

LAKE LURE TOWN COUNCIL SPECIAL MEETING PACKET

Wednesday, September 27, 2023
8:00 a.m.



Mayor Carol C. Pritchett
Mayor Pro Tem David DiOrio
Commissioner Patrick Bryant
Commissioner Scott Doster
Commissioner Jim Proctor



**NOTICE OF SPECIAL
TOWN COUNCIL MEETING**

**Wednesday, September 27, 2023
8:00 a.m.
Lake Lure Municipal Center (Town Hall)**

The Lake Lure Town Council will hold a special meeting on Wednesday, September 27, 2023 at 8:00 a.m. at the Lake Lure Municipal Center (Town Hall). The Lake Lure Municipal Center is located at 2948 Memorial Highway, Lake Lure, NC 28746.

The purpose of this meeting is to address the following items:

- Review and Consider Approval of Indemnification Clause between the Town of Lake Lure and Morgan Corporation
- Consider Adoption of Resolution No. 23-09-27 Authorizing Temporary Construction Easement for the Reservoir Drain Valve Installation Project

This notice is issued on the 21st day of September, 2023 in accordance with the laws and ordinances of the State of North Carolina and the Town of Lake Lure.

TOWN OF LAKE LURE

Town Council Special Meeting

Wednesday, September 27, 2023 - 8:00 AM

Lake Lure Municipal Center



Agenda

- I. Call to Order**
- II. Review and Consider Approval of Indemnification Clause between the Town of Lake Lure and Morgan Corporation - Page 1**
- III. Consider Adoption of Resolution No. 23-09-27 Authorizing Temporary Construction Easement for the Reservoir Drain Valve Installation Project - Page 3**
- IV. Adjournment**

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: September 27, 2023

SUBJECT: Review and Consider Approval of Indemnification Clause between the Town of Lake Lure and Morgan Corporation

AGENDA INFORMATION:

Item Number: II
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

Morgan Corporation is set to begin installing the Reservoir Drain Valve within upcoming months. The Town has obtained verbal permission to be on the properties of two private property owners for purposes of accessing the Dam, staging of equipment and supplies and other purposes consistent with the installation of the Reservoir Drain and is in the process of obtaining written Temporary Construction Easements from the necessary property owners. Morgan Corporation may need to be on the properties in order to begin its work prior to the execution of written Temporary Construction Easements so as not to delay the project. Thus, Town staff recommends agreeing to indemnify, defend, and hold Morgan Corporation harmless from any claims of the property owners grounded in Trespass or for damage to real property and related causes of action. Town Attorney William Morgan has drafted an Indemnification clause that would solidify that the Town will indemnify, defend and hold Morgan Corporation and its officers, agents, employees and subcontractors harmless and assume any and all liability for any trespass claim or action for damage to real property or relating to potential easement issues that may arise in the performance of the Lake Lure Reservoir Drain project by Morgan Corporation. Attorney Morgan has clarified that approval and execution of the Indemnification clause shall survive the completion of the Reservoir Drain project remaining in full force and effect until any applicable statutes of limitation have expired

RECOMMENDED MOTION AND REQUESTED ACTION:

To approve Indemnification Clause between the Town of Lake Lure and Morgan Corporation

ATTACHMENTS:

Draft Indemnification Clause

INDENIFICATION

This Indemnification promise of the Town of Lake Lure, NC is executed this the ____ day of September 2023 for the benefit of Morgan Corporation.

WHEREAS, the Town of Lake Lure owns and operates a dam that impounds the waters of Lake Lure; and

WHEREAS, the Town has contracted with Morgan Corporation to install a Reservoir Drain within the Dam; and,

WHEREAS, the Town has obtained verbal permission to be on the properties of two private property owners (Hunt and Moore) for purposes of accessing the Dam, staging of equipment and supplies and other purposes consistent with the installation of the Reservoir Drain and is in the process of obtaining written Temporary Construction Easements from the necessary property owners; and,

WHEREAS, Morgan Corporation may need to be on the properties in order to begin its work prior to the execution of written Temporary Construction Easements so as not to delay the project; and,

WHEREAS, the Town has agreed to indemnify, defend, and hold Morgan Corporation harmless from any claims of the property owners grounded in Trespass or for damage to real property and related causes of action in order to not delay the commencement of the work;

NOW, THEREFORE, in consideration of Morgan Corporation’s agreement to begin the work associated with the installation of the Reservoir Drain even though Temporary Construction Easements may not have been executed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town of Lake Lure agrees as follows:

The town ‘will indemnify, defend and hold Morgan Corporation and its officers, agents, employees and subcontractors harmless and assume any and all liability for any trespass claim or action for damage to real property or relating to potential easement issues that may arise in the performance of the Lake Lure Reservoir Drain project by Morgan Corporation. This Indemnification clause shall survive the completion of the Reservoir Drain project remaining in full force and effect until any applicable statutes of limitation have expired.

This ____ day of September, 2023.

Carol Pritchett, Mayor

William “Hank” Perkins, Manager

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: September 27, 2023

SUBJECT: Consider Adoption of Resolution No. 23-09-27 Authorizing Temporary Construction Easement for the Reservoir Drain Valve Installation Project

AGENDA INFORMATION:

Item Number: III
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

In conjunction with the Indemnification Clause, Town Attorney William Morgan has drafted the Temporary Construction Easement for the Reservoir Drain Valve Installation Project. The Temporary Construction Easement is between the Town and the property owners of the John Jackson Hunt Estate (Parcel Id. 226751). The purpose of the easement is to establish “lay down areas” along the access road to the base of the dam where the installation of the reservoir drain will occur and such lay down area is where various components of the reservoir drain will be stored and assembled, as well as equipment needed for the same. Resolution No. 23-09-27 authorizes the Temporary Construction Easement.

RECOMMENDED MOTION AND REQUESTED ACTION:

To adopt Resolution No. 23-09-27 Authorizing Temporary Construction Easement for the Reservoir Drain Valve Installation Project.

ATTACHMENTS:

Consider Adoption of Resolution No. 23-09-27 Authorizing Temporary Construction Easement for the Reservoir Drain Valve Installation Project; Draft Consider Temporary Construction Easement



RESOLUTION NO. 23-09-27

**RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE AUTHORIZING
TEMPORARY CONSTRUCTION EASEMENTS FOR THE RESERVOIR DRAIN VALVE
INSTALLATION PROJECT**

WHEREAS, The Town of Lake Lure, is a North Carolina municipal corporation organized and existing pursuant to the laws of North Carolina, 160A-1, et. seq., that owns, operates, and maintains the Dam that impounds the waters of Lake Lure; and

WHEREAS, Lake Lure’s 1927 Dam is scheduled for replacement over the course of the next decade but needs repairs mandated by the NC Office of Dam Safety, including a Reservoir Drain whereby the Lake may be lowered by an adequate amount in the case of an emergency; and

WHEREAS, The reservoir drain will also enable and facilitate work on the Town’s phased rehabilitation and replacement of its sewer system that is ongoing, and which will result in the implementation of a new state-of-the-art sewer utility which is being installed in the backshore, which is the land exposed during lake drawdown periods; and,

WHEREAS, Temporary construction easements are needed in order to establish “lay down areas” along the access road to the base of the dam where the installation of the reservoir drain will occur and such lay down area is where various components of the reservoir drain will be stored and assembled, as well as equipment needed for the same.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA:

SECTION ONE. The Town of Lake Lure authorizes temporary construction easements between the Town of Lake Lure and the following property owners:

HUNT, JOHN JACKSON ESTATE (Parcel Id. 226751)

SECTION TWO. The Town of Lake Lure and the parties specified above shall abide by any specifications within the authorized easements.

SECTION THREE. Any additional temporary construction easements for the Reservoir Drain Valve Installation Project are hereby authorized at the discretion of the Town Attorney and Town Manager.

READ APPROVED AND ADOPTED this _____ day of September, 2023

ATTEST:

Olivia Stewman, Town Clerk

Mayor Carol C. Pritchett

NORTH CAROLINA)
)
)
RUTHERFORD COUNTY)

TEMPORARY CONSTRUCTION
EASEMENT

THIS GRANT OF EASEMENT, made this ____ day of _____ 2023, by and between the heirs of John Jackson Hunt (hereinafter “Grantors”), party of the first part, to the TOWN OF LAKE LURE, a municipal corporation located in Rutherford County, North Carolina, party of the second part (hereinafter referred to as “Grantee” or “the Town”);

W I T N E S S E T H:

WHEREAS, Grantors are the owners of certain tracts of land located adjacent to U.S. Highway 64-74 and adjacent to the access drive to the Town’s hydro plant and to the base of the Lake Lure Dam (Parcel Id. 226751) lying and being in Rutherford County, North Carolina, as more particularly described in Deed Book 255 at Page 422, described hereinabove; and,

WHEREAS, Grantee, the Town of Lake Lure, is a North Carolina municipal corporation organized and existing pursuant to the laws of North Carolina, 160A-1, et. seq., that owns, operates, and maintains the Dam that impounds the waters of Lake Lure; and,

WHEREAS, Lake Lure’s 1927 Dam is scheduled for replacement over the course of the next decade but needs repairs mandated by the NC Office of Dam Safety, including a Reservoir Drain whereby the Lake may be lowered beyond current capabilities in the case of an emergency or for maintenance purposes; and,

WHEREAS, the reservoir drain will also enable and facilitate work on the Town’s phased rehabilitation and replacement of its sewer system that is ongoing, and which will result in the implementation of a new state-of-the-art sewer utility which is being installed in the backshore, which is the land exposed during lake drawdown periods; and

WHEREAS, this temporary construction easement is needed in order to establish “lay down areas” along the access road to the base of the dam where the installation of the reservoir drain will occur and such lay down area is where various components of the reservoir drain will be stored and assembled, as well as equipment needed for the same; and,

WHEREAS, Grantors' property (parcel #226751) lying along the access road is an ideal location for several of the lay down areas and Grantors have agreed to grant the Town this Temporary Construction Easement for the purposes set forth above;

NOW, THEREFORE, in consideration of the premises, the mutual promises set forth herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantors and Grantee hereby agree as follows:

1. Grantors by these presents does bargain, sell, and convey unto the Town, its successors and assigns, a temporary construction easement on and across the property identified as tax parcel 226751 and generally shown as marked on Attachment A to this Temporary Construction Easement attached hereto and incorporated herein as if fully set forth herein. The easement area will extend twenty (20') feet from the center line of the road in both directions. The term of this Agreement shall begin upon the date of mutual execution hereof and shall extend to and including August 24, 2024, or until the portions of the project for which this Temporary Construction Easement is meant to facilitate have been completed, whichever occurs first. Grantee shall notify Grantors prior to beginning its use of the Temporary Construction Easement and use thereof will proceed as expeditiously as practicable.
2. Said temporary construction easement shall include, but not be limited to, the free and full right of ingress and egress over and across said easement to access the work area and for the purpose of staging the construction of the Grantee's reservoir drain installation project, including the right to store components, parts, equipment, tools, vehicles and supplies and other items necessary to complete construction of the reservoir drain and related, necessary improvements.
3. The Grantee's contractor may clear any portion of the lay down areas necessary for conducting the work; however, in no case shall trees larger than six (6") inches in diameter be cut. Upon substantial completion, the Grantee shall cause all disturbed areas to be returned as close as possible to their original states, will seed, and stabilize the same where necessary and remove any trees cut by the contractor and other debris.
4. Grantee and its contractor shall maintain liability insurance with limits of not less than two million (\$2,000,000.00) per person and provide evidence of insurance before start of the work. Each Grantor will be named as an additional insured under the policy. Grantee will indemnify, defend and hold Grantors harmless from and against all claims arising out of Grantee or its contractor's use of the easement.
5. Grantors covenant that they are seized of the aforesaid premises (parcel #226751) in fee and have the right to convey the easement hereby granted; that the same is free from encumbrances; and that Grantors will warrant and defend said title to said easements against the claims of all persons whatsoever.

6. Grantors may use the easement premises in any manner which will not damage, impair, prevent, or interfere with the reservoir drain improvements or the Grantee's exercise of the rights granted hereunder.
7. Grantee shall be responsible for paying a reasonable attorney's fee to Grantors' attorney for review of this easement.
8. It is agreed that this grant covers all the agreements between the parties concerning the Temporary Construction Easement herein described and no representations or statements, verbal or written, have been made modifying, adding to, or changing the terms of this agreement.

IN TESTIMONY WHEREOF the Grantors have hereunto set their hand and seal.

_____ (seal)
 Sally Hunt Royster, Co-Executor of the John Jackson Hunt Estate

_____ (seal)
 Elizabeth Sarazen, Co-Executor of the John Jackson Hunt Estate

STATE OF _____
 _____ COUNTY

I, _____, Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this _____ day of _____, 20__.

(Official Seal)

 Official Signature of Notary

 Notary's Printed or Typed Name

My commission expires: _____

STATE OF _____
 _____ COUNTY

I, _____, Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this _____ day of _____, 20__.

(Official Seal)

Official Signature of Notary

Notary's Printed or Typed Name

My commission expires: _____
=====

SO AGREED:

Carol C. Pritchett, Mayor

Town Seal

ATTEST: _____
Olivia Stewman, Town Clerk

NORTH CAROLINA

RUTHERFORD COUNTY

I, _____, a Notary Public in and for said County and State, do hereby certify that Carol C. Pritchett, Mayor of the Town of Lake Lure, and Olivia Stewman, Town Clerk for the Town of Lake Lure, personally came before me this day and being duly sworn says each for herself that she knows the corporate seal of the Town of Lake Lure and that the seal affixed to the foregoing instrument is the corporate seal of the Town of Lake Lure, that Carol C. Pritchett, Mayor and Olivia Stewman, Town Clerk subscribed their names thereto; that the corporate seal for the Town of Lake Lure was affixed thereto, all by virtue of a resolution or other official action of the Board of Commissioners, and that said instrument is the act and deed of the Town of Lake Lure.

IN WITNESS WHEREOF, I have set my hand and notarial seal this the ____ day of _____ 2023.

(SEAL)
Notary Public

Print Name of Notary

My Commission Expires: _____

IV

ADJOURNMENT