and/or Town. In the event any lien is recorded

with respect to the Parking Lot on account of any activity of the Town or any use of the Parking Lot by or on behalf of the Town, the Town shall, within ten (10) days of notice by Fairfield cause such mechanics' lien to be removed from the Parking Lot by posting a bond as permitted by statute.

16. **Inurement.** The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, and assigns. The rights and obligations set forth in this Agreement are intended to run with the land.
17. **Amendment.** This Agreement shall not be amended orally or by performance. This Agreement may only be amended by a written amendment duly executed by the Parties.
18. **Paragraph Headings.** Paragraph headings are included for reference purposes only and do not constitute part of this Agreement.
19. **Access to Persons and Records.** The State Auditor and DPR's internal auditors shall have access to persons and records as a result of all agreements entered into by State agencies or political subdivisions in accordance with G.S. 147-64.7. The Town and Fairfield shall retain all records for a period of three (3) years following completion of the Agreement.
20. **Governing Law.** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The Parties agree that the proper venue of this Agreement, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement of this Agreement shall be determined. The Parties agree and submit, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina.
21. **Severability.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
22. **Notices.** All notices, demands, or other official communications to any party under this Agreement shall be in writing; shall be sent only by facsimile (with confirmation by United States Mail), by nationally recognized courier service, or by personal delivery; and shall be given:

*If to Fairfield, to:*

Fairfield Mountains Property Owners Association Inc.  
ATTN: Board of Directors  
112 Mountains Boulevard  
Lake Lure, NC 28746

*If to State, to:*

N.C. Division of Parks and Recreation  
ATTN: Chief of Natural Resources and Regional Planning  
1615 Mail Service Center  
Raleigh, NC 27699-1615

*If to Town, to:*

Town Manager



Town of Lake Lure  
P.O. Box 255  
Lake Lure, NC 28746

All such notices, demands, requests, or other communications shall be deemed received on the date of receipt by the recipient if received prior to 5:00 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, demand, request, or other communication shall be deemed not to have been received until the next succeeding business day in the place of receipt. Addresses for notice may be changed from time to time by written notice to the other parties.

23. **Waiver.** The failure of any party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification or any provision hereof and no cancellation or surrender thereof shall be valid unless in writing signed by the Parties.
24. **Entire Agreement.** This Agreement, any exhibits and attachments affixed hereto, and any documents specifically incorporated by reference represent the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained in this Agreement, and this Agreement shall supersede all previous communications, representations, or agreements between the Parties. Any previous agreement, understanding, representation or covenant that may have existed between the Parties, of any kind, nature or description, expressed or implied, oral or written, which has not been set forth in this Agreement, is of no effect and shall not be considered in the interpretation of this Agreement.

*[Remainder of page intentionally left blank; signature page to follow.]*

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the date of the last signature below.

**FAIRFIELD MOUNTAINS PROPERTY OWNERS ASSOCIATION, INC,**

By: *[Signature]*  
Name: PHILIP REITANO  
Title: President

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

I certify that the following person(s) personally appeared before me this day and is/are personally known to me or identified by me through satisfactory evidence, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated for Fairfield Mountains Property Owners Association, Inc.:

Philip Reitano, President.  
Date: 10/11/2017  
Notary Public *Christy E. Roper*  
Print Name: Christy E Roper  
My commission expires: 8/15/2020

[AFFIX SEAL BELOW]



**THE TOWN OF LAKE LURE, N.C.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

(affix Town Seal)

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

I certify that the following person(s) personally appeared before me this day and is/are personally known to me or identified by me through satisfactory evidence, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated for the Town of Lake Lure, N.C.:

\_\_\_\_\_, \_\_\_\_\_.

Date: \_\_\_\_\_

Notary Public

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[AFFIX SEAL BELOW]

**THE STATE OF NORTH CAROLINA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day and is/are personally known to me or identified by me through satisfactory evidence, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated for the State of North Carolina:

\_\_\_\_\_, \_\_\_\_\_.

Date: \_\_\_\_\_

Notary Public

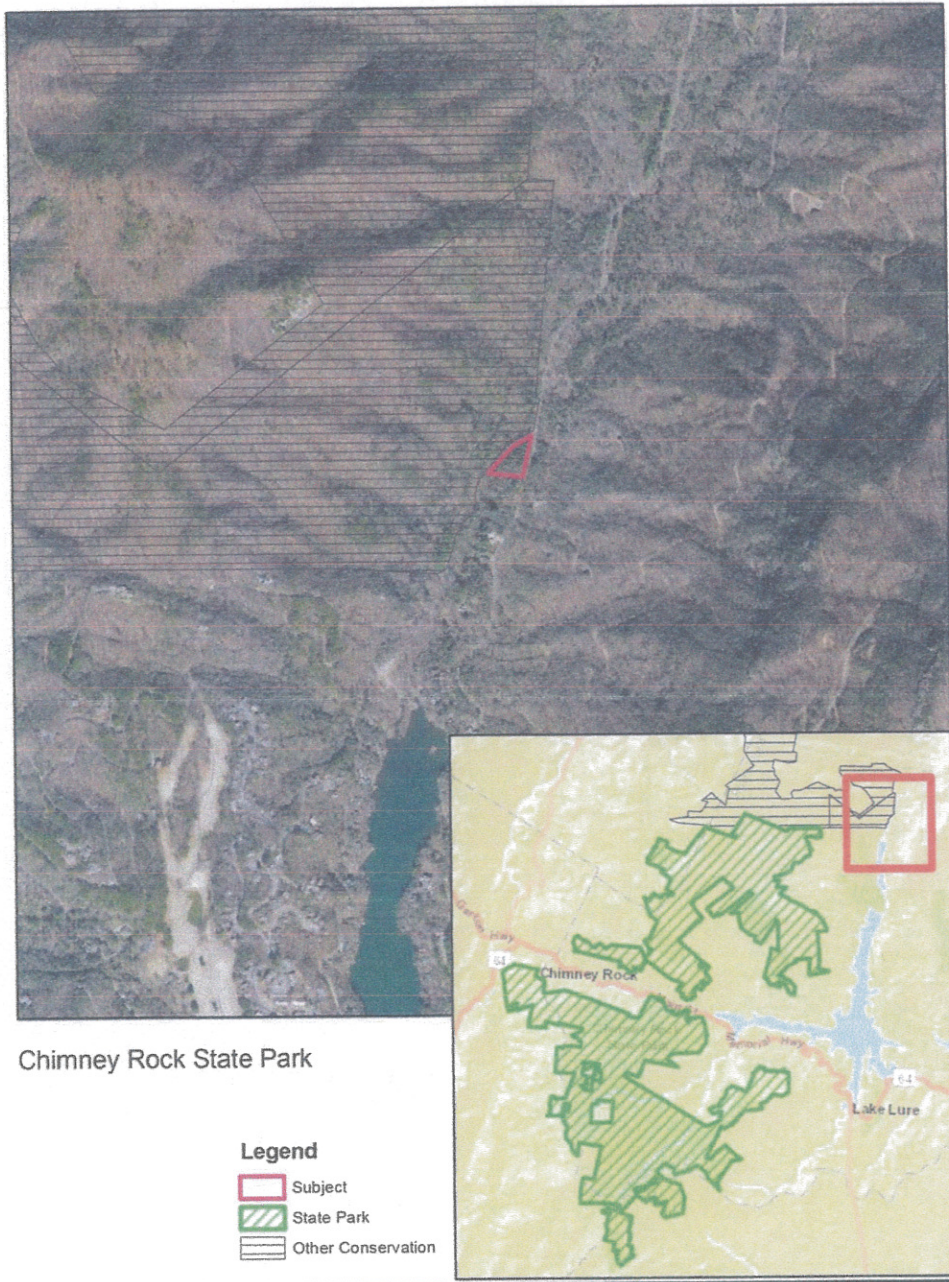
Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[AFFIX SEAL BELOW]



**EXHIBIT A**  
**Site Map**



**EXHIBIT B**  
**ACC Rules and Regulations**