Orange County
Board of Commissioners

Agenda

Regular Meeting
April 15, 2014
7:00 p.m.
Southern Human Services Center
2501 Homestead Road
Chapel Hill, NC 27514

Note: Background Material on all abstracts available in the Clerk's Office

Compliance with the "Americans with Disabilities Act" - Interpreter services and/or special sound equipment are available on request. Call the County Clerk's Office at (919) 245-2130. If you are disabled and need assistance with reasonable accommodations, contact the ADA Coordinator in the County Manager's Office at (919) 245-2300 or TDD# 644-3045.

1. Additions or Changes to the Agenda

PUBLIC CHARGE

The Board of Commissioners pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the Board and with fellow residents. At any time should any member of the Board or any resident fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

2. Public Comments (Limited to One Hour)

(We would appreciate you signing the pad ahead of time so that you are not overlooked.)

a. Matters not on the Printed Agenda (Limited to One Hour – THREE MINUTE LIMIT PER SPEAKER – Written comments may be submitted to the Clerk to the Board.)

Petitions/Resolutions/Proclamations and other similar requests submitted by the public will not be acted upon by the Board of Commissioners at the time presented. All such requests will be referred for Chair/Vice Chair/Manager review and for recommendations to the full Board at a later date regarding a) consideration of the request at a future regular Board meeting; or b) receipt of the request as information only. Submittal of information to the Board or receipt of information by the Board does not constitute approval, endorsement, or consent.

b. Matters on the Printed Agenda
(These matters will be considered when the Board addresses that item on the agenda below.)

3. Petitions by Board Members (Three Minute Limit Per Commissioner)

4. Proclamations/ Resolutions/ Special Presentations

a. Proclamation of Recognition on Chapel Hill High School Women's Basketball Team and Coach Sherry Norris Winning the 2014 State Championship
b. Proclamation Recognizing "PowerTalk 21 Day" in Orange County

5. Public Hearings

a. Zoning Atlas Amendment – Easterlin Rezoning of 5908 US 70 East in Eno Township – Public Hearing Closure and Action (No Additional Comments Accepted)
b. Unified Development Ordinance Text Amendment Related to Setbacks for Class II Kennels Developed in the EDE-2 General Use Zoning District – Public Hearing Closure and Action (No Additional Comments Accepted)
c. Safe Routes to School (SRTS) Strategic Action Plan (No Additional Comments Accepted)
d. Orange County Community Development Block Grant (CDBG) Program – FY 2014 Infrastructure Program - $3,000,000
e. Orange County's Proposed 2014 Legislative Agenda

6. Consent Agenda

- Removal of Any Items from Consent Agenda
- Approval of Remaining Consent Agenda
- Discussion and Approval of the Items Removed from the Consent Agenda

a. Minutes
b. Fiscal Year 2013-14 Budget Amendment #7
c. Use Agreement between Orange County and the New Hope Fire Department
d. Use Agreement between Orange County and Orange Rural Fire Department
e. Use Agreement between Orange County and Carrboro Fire & Rescue
f. Terra Dotta, LLC Lease – 501 W. Franklin Street, Suites 105, 106 & 200
g. Mount Willing Road Bridge Drainage Easement and Right of Entry Agreement to North Carolina Department of Transportation
h. CDBG Program – Language Access Plan
i. Agreement with the State for Federal Assistance
j. Designation of Orange County Agent for FEMA Public Assistance

7. Regular Agenda

a. Bid Award – Orange County MSW Landfill Closure
b. Solid Waste Service Tax District for Recycling
c. DC Fast Charger Electric Vehicle Station Licensing Agreement with Brightfield Transportation Solutions
d. Morinaga America Foods Temporary Office Lease – Link Government Services Center, Lower Level

8. Reports

a. Report on Orange County's "Small Business Loan Program"

9. County Manager's Report

10. County Attorney's Report

11. Appointments

12. Board Comments (Three Minute Limit Per Commissioner)

13. Information Items

- April 1, 2014 BOCC Meeting Follow-up Actions List
- BOCC Chair Letter Regarding Petitions from April 1, 2014 Regular Board Meeting

14. Closed Session

"To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee;" NCGS § 143-318.11(a)(6).

15. Adjournment

A summary of the Board's actions from this meeting will be available on the County's website the day after the meeting.

Note: Access the agenda through the County's web site, www.orangecountync.gov

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 4-a

SUBJECT: Proclamation of Recognition on Chapel Hill High School Women's Basketball Team and Coach Sherry Norris Winning the 2014 State Championship

DEPARTMENT: BOCC

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
- Proclamation

INFORMATION CONTACT:

Donna Baker, Clerk to the Orange County Board of Commissioners
(919) 245-2130

PURPOSE: To consider a proclamation recognizing the Chapel Hill High School Women's Basketball Team and Coach Sherry Norris for winning the 2014 State Championship.

BACKGROUND: On March 15, 2014, the Chapel Hill High School Women's Basketball Team captured the North Carolina High School Athletic Association's (NCHSAA) 3A State Women's Basketball Championship.

Under the guidance of Coach Sherry Norris, the Chapel Hill High School Women's Basketball Team earned its second NCHSAA state title, completing the season with an undefeated 32-0 record. Coach Sherry Norris was also named the 2013-14 North Carolina Women's Coach of the Year by the Associated Press.

FINANCIAL IMPACT: None

RECOMMENDATION(S): The Manager recommends that the Board approve the attached proclamation recognizing the Chapel Hill High School Women's Basketball Team and Coach Sherry Norris for winning the 2014 State Championship and authorize the Chair to sign the proclamation on behalf of the Board.

ORANGE COUNTY BOARD OF COMMISSIONERS

PROCLAMATION OF RECOGNITION ON CHAPEL HILL HIGH SCHOOL WOMEN'S BASKETBALL TEAM AND COACH SHERRY NORRIS WINNING THE 2014 STATE CHAMPIONSHIP

WHEREAS, on March 15, 2014, Chapel Hill High School Women's Basketball Team captured the North Carolina High School Athletic Association's (NCHSAA) 3A State Women's Basketball Championship; and,

WHEREAS, under the guidance of Coach Sherry Norris, the Chapel Hill High School Women's Basketball Team earned its second NCHSAA state title, completing the season with an undefeated 32-0 record; and,

WHEREAS, Coach Sherry Norris was named the 2013-14 North Carolina Women's Coach of the Year by the Associated Press, and, in her 37th year as a classroom teacher, has announced her retirement; and,

WHEREAS, Coach Sherry Norris is the winningest high school volleyball and basketball coach with more than 1,200 victories across the two sports, and recorded her 540th basketball win with the State Championship victory by the Lady Tigers; and,

WHEREAS, through hard work, dedication, teamwork, and commitment, the Lady Tigers brought honor upon themselves, Chapel Hill High School, the Chapel Hill/Carrboro City Schools District and Orange County;

NOW, THEREFORE, be it proclaimed that the Orange County Board of Commissioners expresses its sincere appreciation and respect for the Chapel Hill High School Women's Basketball Team and Coach Sherry Norris for the Tigers' outstanding achievement, and their inspiration to youth across North Carolina through their dedication, teamwork, and athletic prowess.

This the 15th day of April, 2014.

_____

Barry Jacobs, Chair
Orange County Board of Commissioners

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 4-b

SUBJECT: Proclamation Recognizing "PowerTalk 21 Day" in Orange County

DEPARTMENT: County Commissioners **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):

Proclamation

INFORMATION CONTACT:
Board of Commissioners
Donna Baker, Clerk to the Board, 245-2130

PURPOSE: To consider proclaiming April 21, 2014 as "PowerTalk 21 Day" in Orange County.

BACKGROUND: Gayane Chambless, on behalf of the Orange County Orange Partnership for Alcohol and Drug Free Youth, petitioned the Board at its April 1, 2014 meeting for the Board's consideration and support of a PowerTalk 21 campaign in Orange County. The Orange County Orange Partnership for Alcohol and Drug Free Youth is partnering with Mothers Against Drunk Driving of North Carolina (MADD NC) to bring this PowerTalk 21 campaign to Orange County. MADD NC had been asked by the Substance Abuse Mental Health Services Administration (SAMHSA) to pilot this campaign in North Carolina. Because Orange County has been so proactive in prevention efforts, the Orange Partnership has been invited to participate.

The Orange Partnership's mission is to reach parents and other adults, encouraging them to be aware of the issues and talk to the youth in their lives. PowerTalk 21 fits perfectly in line with that mission to do so, and provides the tools to share with adults in the community. The proposal is for a proclamation from the Board, as an invitation and call to action throughout the County, to recognize April 21, 2014 as "PowerTalk 21 Day" in Orange County

FINANCIAL IMPACT: None

RECOMMENDATION(S): The Manager recommends the Board approve and authorize the Chair to sign the proclamation.

ORANGE COUNTY BOARD OF COMMISSIONERS
PROCLAMATION
"PowerTalk 21 Day" in Orange County

WHEREAS, Orange County values the health and safety of all its residents; and

WHEREAS, substance abuse is particularly damaging to one of our most valuable resources, our children; and

WHEREAS, youth who begin drinking before age 15 are five times more likely to develop alcohol dependency later in life; and

WHEREAS, teen alcohol use kills 4,700 people each year, more than all other illegal drugs combined; and

WHEREAS, high school students who use alcohol or other substances are five times more likely to drop out of school; and

WHEREAS, the majority of youth say their parents are their primary influence when it comes to decisions about drinking alcohol; and

WHEREAS, Orange County recognizes the role of parents, and the importance of talking with their teens about alcohol; and

WHEREAS, *PowerTalk 21*® day is established on April 21, 2014 to encourage parents and caregivers to embrace their important role in influencing America's youth and their decisions about drinking alcohol; and

WHEREAS, in 2014 Mothers Against Drunk Driving® (MADD) kicked off "21 Days in Support of 21," beginning on April 1st and culminating in PowerTalk 21 on April 21st, in order to create a sustained and prolonged national conversation about underage drinking; and

WHEREAS, to equip parents to talk with their teens about alcohol, the Orange Partnership for Alcohol and Drug Free Youth, in collaboration with MADD of North Carolina, will host a free community town hall event to give parents, caregivers and community members the opportunity to explore the issue of underage drinking and how to effectively talk with teens about alcohol; and

WHEREAS, local town halls and parent workshops, replicated across the country, will offer parents research-based tools to help them talk with their teens about alcohol and encourage adults to consider creating a safer community by becoming involved in reducing underage drinking; and

WHEREAS, all people are urged to join in the local and national efforts to raise awareness of the importance of parents and teens talking together about alcohol in order to reduce the risks and dangers posed to teens and communities;

NOW, THEREFORE, we, the Orange County Board of Commissioners, do hereby proclaim Monday, April 21, 2014 to be:

PowerTalk 21® Day

in Orange County, North Carolina.

This the 15th day of April, 2014.

_____

Barry Jacobs, Chair
Orange County Board of Commissioners

ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda
Item No. 5-a

SUBJECT: Zoning Atlas Amendment – Easterlin Rezoning of 5908 US 70 East in Eno Township – Public Hearing Closure and Action (No Additional Comments Accepted)

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** Yes

ATTACHMENTS:

1. Approved February 24, 2014 Quarterly Public Hearing Legal Ad
2. Vicinity Map
3. Ordinance Approving Rezoning Petition
4. Statement of Consistency with Comprehensive Plan
5. Ordinance Denying Rezoning Petition
6. Statement of Inconsistency with Comprehensive Plan
7. Excerpt of Draft Minutes from February 24, 2014 Quarterly Public Hearing
8. Excerpt of Approved Minutes from March 5, 2014 Planning Board

INFORMATION CONTACT:

Michael D. Harvey, Planner III, (919) 245-2597
Craig Benedict, Director, (919) 245-2592

PURPOSE: To receive the Planning Board recommendation, close the public hearing, and make a decision on an owner-initiated general rezoning petition in accordance with the provisions of the Unified Development Ordinance (UDO).

As a reminder, the reconvening of this hearing is solely to receive the Planning Board recommendation and any additional written evidence submitted since the February 24, 2014 Quarterly Public Hearing. This hearing is not intended to solicit additional input from the public or the applicant. While the BOCC may ask staff questions related to the review of a given item, comments from the public shall not be solicited.

BACKGROUND: This item was presented at the February 24, 2014 Quarterly Public Hearing where staff indicated the property owners, Mrs. and Mr. Donna and Donald Easterlin, have applied to rezone an approximately 12 acre parcel of property located at 5908 US 70 East in Eno Township:

FROM: Economic Development Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower Eno Protected Watershed Protection Overlay.

TO: Economic Development Eno High Intensity (EDE-2) and Lower Eno Protected Watershed Protection Overlay.

Approximately 8.6 acres of the property is currently zoned EDE-2 with the remaining acreage (approximately 3.4 acres) zoned EDE-1. As indicated during the hearing, the purpose of the amendment is to extend the EDE-2 zoning designation over the entire property.

Agenda materials from the February 24, 2014 Quarterly Public Hearing can be viewed at: http://orangecountync.gov/occlerks/140224.pdf. There were no comments made at the hearing on this item.

Planning Director's Recommendation: The Planning Director recommends **approval** of the request finding that:

1. The application is complete in accordance with the requirements of Section 2.8 of the UDO.
2. The property is of sufficient size to be rezoned to EDE-2.
3. The rezoning is consistent with the Orange County 2030 Comprehensive Plan Future Land Use Map, the Growth Management System, and the adopted Eno Economic Development District Area Small Area Plan.

Planning Board Recommendation: At its March 5, 2014 regular meeting, the Board voted unanimously to recommend approval of the zoning atlas amendment consistent with the staff recommendation. Agenda materials from this meeting can be viewed at: http://orangecountync.gov/planning/documents/3.5.14PBPacket.pdf. An excerpt of the approved minutes from the meeting are contained within Attachment 8.

Procedural Information: In accordance with Section 2.8.8 of the UDO, any evidence not presented at the public hearing must be submitted in writing prior to the Planning Board's recommendation. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing. The public hearing is held open to a date certain for the purpose of the BOCC receiving the Planning Board's recommendation and any submitted written comments.

FINANCIAL IMPACT: This request has been reviewed by County departments who have determined that the approval or denial of the request would not create the need for additional funding for the provision of County services.

RECOMMENDATION(S): The Manager recommends the Board:

1. Receive the Planning Board's recommendation;
2. Close the public hearing; and
3. Decide accordingly and/or adopt:
    a. Attachment 3 - Ordinance Amending the Zoning Atlas
    b. Attachment 4 - Statement of Consistency

authorizing the zoning atlas amendments as detailed herein.

Attachment 1

NOTICE OF JOINT PUBLIC HEARING
ORANGE COUNTY BOARD OF COMMISSIONERS
ORANGE COUNTY PLANNING BOARD

A joint public hearing will be held at the Department of Social Services, Hillsborough Commons, 113 Mayo St., Hillsborough, North Carolina, on Monday, February 24, 2014 at 7:00 PM for the purpose of giving all interested citizens an opportunity to speak for or against the following items:

1. **Class A Special Use Permit**: In accordance with the provisions of Section 2.7 *Special Use Permits* and Section 5.9.6 of the Orange County Unified Development Ordinance (UDO), Strata Solar and Stout Farm LLC have submitted a Class A Special Use Permit application seeking to **develop a solar array/public utility station** on two parcels of property, totaling approximately 52 acres in area, **off of Redman Road between the railway and Interstate 85/40 in Cheeks Township**.

   Strata Solar intends to lease the parcels, with Parcel Identification Numbers (PIN) of 9844-06-5971 and 9844-17-2687, owned by Stout Farm LLC to develop a 5 megawatt facility involving the erection of individual solar arrays.

   The properties in question are zoned Rural Residential (R-1), Upper Eno Protected Watershed Protection and Major Transportation Corridor (MTC) Overlay Districts.

   The properties are located within the Commercial Industrial Transition Activity Node (CITAN) land use category as denoted on the Future Land Use Map of the Comprehensive Plan and the Urban Designated Area as denoted on the Growth Management System Map.

   Purpose: To review the item and receive public comment on the application.

2. **Zoning Atlas Amendment**: In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Orange County Unified Development Ordinance (UDO), Mr. and Mrs. Don and Donna Easterlin have submitted an application seeking to **rezone an approximately 12 acre parcel of property located at 5908 US 70 East in Eno Township**:

   FROM: Economic Development Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower Eno Protected Watershed Protection Overlay.

   TO: Economic Development Eno High Intensity (EDE-2) and Lower Eno Protected Watershed Protection Overlay.

   The parcel in question is currently split zoned with a Parcel Identification Number (PIN) of 0803-11-5662. Approximately 8.6 acres of the property is zoned EDE-2 with the remaining acreage (approximately 3.4 acres) zoned EDE-1.

   The property is currently utilized to support a Class II Kennel operation and a telecommunications tower. Kennels are a permitted use of property, subject to the

issuance of a Class B Special Use Permit, in the EDE-2 zoning district and are prohibited within the EDE-1 zoning district. According to the application, Mr. and Mrs. Easterlin are requesting the rezoning to eliminate the existing split zoning and ensure the kennel operation is entirely contained within the EDE-2 general use zoning designation.

The property subject to this petition is located within the Economic Development Transition Activity Node land use category as denoted on the Future Land Use Map of the Comprehensive Plan and the Urban Designated Area as denoted on the Growth Management System Map.

Purpose: To review the item and receive public comment on the application.

3. **Unified Development Ordinance (UDO) Text Amendment**: In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, Mr. and Mrs. Don and Donna Easterlin have submitted an application seeking to amend Section 5.6.5 (A) (2) (b) *Kennels (Class II) – Standards of Evaluation* to **reduce required setbacks for Class II Kennels developed within the EDE-2 zoning district**.

   Section 5.6.5 (A) (2) (b) of the UDO requires a Class II Kennel operation, including outdoor runs, exercise yards, or buildings where animals are housed, to observe a 150 foot setback from property lines.

   According to the application, Mr. and Mrs. Easterlin operate a Class II Kennel at 5908 US 70 East, the majority of which is zoned EDE-2. Portions of the operation, permitted under an existing Special Use Permit issued on March 10, 1986, are within the required 150 foot setback.

   The proposed amendment would reduce the required setbacks for Class II Kennels, developed within the EDE-2 zoning district, to 25 feet which is the typical setback required for structures developed within the district.

   Purpose: To review the item and receive public comment on the application.

4. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments and Zoning Atlas Amendments**: In accordance with the provisions of Section 2.3 *Comprehensive Plan Amendments* and Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated an amendment to the text of the 2030 Comprehensive Plan and the Unified Development Ordinance and to the Zoning Atlas.

   The purpose of these amendments is to **establish two new zoning overlay districts in the Efland area in Cheeks Township**. These proposed actions are measures to implement some of the recommendations contained in the adopted Efland-Mebane Small Area Plan. This is virtually the same text amendment that was heard at the November 19, 2012 quarterly public hearing but the text amendment was not adopted in 2013.

In the 2030 Comprehensive Plan, the Land Use and Zoning Matrix contained in Appendix F is proposed to be amended by adding a checkmark to potentially allow a special zoning overlay district in the following land use classifications: 20-Year Transition, Commercial Transition Activity Node, Commercial-Industrial Transition Activity Node, and Economic Development Transition Activity Node.

The following Sections of the UDO are proposed for amendment: 2.5.7 and 4.4. Additionally, existing Sections 4.5 and 4.6 will be renumbered to 4.7 and 4.8, respectively. New Sections 4.5 and 4.6 will be inserted to establish the new zoning overlay districts. Existing Section 6.6.3 will be renumbered to be 6.6.5 and new Sections 6.6.3 and 6.6.4 will be inserted to establish standards for the two proposed zoning overlay districts.

The proposed renumbering will also affect references to the sections proposed for renumbering. References will be updated in the following existing Sections: 4.5.1 (which will also be renumbered to 4.7.1), 6.8.12, and 7.13.2.

The Zoning Atlas is proposed to be amended in order to depict the geographic extent of the two overlay districts.

The general geographic extent of the proposed "Efland Village Overlay District" is the railroad tracks that run through Efland to slightly north of U.S. Highway 70 with west-east boundaries of the Harding Road area and Gym Road.

The general geographic extent of the proposed "Efland Interstate Overlay District" is the railroad tracks that run through Efland to Interstate 40/85 with west-east boundaries of a line between Gaines Chapel Road and Center Street and the U.S. 70 Connector.

A map depicting the proposed overlay districts is available on the Planning Department's website at: http://orangecountync.gov/planning/SpecialProjects.asp

Single-family residential uses are not subject to the proposed overlay districts.

Purpose: To review the item and receive public comment on the proposed text and zoning atlas amendments.

5. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments**: In accordance with the provisions of Section 2.3 *Comprehensive Plan Amendments* and Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated an amendment to the text of the 2030 Comprehensive Plan and the Unified Development Ordinance and to the Zoning Atlas.

   The purpose of these amendments is to **establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE)**. This text amendment would establish the ASE program **outside of the Rural Buffer land use**

classification, as depicted on the Future Land Use Map of the 2030 Comprehensive Plan. This is a program that has been in development since 2001.

In the 2030 Comprehensive Plan, the Land Use and Zoning Matrix contained in Appendix F is proposed to be amended by adding an ASE-CZ zoning district that would potentially be allowed in the following Land Use Classifications: Commercial Transition Activity Node, Commercial-Industrial Transition Activity Node, Rural Residential, Agricultural Residential, Rural Community Activity Node, Rural Neighborhood Activity Node, and Rural Industrial Activity Node.

The following Sections of the UDO are proposed for amendment: 2.4.3, 2.5.2, 3.8, numerous Sections in Article 5 (including the Table of Permitted Uses), 6.2.5, 6.2.6, 6.4.10, 6.8.6, 6.9.7, and Article 10 (Definitions).

The purpose of the Agricultural Support Enterprises program is to accommodate appropriate uses farmers outside of the Rural Buffer land use classification can pursue in order to generate additional farm-related income and to potentially allow farming support/related uses in rural areas while minimizing any adverse impacts on adjoining property by applying special standards for specific uses and the development requirements in the County's UDO for all projects. Examples of the most intensive uses include Agricultural Processing Facility, Farm Equipment Rental/ Sales and Service, Meat Processing Facility, Stockyards/ Livestock Markets, Winery with Major Events (more than 150 people). Examples of the least intensive uses include Community Farmers Market, Cooperative Farm Stand, Rural Special Events (150 people or less), Veterinary Clinic, Winery with Minor Events (150 people or less). By better enabling farmers to stay in the business of farming, the rural, farming heritage of Orange County will continue to be preserved.

Additional information about this topic is available on the Planning Department's website at: http://orangecountync.gov/planning/SpecialProjects.asp

Purpose: To review the item and receive public comment on the proposed text amendments.

PUBLIC INFORMATION MEETING
for the Agricultural Support Enterprises proposal

In an effort to better inform interested persons in an informal setting, a Public Information Meeting will be held on Thursday, February 13, 2014. Interested persons will have the opportunity to hear a presentation and ask questions about the proposed amendments. The Public Information Meeting will be held in the Food Lab of the Environmental and Agricultural Center located at 306 Revere Road in Hillsborough and will begin at 6:00 p.m.

6. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments**: In accordance with the provisions of Section 2.3 *Comprehensive Plan Amendments* and Section 2.8 *Zoning Atlas and Unified Development*

Ordinance Amendments of the Unified Development Ordinance, the Planning Director has initiated an amendment to the text of the 2030 Comprehensive Plan and the Unified Development Ordinance and to the Zoning Atlas.

The purpose of these amendments is to **establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE)**. This text amendment would establish the ASE program **within the Rural Buffer land use classification**, as depicted on the Future Land Use Map of the 2030 Comprehensive Plan.

In the 2030 Comprehensive Plan, the Land Use and Zoning Matrix contained in Appendix F is proposed to be amended by adding a checkmark to potentially allow the ASE-CZ zoning district in the Rural Buffer land use classification.

The following Sections of the UDO are proposed for amendment: 3.8 and several sections in Article 5, including the Table of Permitted Uses and Sections that are not currently adopted but would be adopted as part of "ASE outside of the Rural Buffer" (item #6 above).

The purpose of the Agricultural Support Enterprises program, as it applies to the Rural Buffer land use classification, is to accommodate appropriate uses farmers can pursue in order to generate additional farm-related income and to potentially allow appropriate farming support/related uses in the Rural Buffer while minimizing any adverse impacts on adjoining property by applying special standards for specific uses and the development requirements in the County's UDO for all projects. Examples of the most intensive uses include Agricultural Processing Facility, Farm Equipment Rental/ Sales and Service, Meat Processing Facility, Stockyards/ Livestock Markets, Winery with Major Events (more than 150 people). Examples of the least intensive uses include Community Farmers Market, Cooperative Farm Stand, Rural Special Events (150 people or less), Veterinary Clinic, Winery with Minor Events (150 people or less). Projects in the Rural Buffer must also conform to the Joint Planning Area Land Use Plan/Agreement which is a joint planning effort between Orange County and the Towns of Chapel Hill and Carrboro. By better enabling farmers to stay in the business of farming, the rural, farming heritage of Orange County will continue to be preserved.

Additional information about this topic is available on the Planning Department's website at: http://orangecountync.gov/planning/SpecialProjects.asp

Purpose: To review the item and receive public comment on the proposed text amendments.

PUBLIC INFORMATION MEETING
for the Agricultural Support Enterprises proposal

In an effort to better inform interested persons in an informal setting, a Public Information Meeting will be held on Thursday, February 13, 2014. Interested persons will have the opportunity to hear a presentation and ask questions about the proposed amendments. The Public Information Meeting will be held in the Food Lab of the Environmental and Agricultural Center located at 306 Revere Road in Hillsborough and will begin at 6:00 p.m.

7. **Unified Development Ordinance (UDO) Text Amendment**: In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated amendments to the text of the Unified Development Ordinance (UDO).

   The purpose of the amendments is to **change the existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related items/amendments**. The following Sections are proposed for amendments: 2.1, 2.3, 2.7, 2.8, 5.10.2.

   The proposed amendments would replace the existing joint Board of County Commissioners (BOCC)/Planning Board quarterly public hearings with a minimum of eight (8) BOCC-only public hearing dates per year. The Planning Board would make its recommendation to the BOCC after the public hearing but a quorum of Planning Board members would no longer be necessary to hold a public hearing.

   Purpose: To review the item and receive public comment on the proposed amendments.

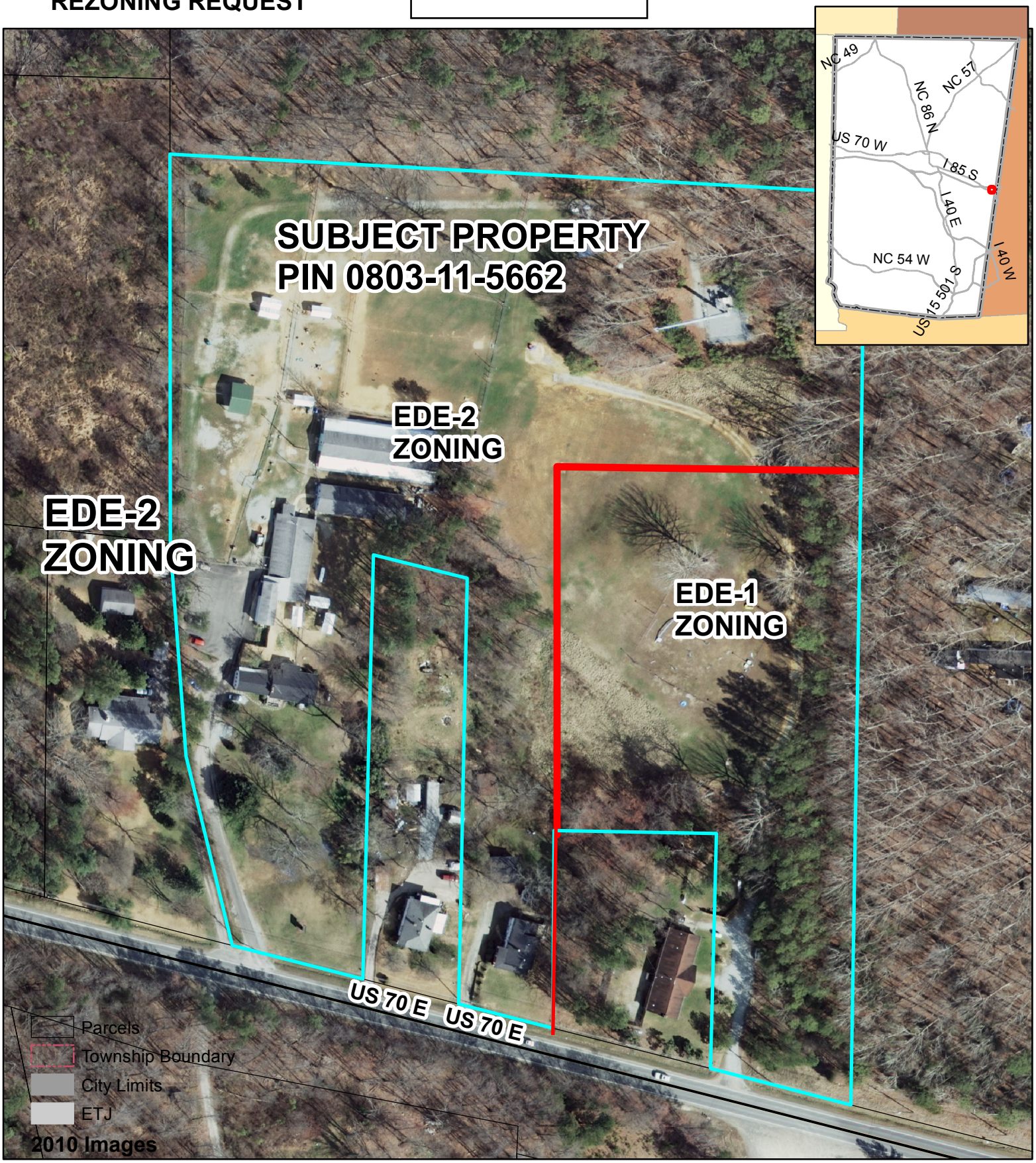
Substantial changes in items presented at the public hearing may be made following the receipt of comments made at the public hearing. Accommodations for individuals with physical disabilities can be provided if the request is made to the Planning Director at least 48 hours prior to the Public Hearing by calling the one of the phone numbers below. The full text of the public hearing items may be obtained no later than February 14, 2014 at the County website www.co.orange.nc.us at the Meeting Agendas link.

Questions regarding the proposals may be directed to the Orange County Planning Department located on the second floor of the County Office Building at 131 West Margaret Lane, Suite 201, Hillsborough, North Carolina. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday. You may also call (919) 245-2575 or 245-2585 and you will be directed to a staff member who will answer your questions.

PUBLISH:	The Herald Sun	News of Orange
	February 12, 2014	February 12, 2014
	February 19, 2014	February 19, 2014

VICINITY MAP - EASTERLIN REZONING REQUEST

Attachment 2



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- Red: Band_1
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1 inch = 130 feet

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Orange County Planning and Inspections Department
01/10/2014

Ordinance #: ORD-2014-015

AN ORDINANCE AMENDING
THE ORANGE COUNTY ZONING ATLAS

WHEREAS*,* Orange County has received and processed a petition seeking to amend the Orange County Zoning Atlas, as established in Section 1.2 of the Orange County Unified Development Ordinance (UDO), and

WHEREAS, This petition, submitted by Mr. and Mrs. Donald and Donna Easterlin, seeks to rezone an approximately 12 acre property located at 5908 U.S. 70 Business, and

WHEREAS, the property to be rezoned is identified further as follows:

> *Beginning at an iron stake in the northern right-of-way line of U.S.70, which point is located N 72'54'09" W 1478.10' of the centerline intersection of U.S. 70 and N.C. 751; then N 04'21'41''E 637.53' to an iron stake; then N.85'38'19" W 304.2' to a point; then S 04'37'23" W 771.68'to an iron stake in the northern right-of-way line of U.S. 70; then S. 73'32'48'E 313.77' to the point of beginning.*

WHEREAS, the requirements of Section 2.8 of the Unified Development Ordinance (UDO) have been deemed complete, and

WHEREAS, pursuant to Sections 1.1.5 and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds that the rezoning will carry out the intent and purpose of the adopted 2030 Comprehensive Plan or part thereof including, but not limited to, the following:

a. The Future Land Use Map.
b. Principle 7: Promotion of Economic Prosperity and Diversity.
c. Economic Development (ED) Overarching Goal: Viable and sustainable economic development that contributes to both property and sales tax revenues, and enhances high-quality employment opportunities for County residents.
d. Land Use Overarching Goal: Coordination of the amount, location, pattern and designation of future land uses, with availability of County services and facilities sufficient to meet the needs of Orange County's population and economy consistent with other Comprehensive Plan element goals and objectives.
e. Objective LU-1.1: Coordinate the location of higher intensity / high density residential and non-residential development with existing or planned locations of public transportation, commercial and community services, and adequate supporting infrastructure (i.e., water and sewer, high-speed internet access, streets, and sidewalks), while avoiding areas with protected natural and cultural resources. This could be achieved by increasing allowable densities and

creating new mixed-use zoning districts where adequate public services are available.

and

WHEREAS, the Board has found the proposed zoning atlas amendment to be reasonably necessary to promote the public health, safety, and general welfare.

BE IT ORDAINED by the Board of Commissioners of Orange County that the Orange County Zoning Atlas is hereby amended to rezone the property as described herein to **Economic Development Eno High Intensity (EDE-2)**.

BE IT FURTHER ORDAINED THAT this ordinance be placed in the book of published ordinances and that this ordinance is effective upon its adoption.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing ordinance was adopted this _____ day of _____, 2014.

I, Donna S. Baker, Clerk to the Board of Commissioners for Orange County, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on _____, 2014 as relates in any way to the adoption of the foregoing and that said proceedings are recorded in the minutes of the said Board.

WITNESS my hand and the seal of said County, this _____ day of _____, 2014.

SEAL

_____
Clerk to the Board of Commissioners

Attachment 4

RESOLUTION CONCERNING
STATEMENT OF CONSISTENCY
OF A PROPOSED ZONING ATLAS AMENDMENT
WITH THE ADOPTED
ORANGE COUNTY 2030 COMPREHENSIVE PLAN

WHEREAS, Mr. and Mrs. Donald and Donna Easterlin, Orange County property owners, have initiated an amendment to the Orange County Zoning Atlas, as established in Section 1.2 of the Orange County Unified Development Ordinance (UDO), and

WHEREAS, the rezoning petition seeks to rezone an approximately 12 acre property located at 5908 U.S. 70 Business, further described as follows:

Beginning at an iron stake in the northern right-of-way line of U.S.70, which point is located N 72'54'09" W 1478.10' of the centerline intersection of U.S. 70 and N.C. 751; then N 04'21'41''E 637.53' to an iron stake; then N.85'38'19" W 304.2' to a point; then S 04'37'23" W 771.68'to an iron stake in the northern right-of-way line of U.S. 70; then S. 73'32'48'E 313.77' to the point of beginning.

and,

WHEREAS, pursuant to Sections 1.1.5, and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds sufficient documentation within the record denoting that the rezoning will carry out the intent and purpose of the adopted 2030 Comprehensive Plan, as amended, or part thereof including but not limited to, the following:

a. The Future Land Use Map.
b. Principle 7: Promotion of Economic Prosperity and Diversity.
c. Economic Development (ED) Overarching Goal: Viable and sustainable economic development that contributes to both property and sales tax revenues, and enhances high-quality employment opportunities for County residents.
d. Land Use Overarching Goal: Coordination of the amount, location, pattern and designation of future land uses, with availability of County services and facilities sufficient to meet the needs of Orange County's population and economy consistent with other Comprehensive Plan element goals and objectives.
e. Objective LU-1.1: Coordinate the location of higher intensity / high density residential and non-residential development with existing or planned locations of public transportation, commercial and community services, and adequate supporting infrastructure (i.e., water and sewer, high-speed internet access, streets, and sidewalks), while avoiding areas with protected natural and cultural resources. This could be achieved by increasing allowable densities and creating new mixed-use zoning districts where adequate public services are available.

and,

WHEREAS, the Board has found the proposed zoning atlas amendment to be reasonable and in the public interest as it promotes public health, safety, and general welfare by furthering the goals and purposes of the 2030 Comprehensive Plan or part thereof,

BE IT RESOLVED by the Board of Commissioners of Orange County that the proposed zoning atlas amendment, as described herein, has been deemed to be consistent with the goals and policies of the adopted Orange County 2030 Comprehensive Plan and the BOCC hereby adopts this statement of consistency signifying same.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing ordinance was adopted this _____ day of _____, 2014.

I, Donna S. Baker, Clerk to the Board of Commissioners for Orange County, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on _____, 2014 as relates in any way to the adoption of the foregoing and that said proceedings are recorded in the minutes of the said Board.

WITNESS my hand and the seal of said County, this _____ day of _____, 2014.

SEAL

_____
Clerk to the Board of Commissioners

ATTACHMENT 5

Ordinance #: ORD-2014-016

AN ORDINANCE DENYING AN AMENDMENT TO THE ORANGE COUNTY ZONING ATLAS

WHEREAS, Orange County has received and processed a petition seeking to amend the Orange County Zoning Atlas, as established in Section 1.2 of the Orange County Unified Development Ordinance (UDO), and

WHEREAS, This petition, submitted by Mr. and Mrs. Donald and Donna Easterlin, seeks to rezone an approximately 12 acre property located at 5908 U.S. 70 Business, and

WHEREAS, the property to be rezoned is identified further as follows:

> *Beginning at an iron stake in the northern right-of-way line of U.S.70, which point is located N 72'54'09" W 1478.10' of the centerline intersection of U.S. 70 and N.C. 751; then N 04'21'41''E 637.53' to an iron stake; then N.85'38'19" W 304.2' to a point; then S 04'37'23" W 771.68'to an iron stake in the northern right-of-way line of U.S. 70; then S. 73'32'48'E 313.77' to the point of beginning.*

WHEREAS, the requirements of Section 2.8 of the Unified Development Ordinance (UDO) have been deemed complete, and

WHEREAS, pursuant to Sections 1.1.5 and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds that the rezoning will not carry out the intent and purpose of the adopted 2030 Comprehensive Plan or part thereof, and

WHEREAS, the Board has found the proposed zoning atlas amendment is not reasonably necessary to promote the public health, safety, and general welfare.

BE IT ORDAINED by the Board of Commissioners of Orange County that the rezoning request, as referenced herein, is denied

BE IT FURTHER ORDAINED THAT this ordinance be placed in the book of published ordinances and that this ordinance is effective upon its adoption.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing ordinance was adopted this _____ day of _____, 2014.

I, Donna S. Baker, Clerk to the Board of Commissioners for Orange County, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on _____, 2014 as relates in any way to the adoption of the foregoing and that said proceedings are recorded in the minutes of the said Board.

WITNESS my hand and the seal of said County, this _____ day of _____, 2014.

SEAL

_____
Clerk to the Board of Commissioners

RESOLUTION CONCERNING
STATEMENT OF INCONSISTENCY
OF A PROPOSED ZONING ATLAS AMENDMENT
WITH THE ADOPTED
ORANGE COUNTY 2030 COMPREHENSIVE PLAN

WHEREAS, Mr. and Mrs. Donald and Donna Easterlin, Orange County property owners, have initiated an amendment to the Orange County Zoning Atlas, as established in Section 1.2 of the Orange County Unified Development Ordinance (UDO), and

WHEREAS, This petition seeks to rezone an approximately 12 acre property located at 5908 U.S. 70 Business, and

WHEREAS, the property to be rezoned is identified further as follows:

> *Beginning at an iron stake in the northern right-of-way line of U.S.70, which point is located N 72'54'09" W 1478.10' of the centerline intersection of U.S. 70 and N.C. 751; then N 04'21'41''E 637.53' to an iron stake; then N.85'38'19" W 304.2' to a point; then S 04'37'23" W 771.68'to an iron stake in the northern right-of-way line of U.S. 70; then S. 73'32'48'E 313.77' to the point of beginning.*

WHEREAS, pursuant to Sections 1.1.5, and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds there is insufficient documentation within the record denoting that the rezoning will carry out the intent and purpose of the adopted 2030 Comprehensive Plan, as amended, or part thereof, and,

WHEREAS, the Board has found the proposed zoning atlas amendment is not in the public interest as it does not promote the public health, safety, and general welfare.

BE IT RESOLVED by the Board of Commissioners of Orange County that the proposed zoning atlas amendment, as described herein, has been deemed to be inconsistent with the goals and policies of the adopted Orange County 2030 Comprehensive Plan and the BOCC hereby adopts this statement of consistency signifying same.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing ordinance was adopted this _____ day of _____, 2014.

I, Donna S. Baker, Clerk to the Board of Commissioners for Orange County, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on _____, 2014 as relates in any way to the adoption of the foregoing and that said proceedings are recorded in the minutes of the said Board.

WITNESS my hand and the seal of said County, this _____ day of _____, 2014.

SEAL

_____
Clerk to the Board of Commissioners

DRAFT **MINUTES**

ORANGE COUNTY BOARD OF COMMISSIONERS
QUARTERLY PUBLIC HEARING
February 24, 2014
7:00 P.M.

The Orange County Board of Commissioners and the Orange County Planning Board met for a dinner meeting on Monday, February 24, 2014 at 7:00 p.m. at the DSS Officers, Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Barry Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee Bernadette Pelissier, Renee Price and Penny Rich
COUNTY COMMISSIONERS ABSENT:
COUNTY ATTORNEY PRESENT: James Bryan (Staff Attorney)
COUNTY STAFF PRESENT: Interim County Manager Michael Talbert and Deputy Clerk to the Board David Hunt (All other staff members will be identified appropriately below)
PLANNING BOARD MEMBERS PRESENT: Planning Board members Maxecine Mitchell, Johnny Randall, Paul Guthrie, Herman Staats, Tony Blake, and H.T. "Buddy" Hartley
PLANNING BOARD MEMBERS ABSENT: Chair Pete Hallenbeck, Lisa Stuckey, Stephanie O'Rourke, Andrea Rohrbacher and James Lea

Chair Jacobs called the meeting to order at 7:03 pm. He reviewed the following items at the members' places:

- Booklet/Blue Sheets/Cream Sheets/PowerPoint – Item C-1 – Class A Special Use Permit
- Letter – Item C-3 - Unified Development Ordinance (UDO) Text Amendment

A. OPENING REMARKS FROM THE CHAIRS

B. PUBLIC CHARGE

The Chair dispensed with the reading of the public charge.

C. PUBLIC HEARING ITEMS

Planning Board Member Buddy Hartley introduced this item.

2. **Zoning Atlas Amendment** - To review an application seeking to rezone an approximately 12 acre parcel of property located at 5908 US 70 East in Eno Township from Economic Development Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower Eno Protected Watershed Protection Overlay to Economic Development Eno High Intensity (EDE-2) and Lower Eno Protected Watershed Protection Overlay.

Michael Harvey said this item is not a special use permit, but is a legislative action to review a re-zoning request. He reviewed the following PowerPoint slides:

BACKGROUND

- PIN – 0803-11-5662.
- Size of Parcel – 12 acres with approximately 8.6 acres zoned EDE-2 and 3.4 zoned EDE-1.
- Future Land Use Element Map Designation – Economic Development Transition Activity Node

- Growth Management System Designation -- Urban.
- Existing Conditions -- The property supports a previously permitted Class 2 Kennel and telecommunications tower.
- Access -- The property has direct access onto US Highway 70.

REQUEST:

- Applicant requests EDE-2 zoning for entire property,
- Believes EDE-2 zoning designation is more appropriate for the property given its frontage along US Highway 70,
- Represents a logical extension of the district.
- Existing land use (i.e. Class II Kennel) is a conforming land use in EDE-2 zoning district.

EDE-1 VERSUS EDE-2 LAND USES:

- EDE-2 would allow the following additional uses:
  - Animal Hospital/Kennels (Class II require SUP) – STAFF NOTE: kennel already operating on property
  - Manufacturing/Assembly uses (i.e. fabricated metal, electronic equipment, food products, furniture, etc.)
  - Retail (i.e. restaurant, retail sales, etc.)
  - Services (i.e. hotels, research facility, etc.)
  - Wholesale trade

STAFF ASSESSMENT:

- The application is complete,
- The property is of sufficient size,
- Consistent with the Orange County 2030 Comprehensive Plan, Growth Management System Map, and adopted Eno Economic Development District Area Small Area Plan,
- Logical extension of existing EDE-2 district,
- Would help property owner address issues associated with expansion of existing kennel operation.

RECOMMENDATION:

1. Receive the proposal to amend the Zoning Atlas.
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
4. Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Buddy Hartley asked if there were any questions from the boards.

Michael Brough, representing Sunny Acres, said he and the owners of the kennel are available for questions. He said this will essentially eliminate split zoning of this property. He said the reasoning behind this request is a possible future expansion of the kennel in future. He said it is in the interest of the general public to have a single tract of land, under single ownership, zoned the same way.

Commissioner Dorosin referred to the skinny rectangle in the middle of the map, as well as the front small piece, and asked if these were separate parcels.

Michael Brough said these were separate and he is not sure whether these have been combined, but if not, this will happen as part of the next step. He knows there has been an acquisition of additional acreage since the property was first purchased. He said he has a survey, and this may be combined or it may not be. He said it is all effectively one tract of land.

A motion was made by Commissioner McKee, seconded by Commissioner Price to:

1. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
2. Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

Attachment 8

Excerpt of Approved Minutes

MINUTES
ORANGE COUNTY PLANNING BOARD
MARCH 5, 2014
REGULAR MEETING

APPROVED APRIL 2, 2014

MEMBERS PRESENT: Lisa Stuckey, Chapel Hill Township Representative; Herman Staats, At-Large, Cedar Grove Township; Paul Guthrie, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Tony Blake, Bingham Township Representative; Johnny Randall, At-Large Chapel Hill Township; Andrea Rohrbacher, At-Large Chapel Hill Township; James Lea, Cedar Grove Township Representative

MEMBERS ABSENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Maxecine Mitchell, At-Large Bingham Township; Vacant- Eno Township Representative; Vacant- Hillsborough Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Special Projects Coordinator; Tina Love, Administrative Assistant II

OTHERS PRESENT: Beth Trahos, Mike Brough, Donna Easterlin, Don Easterlin, Brent Niemann, Louis Lannoue, Rich Kirkland, Gabe Cantor

HANDOUTS: *Email from Alice Gordon to Peter Eckhoff; Email from Louis Iannone to Michael Harvey; Memorandum from Michael Brough to Orange County Planning Board*

AGENDA ITEM 8: ZONING ATLAS AMENDMENT:
To make a recommendation to the BOCC on an application to rezone an approximately 12 ace parcel of property located at 5908 US 70 East in Eno Township from Economic Development Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower Eno Protected Watershed Protection Overlay to Economic Development Eno High Intensity (EDE-2) and Lower Eno Protected Watershed Protection Overlay. This item was heard at the February 24, 2014 quarterly public hearing.
Presenter: Michael Harvey, Current Planning Supervisor

Michael Harvey: Reviewed abstract.

Paul Guthrie: Who is operating the communications tower?

Michael Harvey: AT&T has an antenna on it and other telecommunication providers are located on it. I believe Verizon has re-erected an antenna or either AT&T has changed out their existing antennas.

Lisa Stuckey: Those two rectangular pieces that look like a residence, is that part of a different lot? Would it be a re-division of the property to sell it?

Michael Harvey: Correct.

Lisa Stuckey: The remaining property, what are the divisions?

Michael Harvey: The blue line represents all this property and the red line is the area to be rezoned.

Lisa Stuckey: There are three parcels. So those two smaller parcels could be sold at any time without dividing the property.

Michael Harvey: Yes, if they choose to do so.

Tony Blake: So the 12 acres in question is the entire red box including the building and that building is not a separate lot.

Michael Harvey: That is the legal description supplied by the applicant's surveyor. That is correct.

MOTION by Herman Staats to approve the Ordinance in attachment 2, approving the Rezoning Petition and approve attachment 3 which is the Statement of Consistency with the Comprehensive Plan. Seconded by Johnny Randall.
VOTE: UNANIMOUS

AGENDA ITEM : ADJOURNMENT

MOTION: made by Paul Guthrie to adjourn. Seconded by Tony Blake.
VOTE: UNANIMOUS

ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda
Item No. 5-b

SUBJECT: Unified Development Ordinance Text Amendment Related to Setbacks for Class II Kennels Developed in the EDE-2 General Use Zoning District – Public Hearing Closure and Action (No Additional Comments Accepted)

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** Yes

ATTACHMENTS:

1. Approved February 24, 2014 Quarterly Public Hearing Legal Ad
2. Copy of E-mail(s) sent to County Commissioners Relating to Easterlin Request
3. Copy of Memorandum Prepared by Michael Brough Provided to Planning Board
4. Map of Kennel Operation Requested by Planning Board Member
5. Ordinance Amending UDO
6. Excerpt of Draft Minutes from February 24, 2014 Quarterly Public Hearing
7. Excerpt of Approved Minutes from March 5, 2014 Planning Board Meeting

INFORMATION CONTACT:

Michael D. Harvey, Planner III, (919) 245-2597
Craig Benedict, Director, (919) 245-2592

PURPOSE: To receive the Planning Board recommendation, close the public hearing, and make a decision on an application proposing a text amendment to the Unified Development Ordinance (UDO) related to the required setbacks for Class II Kennels developed within the Economic Development Eno High Intensity (EDE-2) general use zoning district.

As a reminder, the reconvening of this hearing is solely to receive the Planning Board recommendation and any additional written evidence submitted since the February 24, 2014 Quarterly Public Hearing. This hearing is not intended to solicit additional input from the public or the applicant. While the BOCC may ask staff questions related to the review of a given item, comments from the public shall not be solicited.

BACKGROUND: This item was presented at the February 24, 2014 Quarterly Public Hearing. The applicants, Mrs. and Mr. Donna and Donald Easterlin, operate a Class II Kennel at 5908 US Highway 70 East in the Eno Township. This kennel operates under an existing Class B Special Use Permit issued in 1986 to the original property owner.

The UDO requires all Class II Kennels observe a 150 foot setback from all property lines for buildings or exercise yards. The current configuration of the exercise yards do not comply with this standard.

The Easterlins indicated they are unable to comply with this requirement and have proposed a text amendment allowing for a 25 foot setback to be observed when a Class II Kennel is developed within, and is adjacent to, property zoned EDE-2.

If approved the text amendment will only impact Class II Kennels developed within the EDE-2 zoning district and will not be applied in other general use zoning districts where such facilities are allowed. Changing the standard, however, will set a precedent that could lead to future requests to change the standards for other situations.

Agenda materials from the February 24, 2014 Quarterly Public Hearing can be viewed at: http://orangecountync.gov/occlerks/140224.pdf

During the public hearing the following comments and questions were asked:

1. A BOCC member asked if the applicant could apply for a variance.

   STAFF COMMENT: Staff and the Easterlins' attorney, Mr. Michael Brough of the Brough law firm, indicated it was their professional opinion applying for a variance was not a viable option as there would be difficulty for the applicant to prove this was not a self-induced hardship or that somehow they were experiencing a unique hardship from other kennel operations throughout the County.

   These are some of the required findings allowing for the issuance of a variance as outlined within Section 2.10 of the UDO.

2. A BOCC member expressed concern over different accounts from staff and the applicant over when there was disclosure of the 150 foot setback requirement.

   STAFF COMMENT: Staff stands by its statement(s) indicating the Easterlins were aware of the 150 foot required setback for kennel operations as currently detailed in Section 5.6.5 (A) (2) of the UDO and has verified this account with both their surveyor, Mr. Steve Yuhasz, and their former attorney Mr. Michael Parker.

   From staff's standpoint the issue is moot. The Easterlins have been investigating methods and opportunities for addressing compliance issues with the kennel with Planning staff for some time and have finally determined, based on their current attorney's advice, this is the most viable course of action available to them.

3. A BOCC member asked how many acres of the Eno Township are currently zoned EDE-2 and how much of that is already developed.

   STAFF COMMENT: There are approximately 430 acres of property zoned EDE-2 with approximately 180 acres 'developed' including underdeveloped acreage and required yard (i.e. setback) areas.

4. A BOCC member asked if it was possible to amend the terms of the existing SUP to reduce the setback.

   STAFF COMMENT: It is possible to amend the terms of the existing SUP but the ordinance amendment would have to be approved first. Otherwise the 150 foot setback will still have to be observed.

   SUPs cannot change or modify established development standards required by the UDO unless there is specific language, within the standards section, allowing the reviewing body (i.e. BOCC or Board and/or Adjustment) to impose different standards as determined through the SUP review process.

5. A Planning Board member asked if there had been any complaints from adjacent property owners related to noise or odor associated with the kennel operation.

   STAFF COMMENT: No complaints had been received. The issue here is a unpermitted expansion of the kennel in contradiction to the existing SUP.

6. A couple of BOCC members indicated they believed the request was justified given this amendment would only impact the development of Class II Kennels in the EDE-2 higher intensity general use zoning district.

7. A Planning Board member asked if it were possible to provide a more detailed map detailing the location of the kennel operation on the property.

   STAFF COMMENT: Please refer to Attachment 4 for the map.

An excerpt of draft minutes from the public hearing are contained within Attachment 6.

Planning Director's Recommendation: The Planning Director recommends **denial** of the request based on the following:

1. There is nothing inherently significant about the EDE-2 general use zoning district mandating kennel operations be allowed to observe a 'different' setback requirement from other non-residential general use zoning districts, where Class II Kennels are allowed, throughout the county.

2. Permitted uses within the EDE-2 zoning district include:

   a. Offices,

   b. Retail (i.e. restaurants, retail sales, etc.),

   c. Financial offices/uses (i.e. bank, finance agency, credit agency, brokerage house, etc.)

   d. Government uses,

   e. Manufacturing, Assembly, and Processing operations,

   f. Services (i.e. assembly uses, barber/beauty shops, funeral home, health care, music/dance schools, day care, etc.)

   g. Wholesale trade operations.

   These uses have been deemed 'permitted by right' meaning they are reviewed and acted upon by staff through the review of a site plan.

   There are other uses, including Class II Kennels, allowed in the district where the County has determined they are required to go through a heightened level of permit review (i.e. a Special Use Permit process acted upon by either the Board of Adjustment or Board of Commissioners) to ensure the use is compatible with the surrounding area.

   These uses are required to adhere to additional development restrictions, including increased setbacks, to address potential impacts on adjacent properties in an effort to ensure there are no adverse impacts.

   While some of the allowable permitted uses may not be concerned over the proximity of a kennel operation to a common property line, some might. Staff is concerned this may limit the marketability of adjacent, undeveloped, properties.

3. Staff is concerned reducing the required setback to 25 feet will increase 'complaints' related to the operational characteristics of a kennel and its impacts on adjacent property development/redevelopment.
4. Staff is not convinced the 25 foot setback currently required for 'permitted land uses' within the EDE-2 general use zoning district will provide sufficient separation from a kennel operation and adjacent properties to ensure protection from '*adverse impacts*' as required under Section 5.6.5 (A) (2) (a) of the UDO.

   It is also noteworthy that even uses permitted outright may not be allowed to locate as close as 25 feet from the property line if they cannot meet established performance standards, as detailed within Article 6 of the UDO, related to uses such as noise and vibration. Proposed uses could conceivable be required to locate further than established minimum setbacks from a given property line to mitigate identified impacts.

   The 25 foot setback is a minimum setback. It may be increased for those land uses that produce impacts to adjacent properties in order to mitigate them.

Planning Board Recommendation: At its March 5, 2014 regular meeting, the Board voted 6 to 2 to recommend denial of the proposed text amendment consistent with the staff recommendation. Agenda materials from this meeting can be viewed at: http://orangecountync.gov/planning/documents/3.5.14PBPacket.pdf. An excerpt of the approved minutes from the meeting are contained within Attachment 7.

If there is a motion to approve this item, staff has revised the applicant's proposal, contained within Attachment 5, to make it consistent with existing UDO formatting and ensure the proposed standards are only applicable to Class II Kennels developed within the EDE-2 general use zoning district as proposed by the applicant.

Procedural Information: In accordance with Section 2.8.8 of the UDO, any evidence not presented at the public hearing must be submitted in writing prior to the Planning Board's recommendation. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing. The public hearing is held open to a date certain for the purpose of the BOCC receiving the Planning Board's recommendation and any submitted written comments.

FINANCIAL IMPACT: This request has been reviewed by County departments who have determined that the approval or denial of the request would not create the need for additional funding for the provision of County services.

RECOMMENDATION(S): The Manager recommends the Board:

1. Receive the Planning Board's recommendation;
2. Close the public hearing; and
3. Take action on the request by either:
   a. Denying the request as recommended by the Planning Board and staff, or
   b. Approve the text amendment as contained in Attachment 5.

Attachment 1

NOTICE OF JOINT PUBLIC HEARING
ORANGE COUNTY BOARD OF COMMISSIONERS
ORANGE COUNTY PLANNING BOARD

A joint public hearing will be held at the Department of Social Services, Hillsborough Commons, 113 Mayo St., Hillsborough, North Carolina, on Monday, February 24, 2014 at 7:00 PM for the purpose of giving all interested citizens an opportunity to speak for or against the following items:

1. **Class A Special Use Permit**: In accordance with the provisions of Section 2.7 *Special Use Permits* and Section 5.9.6 of the Orange County Unified Development Ordinance (UDO), Strata Solar and Stout Farm LLC have submitted a Class A Special Use Permit application seeking to **develop a solar array/public utility station** on two parcels of property, totaling approximately 52 acres in area, **off of Redman Road between the railway and Interstate 85/40 in Cheeks Township**.

   Strata Solar intends to lease the parcels, with Parcel Identification Numbers (PIN) of 9844-06-5971 and 9844-17-2687, owned by Stout Farm LLC to develop a 5 megawatt facility involving the erection of individual solar arrays.

   The properties in question are zoned Rural Residential (R-1), Upper Eno Protected Watershed Protection and Major Transportation Corridor (MTC) Overlay Districts.

   The properties are located within the Commercial Industrial Transition Activity Node (CITAN) land use category as denoted on the Future Land Use Map of the Comprehensive Plan and the Urban Designated Area as denoted on the Growth Management System Map.

   Purpose: To review the item and receive public comment on the application.

2. **Zoning Atlas Amendment**: In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Orange County Unified Development Ordinance (UDO), Mr. and Mrs. Don and Donna Easterlin have submitted an application seeking to **rezone an approximately 12 acre parcel of property located at 5908 US 70 East in Eno Township**:

   FROM: Economic Development Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower Eno Protected Watershed Protection Overlay.

   TO: Economic Development Eno High Intensity (EDE-2) and Lower Eno Protected Watershed Protection Overlay.

   The parcel in question is currently split zoned with a Parcel Identification Number (PIN) of 0803-11-5662. Approximately 8.6 acres of the property is zoned EDE-2 with the remaining acreage (approximately 3.4 acres) zoned EDE-1.

   The property is currently utilized to support a Class II Kennel operation and a telecommunications tower. Kennels are a permitted use of property, subject to the

issuance of a Class B Special Use Permit, in the EDE-2 zoning district and are prohibited within the EDE-1 zoning district. According to the application, Mr. and Mrs. Easterlin are requesting the rezoning to eliminate the existing split zoning and ensure the kennel operation is entirely contained within the EDE-2 general use zoning designation.

The property subject to this petition is located within the Economic Development Transition Activity Node land use category as denoted on the Future Land Use Map of the Comprehensive Plan and the Urban Designated Area as denoted on the Growth Management System Map.

Purpose: To review the item and receive public comment on the application.

3. **Unified Development Ordinance (UDO) Text Amendment**: In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, Mr. and Mrs. Don and Donna Easterlin have submitted an application seeking to amend Section 5.6.5 (A) (2) (b) *Kennels (Class II) – Standards of Evaluation* to **reduce required setbacks for Class II Kennels developed within the EDE-2 zoning district**.

   Section 5.6.5 (A) (2) (b) of the UDO requires a Class II Kennel operation, including outdoor runs, exercise yards, or buildings where animals are housed, to observe a 150 foot setback from property lines.

   According to the application, Mr. and Mrs. Easterlin operate a Class II Kennel at 5908 US 70 East, the majority of which is zoned EDE-2. Portions of the operation, permitted under an existing Special Use Permit issued on March 10, 1986, are within the required 150 foot setback.

   The proposed amendment would reduce the required setbacks for Class II Kennels, developed within the EDE-2 zoning district, to 25 feet which is the typical setback required for structures developed within the district.

   Purpose: To review the item and receive public comment on the application.

4. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments and Zoning Atlas Amendments**: In accordance with the provisions of Section 2.3 *Comprehensive Plan Amendments* and Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated an amendment to the text of the 2030 Comprehensive Plan and the Unified Development Ordinance and to the Zoning Atlas.

   The purpose of these amendments is to **establish two new zoning overlay districts in the Efland area in Cheeks Township**. These proposed actions are measures to implement some of the recommendations contained in the adopted Efland-Mebane Small Area Plan. This is virtually the same text amendment that was heard at the November 19, 2012 quarterly public hearing but the text amendment was not adopted in 2013.

In the 2030 Comprehensive Plan, the Land Use and Zoning Matrix contained in Appendix F is proposed to be amended by adding a checkmark to potentially allow a special zoning overlay district in the following land use classifications: 20-Year Transition, Commercial Transition Activity Node, Commercial-Industrial Transition Activity Node, and Economic Development Transition Activity Node.

The following Sections of the UDO are proposed for amendment: 2.5.7 and 4.4. Additionally, existing Sections 4.5 and 4.6 will be renumbered to 4.7 and 4.8, respectively. New Sections 4.5 and 4.6 will be inserted to establish the new zoning overlay districts. Existing Section 6.6.3 will be renumbered to be 6.6.5 and new Sections 6.6.3 and 6.6.4 will be inserted to establish standards for the two proposed zoning overlay districts.

The proposed renumbering will also affect references to the sections proposed for renumbering. References will be updated in the following existing Sections: 4.5.1 (which will also be renumbered to 4.7.1), 6.8.12, and 7.13.2.

The Zoning Atlas is proposed to be amended in order to depict the geographic extent of the two overlay districts.

The general geographic extent of the proposed "Efland Village Overlay District" is the railroad tracks that run through Efland to slightly north of U.S. Highway 70 with west-east boundaries of the Harding Road area and Gym Road.

The general geographic extent of the proposed "Efland Interstate Overlay District" is the railroad tracks that run through Efland to Interstate 40/85 with west-east boundaries of a line between Gaines Chapel Road and Center Street and the U.S. 70 Connector.

A map depicting the proposed overlay districts is available on the Planning Department's website at: http://orangecountync.gov/planning/SpecialProjects.asp

Single-family residential uses are not subject to the proposed overlay districts.

Purpose: To review the item and receive public comment on the proposed text and zoning atlas amendments.

5. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments**: In accordance with the provisions of Section 2.3 *Comprehensive Plan Amendments* and Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated an amendment to the text of the 2030 Comprehensive Plan and the Unified Development Ordinance and to the Zoning Atlas.

The purpose of these amendments is to **establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE)**. This text amendment would establish the ASE program **outside of the Rural Buffer land use classification**, as depicted on the Future Land Use Map of the 2030 Comprehensive Plan. This is a program that has been in development since 2001.

In the 2030 Comprehensive Plan, the Land Use and Zoning Matrix contained in Appendix F is proposed to be amended by adding an ASE-CZ zoning district that would potentially be allowed in the following Land Use Classifications: Commercial Transition Activity Node, Commercial-Industrial Transition Activity Node, Rural Residential, Agricultural Residential, Rural Community Activity Node, Rural Neighborhood Activity Node, and Rural Industrial Activity Node.

The following Sections of the UDO are proposed for amendment: 2.4.3, 2.5.2, 3.8, numerous Sections in Article 5 (including the Table of Permitted Uses), 6.2.5, 6.2.6, 6.4.10, 6.8.6, 6.9.7, and Article 10 (Definitions).

The purpose of the Agricultural Support Enterprises program is to accommodate appropriate uses farmers outside of the Rural Buffer land use classification can pursue in order to generate additional farm-related income and to potentially allow farming support/related uses in rural areas while minimizing any adverse impacts on adjoining property by applying special standards for specific uses and the development requirements in the County's UDO for all projects. Examples of the most intensive uses include Agricultural Processing Facility, Farm Equipment Rental/ Sales and Service, Meat Processing Facility, Stockyards/ Livestock Markets, Winery with Major Events (more than 150 people). Examples of the least intensive uses include Community Farmers Market, Cooperative Farm Stand, Rural Special Events (150 people or less), Veterinary Clinic, Winery with Minor Events (150 people or less). By better enabling farmers to stay in the business of farming, the rural, farming heritage of Orange County will continue to be preserved.

Additional information about this topic is available on the Planning Department's website at: http://orangecountync.gov/planning/SpecialProjects.asp

Purpose: To review the item and receive public comment on the proposed text amendments.

PUBLIC INFORMATION MEETING
for the Agricultural Support Enterprises proposal

In an effort to better inform interested persons in an informal setting, a Public Information Meeting will be held on Thursday, February 13, 2014. Interested persons will have the opportunity to hear a presentation and ask questions about the proposed amendments. The Public Information Meeting will be held in the Food Lab of the Environmental and Agricultural Center located at 306 Revere Road in Hillsborough and will begin at 6:00 p.m.

6. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments**: In accordance with the provisions of Section 2.3 *Comprehensive Plan Amendments* and Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated an amendment to the text of the 2030 Comprehensive Plan and the Unified Development Ordinance and to the Zoning Atlas.

   The purpose of these amendments is to **establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE)**. This text amendment would establish the ASE program **within the Rural Buffer land use classification**, as depicted on the Future Land Use Map of the 2030 Comprehensive Plan.

   In the 2030 Comprehensive Plan, the Land Use and Zoning Matrix contained in Appendix F is proposed to be amended by adding a checkmark to potentially allow the ASE-CZ zoning district in the Rural Buffer land use classification.

   The following Sections of the UDO are proposed for amendment: 3.8 and several sections in Article 5, including the Table of Permitted Uses and Sections that are not currently adopted but would be adopted as part of "ASE outside of the Rural Buffer" (item #6 above).

   The purpose of the Agricultural Support Enterprises program, as it applies to the Rural Buffer land use classification, is to accommodate appropriate uses farmers can pursue in order to generate additional farm-related income and to potentially allow appropriate farming support/related uses in the Rural Buffer while minimizing any adverse impacts on adjoining property by applying special standards for specific uses and the development requirements in the County's UDO for all projects. Examples of the most intensive uses include Agricultural Processing Facility, Farm Equipment Rental/ Sales and Service, Meat Processing Facility, Stockyards/ Livestock Markets, Winery with Major Events (more than 150 people). Examples of the least intensive uses include Community Farmers Market, Cooperative Farm Stand, Rural Special Events (150 people or less), Veterinary Clinic, Winery with Minor Events (150 people or less). Projects in the Rural Buffer must also conform to the Joint Planning Area Land Use Plan/Agreement which is a joint planning effort between Orange County and the Towns of Chapel Hill and Carrboro. By better enabling farmers to stay in the business of farming, the rural, farming heritage of Orange County will continue to be preserved.

   Additional information about this topic is available on the Planning Department's website at: http://orangecountync.gov/planning/SpecialProjects.asp

   Purpose: To review the item and receive public comment on the proposed text amendments.

PUBLIC INFORMATION MEETING
for the Agricultural Support Enterprises proposal

In an effort to better inform interested persons in an informal setting, a Public Information Meeting will be held on Thursday, February 13, 2014. Interested persons will have the opportunity to hear a presentation and ask questions about the proposed amendments. The Public Information Meeting will be held in the Food Lab of the Environmental and Agricultural Center located at 306 Revere Road in Hillsborough and will begin at 6:00 p.m.

7. **Unified Development Ordinance (UDO) Text Amendment**: In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the Unified Development Ordinance, the Planning Director has initiated amendments to the text of the Unified Development Ordinance (UDO).

   The purpose of the amendments is to **change the existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related items/amendments**. The following Sections are proposed for amendments: 2.1, 2.3, 2.7, 2.8, 5.10.2.

   The proposed amendments would replace the existing joint Board of County Commissioners (BOCC)/Planning Board quarterly public hearings with a minimum of eight (8) BOCC-only public hearing dates per year. The Planning Board would make its recommendation to the BOCC after the public hearing but a quorum of Planning Board members would no longer be necessary to hold a public hearing.

   Purpose: To review the item and receive public comment on the proposed amendments.

Substantial changes in items presented at the public hearing may be made following the receipt of comments made at the public hearing. Accommodations for individuals with physical disabilities can be provided if the request is made to the Planning Director at least 48 hours prior to the Public Hearing by calling the one of the phone numbers below. The full text of the public hearing items may be obtained no later than February 14, 2014 at the County website www.co.orange.nc.us at the Meeting Agendas link.

Questions regarding the proposals may be directed to the Orange County Planning Department located on the second floor of the County Office Building at 131 West Margaret Lane, Suite 201, Hillsborough, North Carolina. Office hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday. You may also call (919) 245-2575 or 245-2585 and you will be directed to a staff member who will answer your questions.

PUBLISH:	The Herald Sun	News of Orange
	February 12, 2014	February 12, 2014
	February 19, 2014	February 19, 2014

Michael Harvey

From: Donna Baker
Sent: Thursday, February 27, 2014 8:56 AM
To: Michael Harvey
Subject: FW: Sunny Acres Pet Resort zoning

Donna Baker
Clerk to the Board
P.O. Box 8181
200 South Cameron St.
Hillsborough, N.C. 27278
Phone: (919) 245-2130
Fax: (919) 644-0246
Cell: (919) 428-3212
dbaker@orangecountync.gov

From: Nick England [mailto:nick.england@3rdtech.com]
Sent: Monday, February 24, 2014 12:04 PM
To: ALL_BOCC_MANAGER_CLERK
Subject: Sunny Acres Pet Resort zoning

Dear Commissioners:
I am writing to support Sunny Acres Pet Resort in their request to continue their Doggy Day Camp business.

It is my understanding that Sunny Acres is a very desirable business that evidently has no negative impact on the neighborhood (having been in existence for many years), is located in the proper zoning area, has a very positive economic impact and provides local employment in these tough times, and makes a really positive contribution to the life of dogs and their humans (like me). They are truly friendly people and provide a great service to the community. There are many dog owners in the area who definitely need Sunny Acres to provide the valuable exercise and playtime socialization to keep their dogs healthy and happy.

I understand that this long-established well-liked business had the proper Special Use permit when they fenced in their exercise areas, but now they are being required to meet a 150' setback rule that wasn't even in place when they installed these fences.

Please do whatever is necessary to change or fix the rules to allow these people to continue their valuable service and contributions to the economic health of the community. It will surely be a travesty if these fine people are forced to close a valuable local business even when they acted in good faith and in accordance with all the rules.

Nick England
(also writing for Emma the springer spaniel)
811 Kenmore Rd
Chapel Hill NC 27514

Michael Harvey

From: Alice Gordon <gordon.alice@gmail.com>
Sent: Wednesday, March 05, 2014 3:45 PM
To: Peter Eckhoff
Cc: Michael Harvey; Craig Benedict; Michael Talbert
Subject: Re: Public Hearing Action Item No. C.3 (Sunny Acres)

Dear Mr. Eckhoff,

Thank you for your email. My understanding is that your comments should be included in the public record for this matter.

However, by copy of this email to key members of the county staff, I am asking that one of them reply to you to tell you the status of your comments, and whether you need to do anything else, and also asking that they send a copy of that response to me. I anticipate that you would receive a response in the next few days.

I am sending this email to you in response to your email and also to your telephone call today about this matter.

If you need anything else, please let me know.

Regards,

Alice Gordon

On Wed, Feb 26, 2014 at 12:20 PM, Peter Eckhoff <peckhoff@nc.rr.com> wrote:

To: Orange County Board of Commissioners

Orange County Planning Board

Quarterly Public Hearing Agenda

February 24, 2014

Action Agenda Item No. C.3

From: Peter Eckhoff, Sunny Acres Customer

Subject: Unified Development Ordinance Text Amendment Related to Setbacks for Class II Kennels Developed in the EDE-2 General Use Zoning District

My background is that I have been a customer of Sunny Acres Pet Resort for 4.5 years and my dog still drags me to their front door even after having been boarded there for 2.5 months several years ago.

Attached are 3 figures:

1) Figure 1 is a Google Earth macro view of the area surrounding Sunny Acres. I-85 is at the top of the map and Hwy 70 is near the bottom. The map depicts undeveloped wooded land surrounding the exercise yards.

2) Figure 2 is a copy of the map on page 75 of the above agenda. The 150 foot offset clearly overlays a number of Day Camp exercise yards.

3) Figure 3 is the proposed ordinance wording changes.

My concern is that any downsizing of the dog exercise yards will decrease my chances of bringing my dog there for exercise and possible boarding. The reason for this is that the dogs have to be separated based on temperament, size, and ability to get along with other dogs; thus the need for a number of exercise yards.

I propose that the ordinance be held in abeyance for several reasons:

1) At this time, there is no evidence of any proposed development that would warrant moving the fences.

2) There is the possibility that the Easterlins could purchase the surrounding property thereby making moot the need to move the fences at this time.

3) There have been no neighbor complaints.

4) By moving the fences, the Sunny Acres operation would be degraded with the worse-case scenario being that: 1) Sunny Acres would go out of business, 2) a lot of customers would lose what they consider to be a well-run boarding kennel and day camp as noted by several independent awards, 3) Orange County would lose revenue, 4) 25 people would lose employment and 5) a family would lose their basis of income and livelihood.

5) The Easterins in appreciation of the abeyance, could establish an account for bringing the property into compliance with any resulting ordinance amendments. Compliance would commence upon the approval of the first application for development adjoining the exercise yards or upon purchase of adjoining property by the Easterlins. This could be accomplished in the form of a Compliance Decree submitted into the public record.

I understand the need for ordinances and their enforcement and I appreciate the opportunity to convey their situation from the point of view as one of their customers. I think the above is a win-win solution for all concerned. Feel free to contact me.

Sincerely,

Peter Eckhoff

9 Sedley Place

Durham, NC 27705

Cell: 919 597-8391

Email: peckhoff@nc.rr.com

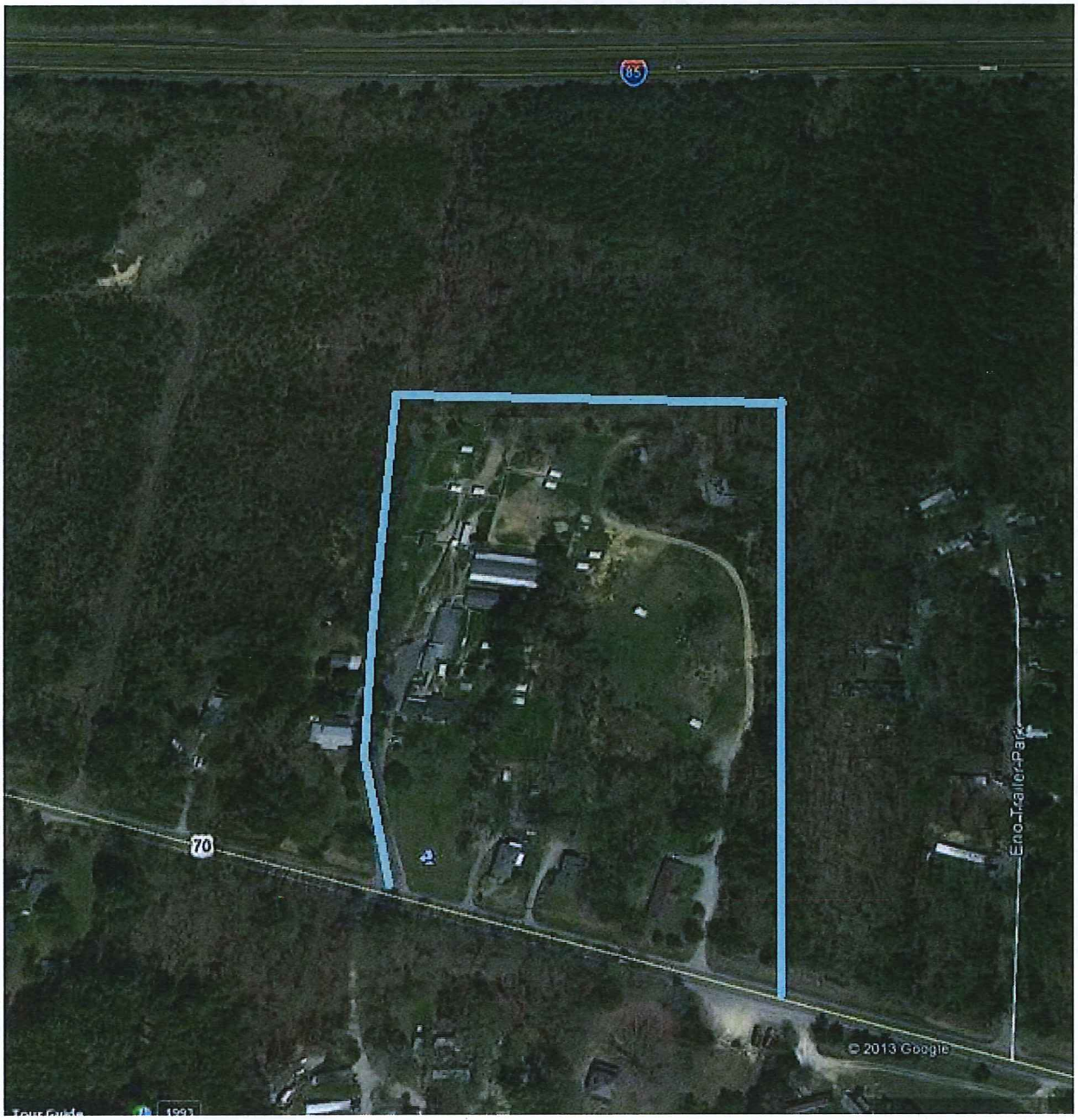


Figure 1: Google Earth macro view of the area surrounding Sunny Acres outlined in blue. I-85 is at the top of the map and Hwy 70 is near the bottom. The map depicts undeveloped wooded land surrounding the exercise yards in the upper left hand corner of the property outline.

ATTACHMENT 3 - VICINITY MAP - EASTERLIN PROPERTY: 75

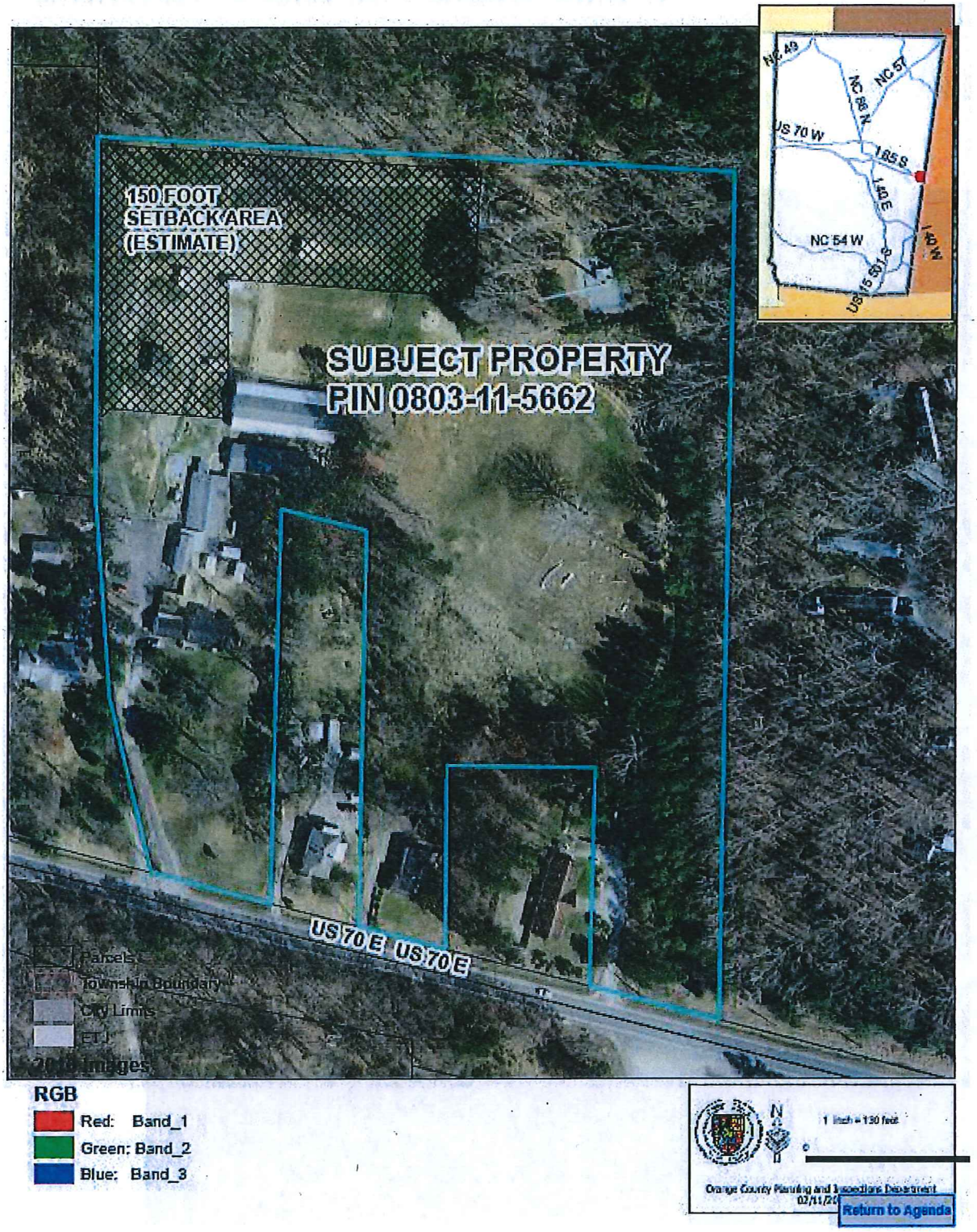


Figure 2: Copy of the map on page 75 of the above agenda. The 150 foot offset clearly overlays a number of Day Camp exercise yards and sun shade (weather canopied) structures.

Section 1. Subsection 5.6.5(A)(2)(b) of the UDO is amended to read as follows:

(b) Except as otherwise provided in the remaining provisions of this subsection, no part of any building, structure, dog run, pen, or exercise yard in which animals are housed or exercised shall be closer than 150 feet from a property line, except property occupied by the owner/operator of the kennel.

(i) The 150 foot setback established by this section ~~These minimum distances~~ shall not apply if all portions of the facility in which animals are housed are wholly enclosed within a building. Nor shall this setback apply to dog training activities where each dog is under the immediate control of its trainer, owner, or other responsible individual.

(ii) The minimum setback established by this subsection for any building, structure, dog run, pen, or exercise yard in which animals are housed or exercised shall be 25 feet, rather than 150 feet, where the Kennel II site is zoned EDE-2 and the property line of the Kennel II site adjoins other property zoned EDE-2.

(iii) The minimum setback established by this subsection for any building, structure, dog run, pen, or exercise yard in which animals are housed or exercised shall be 25 feet from the right-of-way of U.S. 70 where the Kennel II site is zoned EDE-2

Section 2. All provisions of any County ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

Figure 3: Proposed ordinance wording changes from the above mentioned agenda.

Michael Harvey

From: donna_sunnyacres@yahoo.com
Sent: Monday, February 24, 2014 4:03 PM
To: Michael Harvey; donna_sunnyacres@yahoo.com
Subject: Website Feedback: Sunny Acres Pet Resort

From: Donna Easterlin
Phone Number: 9192806708
Message:
February 24, 2014

Dear Orange County Commissioners and Michael Harvey:

As you are probably aware, we are requesting an amendment to the required setback for Class II Kennels and rezoning of 2 properties.

In January 2005 my husband and I took over management of the Durham Boarding Kennel dba Sunny Acres Pet Resort. According to the original site plan, fencing was approved on the property line and a portion was on the property line when we assumed ownership. The previous owners were using this fenced in area to take dogs outside. There was also barbed wire fencing on the rest of the property line to the north and west. Shortly after taking over, we replaced the barbed wire fencing with chain link. We did not think it would be a problem since there was already fencing on the property line. This fencing has been in place now for many, many years.

With thoughts of expansion in mind, we purchased 4 more adjacent properties between 2004 and 2010. Under the current zoning two of those properties totaling over 4 acres were left in the EDE-1 district. Our plan for the future was to combine these properties and extend the Special Use Permit allowing for growth of the business. Rezoning of these 2 properties to EDE-2 would allow us to do that.

The adjacent property owners have had no problem with us leaving our fences where they are now located. It is all woods on the outside of our fences. There are no homes or businesses currently located there. We were recently told it could be many years before city sewer would be available in this area making development next to impossible without sewer. Highway 85 is on the north side of the woods and an asphalt plant is on the west side of the woods. We have never had any complaints from any of our neighbors concerning noise or smell. We keep the entire property clean and odor free. Dogs are only outside for a portion of the daytime hours. At night they are all housed inside buildings.

We did not know there was a 150 foot setback when we purchased the property. It is not mentioned in the Special Use Permit and we were never informed of this when we purchased the property. If we had known, we would not have purchased the property. Since some of the fences were already on the property line we were actually surprised to learn this. We understand the setback is for noise control. However, as I mentioned, there is no one close to our outside play areas that would be impacted by noise.

We have provided a well-needed service to over 100,000 pets over the past 9 years. Many people work all day and travel. They need a safe, secure, clean place for their pets to stay. People don't think of their pets as animals anymore. They are just like their children, one of the family. It is important for people to have peace of mind and feel good about leaving their pets when they have to be away traveling or at work all day. Pets need outdoor space to run, play and get exercise. Some pets have separation anxiety and just can not be left home or they will destroy the house or hurt themselves. We provide the care they need. One of the reasons our customers like us so much is because we can provide the outdoor space for exercising them. They don't want their pets shut up inside all day.

If we have to adhere to the 150 foot setback we will lose all of our exercise yards. There would not be any land left to have outdoor play yards. That would be devastating for the pets, pet parents, and 25 employees that serve these customers. We would lose the majority of our business. We will all be without jobs and the community loses a much needed service. Even if the setback is reduced to 25 feet it will impact our business. We actually need more space to exercise the pets, not less. At 25 feet we would have to move all of our fences (making all of the yards smaller) or purchase property from the adjacent owners (if that is possible) to create an unnecessary setback in our particular case. The cost to move fences or purchase property from the adjacent owners would create a huge financial burden for us. I would rather give our employees a raise than spend unnecessary money to move fences or purchase property. It would also incur down time creating a hardship for the par!
ents who need a place to leave their pets while they work.

I know we have requested an amendment to change the setback from 150 feet to 25 feet, but we feel it would be in the best interest of the community, the pets, the owners of the pets, the employees, and owners of Sunny Acres, to please allow us to leave our fences where they are now located and continue serving the community as we now do. The fences have been in place for almost 9 years now. There has never been a complaint from anyone.

Please consider our situation based on these facts and not just because there is a â?oruleâ? :

The fences are already in place and most of them have been for the 9 years we have been here.
There is no one that is or would be bothered by noise or smell.
We are a much needed service to the community and pets.
Keeping the outdoor exercise yards as we now have them benefits everyone.
The Durham Boarding Kennel has been in existence for over 40 years now.
It's part of Orange County history.
Please don't put us out of business.

We also support several organizations in the community. We give financial support to the local shelters and rescue groups. We offer our boarding services at a discount to rescues. We offer free rental of our facility to rescue groups for events like adoptathons and fundraisers to save the lives of pets.

Sunny Acres Pet Resort is here for the love of pets. We want the best for them.

Thank you for your consideration.

Respectfully yours,

Donna Easterlin

MEMORANDUM

Memorandum to: Orange County Planning Board

From: Michael B. Brough, Attorney for Don and Donna Easterlin

Subject: Proposed UDO text amendment dealing with setback requirements for Kennel II uses in EDE-2 zoning district

Date: March 5, 2014

This memo responds to several points made in the Agenda Abstract relating to the request by the Easterlins for an amendment to the UDO that would reduce the setback applicable to Kennel II uses in the EDE-2 zoning district from 150 feet to twenty-five feet, which is the setback distance required for other uses in that district. Importantly, the reduced setback would apply only where the Kennel II use in the EDE-2 zoning district adjoins other property zoned EDE-2.

1. The Abstract correctly states that I am in agreement with staff that seeking a variance from the 150' setback requirement is not a viable option for the Easterlins, although not exactly for the reasons stated in the Abstract. The problem with obtaining a variance is not that the hardship faced by the Easerlins was "self-induced." The problem is that, to qualify for a variance, the ordinance requires a showing that the hardship be caused by "conditions peculiar to the property, such as location, size, or topography." However, the hardship experienced by the Easterlins in this case is not caused by the uniqueness of their property in terms of location, size, or topography, but by the fact that the costs of complying with the ordinance are high and the regulation serves no useful purpose when the Kennel II use is located in the EDE-2 district and the adjoining property is also zoned EDE-2. This presents a legislative issue for the Board of Commissioners, not a variance issue for the Board of Adjustment.

2. The Abstract states that the Easterlins contend that they are unable to comply with the 150' setback requirement. To clarify, if the portion of their property now zoned EDE-1 is rezoned EDE-2 (as requested by Agenda Item 8), it would be physically possible to create alternative exercise yards by fencing in some portion of this area. The aerial photo submitted by the staff shows an area circumscribed by a black line that depicts the portion of the site that complies with the 150' setback requirement. But much of this area cannot practically be used as an exercise yard, either because it is covered by buildings or trees or is steeply sloped or is within the fall line of the existing cell tower. More importantly, the cost of enclosing this area by a chain link fence at least six feet high creates an economic hardship for a small business, with no corresponding benefit.

3. The Easterlins agree with the statement in the Abstract that the issue of when they learned about the 150' setback requirement is moot. It is clear that neither the 1986 special use permit nor the 2006 violation letter indicates that such a setback is required, and the Easterlins continue to maintain that, whatever their attorney or surveyor may

have known, they were not aware of this setback at the time they purchased the property. But when the Easterlins learned of the 150' setback is not the issue before the Planning Board. The issue is whether the ordinance should be amended to eliminate the 150' setback for Kennel II uses under circumstances where that requirement makes no sense (i.e. where the Kennel II property is zoned EDE-2 and adjoins other property zoned EDE-2) and creates real economic hardship for an existing business.

4. The applicants submit that it is entirely legitimate to draw a distinction between circumstances where the 150' setback may be warranted and circumstances where it is not justified. Where the Kennel II property adjoins land that is zoned to permit residential and other lower intensity uses, perhaps the 150' setback serves a useful purpose. But the EDE-2 is specifically described as a "higher intensity" use district, designed to accommodate a full range of manufacturing and similar uses. Residential uses are not permitted. If a pharmaceutical manufacturing plant or lumber yard could be located within 25' of the property line in an EDE-2 district, there is no reason why the ordinance should require a setback that is six times greater than that for a Kennel II use. If there are other circumstances where the 150' setback for Kennel II uses is not warranted, the County can address them at a later time. The point here is that applicability of the 150' setback requirement is not an "all or nothing" proposition. The setback is not appropriate in the limited circumstances addressed by the proposed amendment, and the amendment should receive a favorable recommendation by the Planning Board.

Attachment 4 - Map

The Black line identifies the area of the property complying with the150 foot setback requirement.

NOTE the 150 foot setback does not apply if the operator of the kennel 'ownes or controls' external property. In these cases the underlying setback standards for the district would apply (i.e. 25 feet).

The Easterlin's own the 2 external properties with frontage along US Highway 70 East

The red liine indicates the boundary of the property where the kennel is located.

The blue line identifies the existing fence line

Data shown on this map is obtained from Orange County GIS and is for reference only.
Exact locations and boundaries should be verified.
Map prepared by Orange County Planning & Inspections.

- USGS Water Feature
- Soils Survey Water Feature
- OC Updated Water Feature
- Water Body
- River Basins
- Watershed
- Parcels
- Township
- School System Boundary
- Contours
- County Boundary
- Soils
- Zoning
- City Limits
- ETJ
- Conservation Easements Held by Others
- Orange County Conservation Easements
- 100 YR Floodplain (Effective 02/02/07)
- Floodway (Effective 02/02/07)
- 500 YR Floodplain (Effective 02/02/07)
- Buildings
- Water and Sewer Boundary

N

1 inch = 200 feet

0 75 150 300 Feet

AN ORDINANCE AMENDING
THE UNIFIED DEVELOPMENT ORDINANCE OF ORANGE COUNTY

WHEREAS, Orange County has received a proposal from Mr. and Mrs. Donald and Donna Easterlin to amend Section 5.6.5 of the Unified Development Ordinance (UDO) with respect to required setbacks associated with the development of Class II Kennels within, and developed adjacent to, the Economic Development Eno High Intensity (EDE-2) general use zoning district, and

WHEREAS, the Easterlins believe the amendment is reasonable, is consistent with the purpose and intent of the EDE-2 general use zoning district, and is consistent with the provisions of the Orange County Comprehensive Plan, and

WHEREAS, the requirements of Section 2.8 of the Unified Development Ordinance have been deemed complete, and

WHEREAS, the County has found the proposed text amendments to be reasonably necessary to promote public health, safety and general welfare and to achieve the purposes of the adopted Comprehensive Plan, and

WHEREAS, pursuant to North Carolina General Statute 153A-341 and Section 1.1.7 of the Unified Development Ordinance, the Board of Commissioners of Orange County has found the proposed text amendments to be consistent with the goals and policies of the adopted Comprehensive Plan.

BE IT ORDAINED by the Board of Commissioners of Orange County that the Unified Development Ordinance of Orange County is hereby amended as depicted in the attached pages.

BE IT FURTHER ORDAINED that this ordinance be placed in the book of published ordinances and that this ordinance is effective upon its adoption.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing ordinance was adopted this _____ day of _____, 2014.

I, Donna S. Baker, Clerk to the Board of Commissioners for Orange County, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on _____, 2014 as relates in any way to the adoption of the foregoing and that said proceedings are recorded in the minutes of the said Board.

WITNESS my hand and the seal of said County, this _____ day of _____, 2014.

SEAL

_____
Clerk to the Board of Commissioners

5.6.4 Junkyards

(A) Standards for Class A Special Use Permit

(1) Submittal Requirements –

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

(a) Detailed plans and specifications for the site screening proposed.

(b) Description of type and number of motorized machines to be employed upon site.

(c) Indicate on the site plan the extent of area to be used for the storage of junked or wrecked motor vehicles

(2) Standards for Evaluation -

(a) The site shall be screened from adjacent property by a minimum of an eight foot high solid fence or equal, uninterrupted except for required vehicle access points.

(b) No materials shall be stored closer than 50 feet to the public right of way or 30 feet to the property lines.

(c) Site is of adequate size to protect adjacent properties from adverse effects of the junkyard.

5.6.5 Kennels (Class II)

(A) Standards for Class B Special Use Permit

(1) Submittal Requirements –

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

(a) Plans for all kennels, exercise yards, dog runs, pens and related improvements, including signage.

(b) Site plan showing the improvements listed in a) above, other structures on the same lot, and structures on adjacent property.

(2) Standards of Evaluation –

(a) The site is of adequate size to protect adjacent properties from adverse effects of the kennel.

(b) No part of any building, structure, dog run, pen, or exercise yard in which animals are housed or exercised shall be closer than 150 feet from a property line, except property occupied by the owner/operator of the kennel.

(i) ~~These minimum distances~~ The 150 foot setback established by this section shall not apply if all portions of the facility, in which animals are housed, are wholly enclosed within a building.[1]

(ii) For Class II Kennels developed within the EDE-2 zoning district, this setback shall not apply to dog training activities where each dog is under the immediate control of its trainer, owner, or other responsible individual.[2]

[1] This is an existing standard being modified by the applicant. Staff has no concern related to the modification.
[2] As originally written by the applicant this would apply to all Class II Kennels, not just those in the EDE-2 zoning district. Staff has modified the language to ensure it only applies to kennels in the EDE-2, consistent with the advertised public hearing, and the stated intent of the applicant.

(iii) For Class II Kennels developed within the EDE-2 zoning district, all buildings, structures, dog runs, pens, or exercise yards in which animals are housed or exercised shall observe the principal setbacks established within Section 3.7 of the UDO in those instances where the property abuts other EDE-2 zoned property and US Highway 70.[3] ,[4]

(b) Any kennel, including primary enclosures or runs, which is not wholly enclosed within a building shall be enclosed by a security fence at least six feet in height.

(c) The site plan shows parking, access areas and screening devices for all buildings and animal boarding facilities existing or proposed for the property.

(d) The site plan shall be reviewed by the Orange County Animal Services Department, and found in conformance with the Animal Control Ordinance.

(e) Building plans for all kennel facilities shall be reviewed and approved by the Orange County Animal Services Department prior to issuance of any building permits.

(f) A sign clearly visible from the ground shall be posted at the main entrance to the facility and shall contain the names, addresses, and telephone numbers where persons responsible for the facility may be contacted at any hour of the day or night. The sign shall comply with dimensional requirements as set forth within this Ordinance.

(g) A Class II Kennel Permit shall be obtained from Orange County Animal Services within the first 30 days of occupancy. Failure to obtain and maintain a valid Class II Kennel Permit or other related permits which may be required by the USDA or Wildlife Resources Commission will result in revocation of the Special Use Permit.

5.6.6 Riding Stables

(A) Standards for Class B Special Use Permit

(1) Submittal Requirements –

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

(a) Plans for all barns, boarding facilities, exercise yards, riding arenas, and related improvements, including signage.

(b) Site plan showing the improvements listed in a) above, other structures on the same lot, and structures on adjacent property.

(2) Standards of Evaluation –

[3] Per Section 3.7 of the UDO the required setback for all structures developed within EDE-2 is 25 feet from property lines, including those properties with frontage along US Highway 70. Staff has combined the applicant's proposed subsection(s) (ii) and (iii) in Attachment 2 into a central section.

[4] This text amendment will need to generate a comprehensive re-assessment of required setbacks for Class II Kennel operations within all non-residential zoning districts (Community Commercial CC-3 and General Commercial GC-4). In staff's opinion there is no justification to treat kennels developed within the EDE-2 district differently from other non-residential general use districts. If this text amendment is approved, staff recommends a separate discussion item at a future Planning Board meeting to review the 150 foot setback requirement in all non-residential general use zoning district designations. There may be a need to modify this regulation in the future to ensure equity for property owners seeking to develop a Class II Kennel and establish a framework where the setback could be reduced.

DRAFT

MINUTES
ORANGE COUNTY BOARD OF COMMISSIONERS
QUARTERLY PUBLIC HEARING
February 24, 2014
7:00 P.M.

The Orange County Board of Commissioners and the Orange County Planning Board met for a dinner meeting on Monday, February 24, 2014 at 7:00 p.m. at the DSS Officers, Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Barry Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee Bernadette Pelissier, Renee Price and Penny Rich
COUNTY COMMISSIONERS ABSENT:
COUNTY ATTORNEY PRESENT: James Bryan (Staff Attorney)
COUNTY STAFF PRESENT: Interim County Manager Michael Talbert and Deputy Clerk to the Board David Hunt (All other staff members will be identified appropriately below)
PLANNING BOARD MEMBERS PRESENT: Planning Board members Maxecine Mitchell, Johnny Randall, Paul Guthrie, Herman Staats, Tony Blake, and H.T. "Buddy" Hartley
PLANNING BOARD MEMBERS ABSENT: Chair Pete Hallenbeck, Lisa Stuckey, Stephanie O'Rourke, Andrea Rohrbacher and James Lea

Chair Jacobs called the meeting to order at 7:03 pm. He reviewed the following items at the members' places:

- Booklet/Blue Sheets/Cream Sheets/PowerPoint – Item C-1 – Class A Special Use Permit
- Letter – Item C-3 - Unified Development Ordinance (UDO) Text Amendment

A. OPENING REMARKS FROM THE CHAIRS

B. PUBLIC CHARGE

The Chair dispensed with the reading of the public charge.

C. PUBLIC HEARING ITEMS

Planning Board Member Buddy Hartley introduced this item.

3. Unified Development Ordinance (UDO) Text Amendment - To review an application seeking to amend Section 5.6.5 (A) (2) (b) *Kennels (Class II) – Standards of Evaluation* to reduce required setbacks for Class II Kennels developed within the EDE-2 zoning district.

Michael Harvey said there is no formal presentation for this item. He referred to a display of the text markup. He referred to page 65 of the abstract and the proposed text amendment on Attachment 1.

He said this is referring to a Class 2 kennel, which involves the keeping, boarding, care, and training of more than 20 animals. He said the current requirement is a 150 foot setback from all established property lines. He said the applicant is currently operating under an existing Class 2 kennel permit, issued in 1986. He said the applicant has dog run areas within the required setbacks, and the proposed text amendment would drop the required setback to 25

feet. He said this would, in effect, adhere to general zoning setbacks already established for this district.

Michael Harvey said staff has some concerns, which are identified in the abstract and the staff memorandum. He reminded the Board of an email in front of them from Mrs. Easterland.

Michael Brough referenced a handout. He said the purpose of this is to correct an unfortunate situation where the applicant is in violation of a zoning ordinance as a result of the 150 foot setback situation. He said it did not occur to the owners when the property was purchased that the replacement of an existing fence would create a zoning problem. He referred to a handout and a comparison of past and current site plans. He said the 1986 permit was evidently in violation of the setback requirement, and the new owners were not aware of the setback requirement. He said the initial notice of the zoning violation occurred back in 2006, and there is no mention of the 150 foot setback requirement.

He said the amendment reduces the 150 foot setback that applies to kennel 2 uses, only in the EDE-2 zoning district and where the property adjoins other property that is zoned EDE-2. He said it does not apply to any other zoning district. He said the 25 foot setback would continue to apply to this use, although the owners prefer to keep their existing fences where they are. He said the change in ordinance only applies to the exercise yards, and it doesn't apply to buildings. He referred to the proposed new language which states this. He said the change to the 150 foot setback does not apply to buildings, as buildings can already go up to the 25 feet.

Michael Brough said the most important aspect of the change is that the amendment only applies in the EDE-2 district and where the property adjoins other EDE-2 properties. He said this is important because the uses in the EDE-2 district are fairly intensive as compared to other districts. He said there is low likelihood of any other type of uses in this area, due to the location and lack of sewer. He said that makes this a very narrow amendment. He said the benefit to the public of maintaining that 150 foot buffer is marginal, if it exists at all; however the hardship that it creates for the owners is pretty extreme. He said there are no other practical areas to place the exercise yards, and these are integral to maintain the business. He said there are 300-400 signatures from customers and community members in support of this business. He said there are 20 or more employees, whose livelihood depends on the business. He noted the members of the audience in attendance to support this amendment.

Commissioner Gordon addressed Michael Harvey and referred to the staff analysis page 73. She asked for clarification on this, specifically items 6 through 9.

Michael Harvey said he would reject some of what Michael Brough said. He said the setback being referenced was enforced in 1986, and the applicants were made aware of the problem, as were their attorney and their surveyor. He said the existing language of the UDO, as was enforced in 1986, indicated that the minimum setback distances would not apply if all elements of the operation were in an enclosed facility; but the ordinance clearly states that all buildings and runs must meet the setback requirements.

He referred to Commissioner Gordon's question and said staff's initial observation is that impacts observed from kennel operation are universal and are not mitigated because the operation is in a non residential district. He believes the question here is what constitutes an appropriate setback for a kennel in an effort to address impacts on adjacent properties. Staff is

concerned that the reduction of the setbacks to 25 feet will increase complaints related to the operation of the kennel and its impact on adjacent property development. He said staff is not convinced that the 25 foot setback will provide sufficient separation from adverse impacts. He said staff is also concerned that this proposal is inconsistent with the Comprehensive Land Use Plan. He said staff understands the situation that the kennel is in, but it is their opinion that the cons outweigh the pros.

Commissioner Gordon said it sounds like there is a situation of existing use, but the remedy is to change the whole zoning ordinance.

Michael Harvey said that is the applicant's contention.

Commissioner Gordon asked if there is any other approach, such as a variance under the Board of Adjustment, for hardship.

Michael Harvey said no, not in his opinion. He said there is an existing special use permit, and the kennel is in violation of that permit.

Commissioner Price asked why the variance is out of consideration.

Michael Harvey said this facility is operating under a previously issued special use permit, and the facility is now out of compliance with that permit and with the ordinance. He said the kennel has to bring the site into compliance with the code in order for the special use permit to remain valid and the operation to continue. He would also argue that this situation is self created, and the operation has been expanded. He said, as a result, this would not qualify for a variance because the hardship is not unique, and it is self induced.

Commissioner Dorosin asked if the Board could amend the terms of the conditions of the special use permit.

Michael Harvey said the ordinance would have to be amended in order for the conditions of the special use permit to be modified. He said the 150 foot setback applies.

Commissioner Rich questioned whether an amendment to this ordinance would mean anyone with a kennel could request this change as well.

Michael Harvey said it would only apply if a kennel was in the EDE-2 zoning district. He said there are no other kennels in the EDE-2 zoning district.

Commissioner Rich noted that this conversation started in 2006, and she asked what has happened between 2006 and 2014.

Michael Harvey said there have been a lot of changes in attorneys and surveyors, and there was no proposal to address the problem until recently.

Commissioner Pelissier asked how many acres in Orange County are zoned EDE-2.

Michael Harvey said, according to Craig Benedict, the amount is approximately 200 acres.

Commissioner McKee said he is hearing two different versions, that the setback amount it was unknown, and that it was known.

Michael Harvey said he stands by his answer to the Board.

Chair Jacobs said this is that what the Board of Adjustment is for, to allow someone to articulate their beliefs and then to have County staff articulate what it believes the facts to be. He said there is then a rendering of an opinion on whether an exceptional situation exists, or is allowed to exist.

Michael Harvey said staff issued an opinion in 2006, and that opinion was not appealed; so that opinion is the full force of law. He does not believe the owners have standing to appeal it now.

James Bryan said he would encourage the Board not to focus on this particular petitioner. He said the Board has an obligation to consider all of the ramifications of this. He said the question of how much EDE-2 is in the County, is a very relevant one. He said whether this petitioner will benefit from it or not, or whether the petitioner has alternatives available to them, is not a valid basis for an eventual decision.

Chair Jacobs said he feels that one of the things the Board is looking for is an alternative to making a universal decision to address an individual circumstance. He asked if there is an alternative avenue other than changing the buffer requirement in the entire district from 150 feet to 25 feet. He said this would be to address the difference of opinion, interpretation, understanding or experience.

James Bryan said there are three alternatives: One is a variance; one is a new or amended conditional use permit; and the third would be an appeal to any staff decision. He does not know the details of all of these. He said a new or changed SUP is not viable, because the Board cannot eliminate requirements in the ordinance. He said an appeal is basically the back and forth that has been heard tonight, and the details would have to go through a a quasi-judicial hearing with the board of adjustment. He said a variance is very much akin to the SUP process, but it is fact dependent and the likelihood is not good.

Michael Harvey said a conditional use is not applicable here, since this district allows Class 2 kennel operations and guidelines and restrictions have been established. He said the UDO has language mandating that those guidelines and restrictions be observed in the conditional use permitting process.

Commissioner Dorosin said he appreciates the attorney's advice that this is a legislative decision and not a quasi-judicial one. He thought he read in the packet that the general setback is 25 feet, so if this change were made, it would change the kennel setbacks to match the setbacks of all the other permitted uses in the EDE-2.

Michael Harvey said this is correct.

Commissioner Dorosin said he would make a motion to adopt this change.

Chair Jacob said it is still early in the process.

Commissioner Price clarified that in order for the kennel to apply for a variance, it would first have to come into compliance

Michael Harvey said his interpretation is that the kennel has an existing special use permit that is governing the operation of their site. He said his problem is that the owners cannot meet the criteria to then justify the issuance of the variance.

Commissioner Price said it is for the panel to decide if this is a hardship or not. She is just clarifying that the kennel would have to come into compliance first.

Michael Harvey said the owners can apply for a variance, but it is his opinion that it cannot be issued if it is to comply with local ordinance and state law.

Commissioner Gordon asked if it would be an option to have another hearing and make this a non-conforming use, and eliminate kennels from EDE-2.

Michael Harvey said if the use is eliminated, then you have an illegally established use. He said under the confines of the non-conforming ordinance, the logic is that it could continue operation; however it is already in violation of the permit it was issued in 1986.

Commissioner Gordon said the question is whether the Board wants to make a universal change for a specific circumstance. She said the consideration of whether it is universally acceptable to have a 150 foot setback for a kennel. She said this is a legitimate question.

Commissioner Pelissier referred to her original question about the EDE-2 total acres, and she asked if information can be provided on how much of the EDE-2 is already developed and how much is not.

She wants to make sure that the public understands that letters sent, even before the public hearing, become part of the public record.

Michael Harvey said this is correct on both counts.

Tony Blake, representative for Bingham Township, said he agrees with Commissioner Dorosin. He said the intent of this ordinance is to protect people from noise and annoyance from a kennel, and this is the additional setback. He questioned, in the case of EDE-2, who cares. He said there should be an ability to tweak this kind of stuff, or the County ends up putting people through unnecessary hardship or putting them out of business.

Commissioner Gordon clarified that this is a public hearing, and no decision will be made tonight.

Mike Schmidt said he would use his three minutes to tell a story. He said he was having a tough day at work. He said he drops his dog off early in the morning and usually picks up late at night, but he took off early and picked up his dog early. He drove up the driveway and saw his dog chasing bubbles that someone was blowing. He said he asked about this and he was told that the kennel had researched how to create dog sensitive bubbles to give the dogs different play and interaction. He said he was told long ago that you can judge someone by their actions when they don’t know they are being observed. He said these people really care about these animals, and he wants to tell about the great benefit he receives, along with the hundreds of others that signed the petition.

Jane Bozart said she sent an email, and if this is in the record she does not need to repeat it.

Ken McNish said he has been bringing his dog to Sunny Acres for three years, and he feels that the key feature that makes it different is the open space for the dogs to run. He said there are a lot of complicated things being discussed tonight; but this is simple, and the proposal makes sense.

Susan Heske said her dogs have been at Sunny Acres for two years, and aside from the benefit of the dogs being able to run and socialize, it is also a very professional business. She is amazed at the staff and the commitment. She said it is located in an area that can use some business. She is not aware of any neighbors waging any complaints. She said she is more concerned with the process and why this situation has not been adjudicated in 8 years. She said a fair amount of money was invested in improving an existing fence. She said this is about process, and her concern is why this has remained dormant for so long. She said this is a low impact business, and there is nothing harmful to the environment. She said the kennel provides jobs to people and is a benefit to hundreds of dogs.

Peter Eckhoff said he has been a customer of Sunny Acres for 4 and a half years. He said his son came down with cancer, and his dog was boarded for 2 months at Sunny Acres. He said the dog was high energy, and he was able to go out in the runs. He said when the dog came home and was then taken back to the kennel; he dragged the owner to the front door. He has had other dogs at other kennels, and it wasn't the same experience. He wonders what the basis is for the ordinance, and he noted the proximity of the highway and the noise created by that.

Michael Brough said he would like to address a couple of issues. He said if the choice of a variance was available, that would have been pursued. He said the consensus was that the variance opportunity is not a real possibility. He said the conditional use permit is out as an option, and so is an appeal. He said the only realistic way to cure this is the legislative solution before the Board. He addressed Commissioner Gordon's question about a universal change. He said he is very sensitive to this, and he represents a number of local governments. He is very sensitive to an ordinance change being broader than the needs of the particular applicant; however he is frequently called upon to craft legislative solutions to deal with particular situations like this one.

He said the reality is that the applicant has drafted a very narrow amendment, and it only affects 200 acres, and quite likely it will only affect this property owner. He said this is not a question of amending an ordinance of universal applicability or not. He said the realistic choice is whether you are going to keep an ordinance on a theoretical basis that is going to have the practical effect of driving this business out of business. He said there have never been any complaints about noise or smell, which indicates there will not be a problem to make the legislative choice before the Board.

Michael Brough said the owners have confirmed to him that they did not know about this 150 foot setback requirement until the past couple of months. He said that is their representation to the Board. He urged the Board to adopt this ordinance.

Commissioner Gordon asked, given the item that came before this, where the property is located, and whether it has to be re-zoned EDE-2 in order to qualify.

Michael Harvey said the rezoning for the previous item is necessary because it is improper to have split zoned property. He said re-zoning does provide an abundance of additional area where dog runs can be placed in compliance with the 150 foot setbacks.

Commissioner McKee said for him it boils down to aligning the setbacks with the zoning. He said the EDE-2 zoning is high intensity, so you don't expect the same kind of setbacks and development as would happen in a residential or EDE-1. He sees no problem with moving the setback to 25 feet.

Commissioner Gordon questioned, given the statement that there is room for compliance if the re-zoning is granted, why that cannot be done.

Michael Brough said this was anticipated, and this was examined. He said looking at the maps, it looks as if there is sufficient space; but it is very difficult as a practical matter. He said the three houses would have to be moved or trees cut down, and there is a creek through the center of the remaining property, as well as some substantial elevation changes. He said the application of the setback makes it a very narrow area, and there is also a required setback from the cell tower on the property. He said, given these things, it becomes very difficult and expensive, and it is of no benefit to anyone to do it.

Commissioner Gordon said it could be done, but it is expensive.

Michael Brough said he cannot say that it can be done, as he cannot survey it out.

Chair Jacobs said he assumes the Easterlings would know which was more onerous, hiring a lawyer or moving the fence, and they chose to hire a lawyer. He said, based on what Michael Brough is saying, it seems it is highly problematic to move the fence. He said he has used Sunny Acres for years. He said this comes down the Board being forced to make a choice between an abstract and a specific. He said sometimes the answer is to be inflexible in the name of a greater good, and sometimes the answer is to recognize the situation in front of you and choose that over the abstract.

He said a decision cannot be based on the property being recombined until a vote is actually taken to recombine it, so this is also abstract. He would rather have dealt with this in another way, but there is no other option.

Maxine Mitchell said she would want to see a layout of the area and some pictures at the next discussion.

Tony Blake said one more point would be to find out if the adjacent owners have been notified to find out if this is a problem for them.

Michael Harvey said the adjoining property owners were made aware of the text amendment. He said no complaints have been received.

Judy Foster said she owns the property next door to the kennel, and she has no objection to the 25 foot setback. She said she would agree to this, and she is right next to their parking lot.

Commissioner Gordon said she is not unsympathetic to this; she is just trying to find out what the options are. She said the question is a general question about universal standards

versus specific standards. She said she loves dogs, and this is a wonderful operation that has not conformed with the regulations, so it is a difficult question.

A motion was made by Commissioner Dorosin, seconded by Commissioner Pelissier to:

1. Accept the applicant's proposed amendments to the UDO as detailed in this abstract and attachments.
2. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for the April 15, 2014 BOCC regular meeting.
3. Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

Attachment 7

Excerpt of Approved Minutes

MINUTES
ORANGE COUNTY PLANNING BOARD
MARCH 5, 2014
REGULAR MEETING

APPROVED APRIL 2, 2014

MEMBERS PRESENT: Lisa Stuckey, Chapel Hill Township Representative; Herman Staats, At-Large, Cedar Grove Township; Paul Guthrie, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Tony Blake, Bingham Township Representative; Johnny Randall, At-Large Chapel Hill Township; Andrea Rohrbacher, At-Large Chapel Hill Township; James Lea, Cedar Grove Township Representative

MEMBERS ABSENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Maxecine Mitchell, At-Large Bingham Township; Vacant- Eno Township Representative; Vacant- Hillsborough Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Special Projects Coordinator; Tina Love, Administrative Assistant II

OTHERS PRESENT: Beth Trahos, Mike Brough, Donna Easterlin, Don Easterlin, Brent Niemann, Louis Lannoue, Rich Kirkland, Gabe Cantor

HANDOUTS: *Email from Alice Gordon to Peter Eckhoff; Email from Louis Iannone to Michael Harvey; Memorandum from Michael Brough to Orange County Planning Board*

AGENDA ITEM 9: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT:
To make a recommendation to the BOCC on an application seeking to amend Section 5.6.5 (A) (2) (b) Kennels (Class II) – Standards of Evaluation to reduce required setbacks for Class II Kennels developed within the EDE-2 zoning district. This item was heard at the February 24, 2014 quarterly public hearing.
Presenter: Michael Harvey, Current Planning Supervisor

Michael Harvey: Reviewed abstract. What I will state and ask the Board to remember is our recommendation is still unfavorable and if this Board is going to make a recommendation to approve the request, we have provided language in Attachment 3 of this document that incorporates the Easterlin's request to amend the UDO in a manner consistent with the UDO framework. If this Board is going to make an affirmative finding and recommendation, we would ask you do it on the language contained in Attachment 3.

Buddy Hartley: Inside the black area, that area is used for the purpose of training dogs?

Michael Brough: A portion of that area is being used for the training of dogs.

Buddy Hartley: The building in the red box that is used for training purposes?

Michael Brough: Yes. It was constructed as a residence but it is not being used as that.

Michael Harvey: The staff was asked to provide a visual representation of the property that would meet the appropriate setbacks as currently required. The Easterlins' are proposing this. We wanted to provide the Board with what would comply and what exists.

Michael Brough: What we are making in the memorandum is that while that is an area that complies with the legal requirements assuming the rest of the property was rezoned, there is a substantial portion of that property which does not lend itself to the expansion of the exercise area. (Described map). There is an area they could build an exercise area but that misses the point. From our perspective under the narrow circumstances this addresses, this would be a very expensive proposition. What good does that achieve? It is multiple thousands of dollars. The point of our request is it is a legislative matter when you weigh cost and benefits and the cost of this private business, which serves a great purpose for the County and surrounding areas, is very high and the benefit is virtual non-existent in this case. There have not been any complaints by either of the surrounding property owners and they were notified of this amendment. It gets down to this question; those objections are essentially theoretical in context. These properties will not be developed until sewer gets there. When it does get developed, it is hard to imagine this area being developed in any way not a substantially intensive use. You have situation where you have a problem we are trying to solve. We have come up with a solution that works and is narrowly drawn and has no real negative impacts on any but provides a legal and practical solution that we have been trying to solve for years. There is a legitimate distinction between why we are limiting this to EDE-2 when it makes no sense to have 150-foot setback if the adjoining property is not intensively zoned for development or residential development. Those circumstances maybe 150 feet is all right but when you have a situation like this, it makes no sense to have 150-foot setback.

Michael Harvey: This property here is split zoned, this portion is EDE-1 so the 150 foot setback would apply, this portion is zoned EDE-2.

Michael Brough: Years down the road if this property were developed, anybody who moved there would already know what is there.

Paul Guthrie: Where is the current exercise yard?

Michael Brough: In the blue lines.

Paul Guthrie: Is this considered necessary, that space now being used as an exercise yard is clearly smaller than the total area of proposed change so is it the configuration of the terrain of that limits its use or are there other reasons.

Michael Brough: There are buildings there and topographic issues in the lower part of the site that slopes. There is an area that is flat and open. Whether that is one third or one half of that site that could be developed but while you could have some exercise area it is very expensive and you are giving up acres of your site in the northwest corner. There are two elements the costs of pulling down the fence and putting up a new fence and the other element is that the 150 foot setback requires them to give up a substantial amount of property it amounts to acres of lands.

Paul Guthrie: Is this an enlargement or maintaining the same level of animals that are cared for? Will you be increasing or maintaining the same level of animal care?

Michael Brough: The long term plan would be that the property would be consolidated and then divided to segregate out a lot around the existing tower and the rest would be submitted for a special use permit covering all the remaining property and the particular uses at that time would be to have an expansion into the area that would be permissible.

Paul Guthrie: I understand the cost argument but is it necessary to tear down the old fence or will you recycle the old fence?

Michael Brough: I can't tell you.

Mrs. Easterlin: The cost I gave you was to use the existing fence.

Michael Brough: We have a cost estimate here that comes to $55,000.

Craig Benedict: I will make some general comments as you deliberate on a legislative decision to change the aspects of a zoning district EDE-2. If it is a general problem, you can address things generally. As a companion to that if it a specific issue, try to address the problem specifically or isolated. Another moral (standard) is each zoning districts has uses that are permitted by right. That is what the Planning Board and BOCC have determined that those are the most appropriate uses that permitted by right. Those are the ones that are anchors of a zoning district. Special uses do not have the same standing in a zoning district as a use permitted by right. Before you change regulations, is there a way to change how things are operated or change location of buildings. Also, if you make a change in this zoning district, could it ever be used to justify changes in another zoning district? The last thing is that we do not base regulation changes based on what the land is on now; we based it on what the land is zoned or what the future land use is.

Lisa Stuckey: Under this proposed text amendment, would the fence still need to be at least 25 feet from the property line?

Michael Harvey: If this is approved, yes.

Lisa Stuckey: So the fence has to be moved.

Michael Harvey: The fence has to be moved or the Easterlins' will have to purchase additional property to make it comply with the 25-foot setback.

Lisa Stuckey: The wording doesn't permit it to be close on the property line but always 25 feet.

Michael Harvey: When it is adjacent to property zoned EDE-2 the setback will be 25 feet.

Herman Staats: The blue line is the current fence; the black line is the setback in compliance.

Michael Harvey: The special use permit approved recognizing these structures as being part of the dog kennel operation approved in 1986. It is the dog runs that create the problem.

Herman Staats: The setback refers to outside use or any use.

Michael Harvey: The ordinance states that the 150-foot applies to all buildings and outdoors exercise areas. There was obviously a different interpretation in 1986. The rule does allow for the 150-foot setback to be waived if portions where animals are housed are completely enclosed in the building. The interpretation that we have utilized since I began work with the County in 2005 says that if all portions of the facility are in a building, no outdoor area at all, then the 150 rule does not apply.

Tony Blake: So technically he is not in compliance.

Michael Harvey: I am not going to say this is non-conforming because I have a special use permit and approval that says otherwise.

Buddy Hartley: The only place the animals are housed is in the original spot?

Michael Brough: The blue box with white areas is like portable carports.

Buddy Hartley: I am familiar with the area. You have more area for dog runs in the black box.

Michael Brough: There is area there but the problem is that it will cost thousands of dollars to do it. As you have already pointed out, you have got buildings well within the 150-foot setback.

Buddy Hartley: If those are covered areas, they could be moved to the areas in black.

Michael Brough: The fence is an issue and then we have the issue of why are we taking away 125 feet out of the ability to use their property when the adjoining property owners do not object.

Johnny Randall: The area of the existing fence that is on the property line, will that have to be moved anyway?

Michael Harvey: The Easterlins' will have to move the fence 25 feet or purchase additional property so the fence complies with the setback.

Buddy Hartley: Either way it will be expensive.

Tony Blake: Have the Economic Development folks weighed in on this.

Michael Harvey: No.

Tony Blake: There should be a way to tweak things that are special cases without affecting every EDD (2) parcel in the County. It seems this is not unreasonable in this instance. I don't see the benefit in enforcing this or putting this type of burden on a small business.

Craig Benedict: In my comments, this is not about looking at one property. I am not specifically talking about this use that is here but the long-term guidelines. We are not looking at someone's site plan when we are addressing changing a zoning district that we should not even looking at. I am representing EDD (2) zoning everywhere.

Paul Guthrie: If the owners were to abandon the use and leave it there and not use it for anything, would you have to tear the fence down?

Michael Harvey: If the area wasn't used as an exercise yard, then there would be no 150-foot setback.

Paul Guthrie: There would be no need to tear down that fence and move it?

Michael Harvey: That assumes that it is no longer utilized for the purpose that the Easterlins' want to use it.

Paul Guthrie: If they only had to erect a fenced area inside the black box that was sufficient to give the exercise they want to give, would that change the financial impact?

Michael Brough: Even if you left the fence there you would have to re-fence another area. You are saying acres of property and leaving it unusable. It would be cheaper to leave the fence there and not use that part of the property at all and erect a new fence somewhere else on the property.

Mrs. Easterlin: The blue line around the outside, there are also several fenced in yards inside the area so we have about nine yards.

Tony Blake: The way the amendments read there would need to be someone out there with them.

Michael Harvey: I have never seen a situation where the dogs were out there overnight.

Lisa Stuckey: We can't make them put them in.

Michael Harvey: Technically the UDO doesn't require it but animal services will mandate the animals have to be kept inside in the evening. This ordinance does require an applicant get the appropriate Class 2 permit from Animal Services in order to operate the kennel.

Lisa Stuckey: There is not another zoning that would be more appropriate that would have smaller setback.

Michael Harvey: The setback is related to the kennel. We looked at conditional use but we have language in the UDO that states once we have adopted a development standard (i.e. a setback), it has to be observed.

Johnny Randall: Is the six-foot high chain link fence required?

Michael Harvey: Yes. If they want to suggest alternative fencing, we could discuss it. This is a dual review process. Orange County Planning and the Board of Adjustment are reviewing it.

Tony Blake: What other General Use Zoning District designations could this possibly effect.

Michael Harvey: None. There could be an extensive reinvestigation of the viability of 150-foot setback in other non-residential zoning districts. This only impacts all the property-zoned EDE-2.

James Lea: Wouldn't it also impact all Class 2 kennels?

Michael Harvey: They would have to come back to the Board of Adjustment and amend their existing approved site plan to take advantage of the reduction if it were approved.

Michael Brough: Regarding that last questions, kennels are permissible in a number of different district but this was limited to the EDE-2 district and further limited to properties that are zoned EDE-2 district. Let me address the general as opposed to the specific. I concur with what Craig has said but in this situation it does that, is there any why you have property that is zoned to a district that allows a 25 foot setback for some of these intensive uses, how does it make sense this use requires a 150 foot setback. What is the point of a 150-foot setback? The main part of our argument is that it doesn't make sense to have a 150-foot setback for a kennel use when it is in an EDE-2 district adjoining property that is zoned for intensive use. This is a policy that is of general applicability to the circumstances we have made it apply to. Does this ordinance make sense in the context in which it applies? We would submit it does not. The ordinance is designed to serve public interest and there is not a public interest in this.

Lisa Stuckey: The 150-foot setback would apply to all Class 2 kennels in the County?

Michael Harvey: Yes.

Craig Benedict: What are some of the adverse impacts that come forward for special use permits. The four general categories are noise, dust, vibration and odor. When things are enclosed in a building, most of the impacts go away. These are what you need a wider type of buffer for. It has been determined that 25 feet because of the noise factor was not a distance that would protect those adverse impacts from imparting upon adjacent property.

Perdita Holtz: May I add one thing to provide clarification. Even if you are a manufacturing facility and theoretically can locate 25 feet away, there are other standards in the UDO that you have to comply with if you do make dust or noise or vibration so you may be able to go to the minimum setback if you are a pretty benign manufacturing operation but you may be required to locate further away so those impacts of noise, vibration, dust, or odor do not cross the property line. There are standards in the UDO that other uses have to comply with that may require that they move further away from the property lines than the minimum setback requires.

Michael Brough: That gets down to the final question. There have not been any complaints since 2005. You are dealing with a theoretical concern. These folks have a real problem that you can solve.

Andrea Rohrbacher: Even though Mr. Brough has stated there have been no complaints on this property, I know of another property in Orange County, in the Town of Carrboro, where there is a compliant because there is less than 150 foot distance.

Johnny Randall: Just because there are no complaints, we don't know why.

Lisa Stuckey: We have two options in terms of proposed changes. Doesn't anyone want to move on Attachment 2 or if we are going to consider this would it be Attachment 3? I would like to get Attachment 2 off the table if this is not a viable option. We are taking Attachment 2 off the table. Attachment 2 was what Mr. Brough had written. Attachment 3 language is what Michael Harvey wrote. Is there anyone who would like to make a motion?

Craig Benedict: Attachment 3 is to approve the change.

James Lea: This would apply to all Class 2 kennels?

Michael Harvey: This only impacts kennels potentially in the EDE-2. When you have an EDE-2 and you want to put a kennel on it, it if surrounded by EDE-2 zoning, the setback is 25 feet.

Paul Guthrie: Is the recommendation of the staff that we vote no on that?

Michael Harvey: Our recommendation is to deny the request. If you are going to approve it, use the language in Attachment 3.

MOTION by Andrea Rohrbacher not to adopt the change. Seconded by Johnny Randall.
VOTE: 6 Yes 2 No (Paul Guthrie, Tony Blake).

Mr. Easterlin: We serviced 100,000 dogs in the last seven years. Someone has to take care of those dogs and we have to have room to do it. We are not going to have dogs we cannot let out. I want you to understand we have really done a job. My wife goes to work at 7:00 a.m. I just can't understand why when we take care of these animals.

Lisa Stuckey: It is clear we were all struggling with this. We make a recommendation and the final decision is made by the BOCC.

Craig Benedict: If you are voting on something, it shouldn't be about one person's property. That is why we have such odd feelings. I tried to separate what is on the ground to what the general rules of decision-making are by legislative bodies so it doesn't reduce itself.

Paul Guthrie: I appreciate your comments but the legislative procedure is both. It is matters of policy and impact and the decision made in committees and every place I have been involved, both apply. When we come to a decision to vote for or against a recommendation, it is a balancing act.

Tony Blake: We lack the tools to make the right decision. It was all or nothing. In this case, I think their argument is on but the problem is we can't make specific exceptions. We need the ability to do that.

Michael Harvey: With all due respect, that is not this Board's role and function. That is the function of the Board of Adjustment.

Tony Blake: They were denied that avenue.

Michael Harvey: They were not denied anything; even their own attorney admitted it was not viable.

Lisa Stuckey: Maybe it should be. Maybe under these circumstances these people should have the opportunity to continue their business but no one after them. If the business is sold, etc. I can see a situation where that area was

filling in and developing and someone wanting to put in a restaurant there and then those dogs would be a problem. What do you do?

Tony Blake: We do allow a use to exist that has existed prior to the zoning change and it seems that it existed prior.

Michael Harvey: The previous users had a special use permit.

AGENDA ITEM : ADJOURNMENT

MOTION: made by Paul Guthrie to adjourn. Seconded by Tony Blake.
VOTE: UNANIMOUS

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 5-c

SUBJECT: Safe Routes to School (SRTS) Strategic Action Plan (No Additional Comments Accepted)

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N) Yes

ATTACHMENTS:

1. Amendment Outline Form
2. Draft SRTS Strategic Action Plan http://orangecountync.gov/planning/documents/UpdatedSRTSPlan-allchapterscombined.pdf (264 Pages; Hard Copy Available Upon Request)
3. NCDOT Comments for Grady Brown Elementary Sidewalk Projects
4. Number of Children by Distance they Live from School Charts
5. Excerpt from Minutes – December 18, 2013 OUTBoard Meeting
6. Excerpt from Minutes – February 24, 2014 and March 10, 2014 Orange County Schools
7. Excerpt from Draft Minutes and Resolution Adopted by the Town of Hillsborough on March 10, 2014
8. Resolution Approving the SRTS Plan

INFORMATION CONTACT:

Abigaile Pittman, Transportation/Land Use Planner, 245-2567
Tom Altieri, Comprehensive Planning Supervisor, 245-2579
Craig Benedict, Director, 245-2585

PURPOSE: To receive the Orange Unified Transportation Board (OUTBoard) recommendation, receive comments and actions from Orange County Schools and the Town of Hillsborough, and make a decision by considering a resolution approving the draft Safe Routes to School (SRTS) Strategic Action Plan required for implementing a Safe Routes to School program in Orange County.

As a reminder, the reconvening of this hearing is solely to receive the OUTBoard, Orange County Schools and the Town of Hillsborough's comments and actions since the November 19, 2014 Quarterly Public Hearing. This hearing is not intended to solicit additional input from the public, and no additional written comments from the public have been submitted since the Quarterly Public Hearing. While the BOCC may ask staff questions related to the review of the item, comments from the public should not be solicited.

BACKGROUND: The NC SRTS Program works with schools, local governments and agencies, advocacy and non-profit organizations, and public health professionals at a grassroots level to identify improvements that can help make bicycling and walking to and from school a safe and healthy transportation alternative. The proposed County SRTS Plan was developed under this program.

The three schools chosen for the SRTS Plan are part of the Orange County Schools system, and all are located inside or adjacent to the Town of Hillsborough:

- Grady A. Brown Elementary School
- Cameron Park Elementary School
- C.W. Stanford Middle School

Eligible SRTS projects can be bundled as infrastructure and non-infrastructure. Funding can include training volunteers, sidewalks, street crossings, safety improvements, bicycle/pedestrian lanes, etc. All projects must be within two (2) miles of a K-8 school.

Following adoption, a SRTS Action Plan Advisory Committee (APAC) will be established that would be responsible for advocating plan implementation and assist with programming and grant writing, evaluating plan progress, and assessing plan priorities. Multiple subsequent implementation action steps are outlined and prioritized in the Plan, the fruition of which would be subject to the recommendations of the APAC and the approval of the Board of County Commissioners (BOCC). Orange County will serve as the lead planning agency in advancing implementation of the SRTS Plan.

Attachment 1 is the Amendment Outline form approved by the BOCC on October 15, 2013. The Amendment form contains details regarding the timeframe for the adoption process. The form also outlines the rationale, process, and implications of the development and adoption of the SRTS Plan.

Pre-adoption activities on the Draft SRTS Strategic Action Plan can be found in Section C.1 of Attachment 1. The Plan development process included a public workshop completed in April 2008 that sought input from residents, including parents, teachers, principals, children, Town of Hillsborough staff, and Orange County staff.

Attachment 2 is a link to an online copy of the Draft SRTS Strategic Action Plan for consideration (264 pages): http://orangecountync.gov/planning/documents/UpdatedSRTSPlan-allchapterscombined.pdf. A hard copy is available upon request.

The BOCC held a public hearing on the SRTS Plan at its November 19, 2013 meeting. No members of the public spoke in favor or against the Plan. The BOCC had two comments:

1. To provide additional details about project costs and funding; and
2. To prepare an exhibit with charts depicting the number of students within walking range of each of the three schools addressed in the Plan (Attachment 4).

Minutes are available on the County website
at: http://server3.co.orange.nc.us:8088/weblink8/0/doc/32180/Page1.aspx

The public hearing was adjourned to February 18, 2014 to obtain a recommendation from the Orange Unified Transportation Board (OUTBoard), and to receive comments and actions from

Orange County Schools and the Town of Hillsborough. On February 18 the public hearing was continued by the BOCC to April 15, 2014 to allow additional time to receive comments.

Staff met with North Carolina Department of Transportation (NCDOT) staff on November 25, 2013 to review projects and related costs identified in the SRTS Plan. At that meeting NCDOT staff explained that more precise project cost development is very involved, including exacting right-of-way delineation, the siting of public and private utilities, evaluation of ditch profiles and potential curb-and-gutter development issues, ADA compliance, soils analysis, identification of any easement conflicts, and environmental constraints. However, NCDOT staff did offer assistance with identifying project issues that could be used in the development of feasibility comments for the County's sidewalk projects related to Grady Brown Elementary School. These comments are provided in Attachment 3. These sidewalk projects would provide the connections to a future Orange Grove Road/I-40 pedestrian bridge which would help this project score more favorably during the State's scoring process. More in-depth reviews of the projects related to Cameron Park Elementary School and the Charles W. Stanford Middle School will be developed in the course of Plan implementation. More precise cost development for SRTS projects related to all three school sites will follow and require pre-engineering input.

The related issue of sidewalk maintenance was discussed at the February 27, 2014 Joint Orange County/Town of Hillsborough meeting. Staff received favorable comments and was directed to develop further research on the topic based on the precedent of a 2004 Orange County sidewalk maintenance agreement for a portion of Homestead Road adjacent to the Towns of Chapel Hill and Carrboro. That agreement was multi-party including NCDOT which allowed an encroachment agreement in its right-of-way. The Towns maintain the sidewalk through this agreement. Orange County (as well as most, if not all, counties in North Carolina) does not maintain local streets or sidewalks, with public roadways being a part of the State maintained system. The NC Department of Transportation (NCDOT) does not build nor maintain sidewalks.

Project Funding

The SRTS Program was established in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) legislation as a federally-funded grant reimbursement program providing an opportunity for communities to improve conditions for bicycling and walking to school. The SRTS program is a reimbursement program that does not require a local match (100% federally funded). Section 1404 of SAFETEA-LU mandated that the North Carolina Department of Transportation (NCDOT) administer this program within the state, providing financial assistance to state, local, and regional agencies, including non-profit organizations that demonstrate an ability to meet the requirements of the program.

There were some revisions to federal and state funding sources in October 2012 that impacts future funding sources for the Safe Routes to School program. Specifically, the federal Moving Ahead for Progress in the 21st Century Bill (MAP-21) SRTS program direct allocation funds were removed. MAP-21 authorized the Transportation Alternatives Program (TAP) to provide funding for programs and projects defined as transportation alternatives, including safe routes to school projects. The TAP replaced the funding from pre-MAP-21 programs, including the SRTS program.

However, NCDOT staff has advised the Planning staff that there will continue to be SAFETEA-LU funds available for the program under its rolling grant cycle. It is anticipated that these funds

will be continued on an annual basis through FFY 2014 (i.e. September 2015). SAFETEA-LU funds apportioned for the SRTS Program prior to MAP-21 are available until expended.

After identifying projects from the Plan to implement, the County would apply through the NCDOT Division 7 office. Project funding is based on project priority with as much local support as possible (Schools, PTA, Superintendent, municipalities, BOCC, supporting plans, etc.), and projects from the Plan with multiple purposes/greater impact are favored. If, for example, a proposed project for CW Stanford Middle School met the objectives of the SRTS program, but also happened to provide a benefit to Orange High School, that is acceptable and even encouraged.

Post expenditure of the existing SAFETEA-LU SRTS Program funds, future funding for SRTS projects will be with TAP funds. The Federal share will be the same as for the general Federal-aid highway program: 80 percent Federal/20 percent State or local match. Also, to address the shift in funding programs, prioritized SRTS projects will be included on the list of future year projects submitted for SPOT 3.0 scoring.

OUTBoard, Orange County Schools, and Town of Hillsborough Recommendations:

The SRTS Plan was reviewed and recommended for approval by the OUTBoard, and approved by Orange County Schools and the Town of Hillsborough.

Attachment 5 is an excerpt from Minutes of the OUTBoard's December 18, 2013 meeting.

Attachment 6 is an excerpt from draft Minutes of the Orange County Schools Board of Education February 24, 2014 and March 10, 2014 meetings.

Attachment 7 is an excerpt from the draft Minutes from the Town of Hillsborough March 10, 2014 Board of Commissioners meeting, and the Resolution adopting the SRTS Plan.

FINANCIAL IMPACT: Other than staff time, there is no financial impact associated with adopting the SRTS Action Plan. Following adoption, Plan implementation will require assistance from the NCDOT SRTS Program staff, the Orange County Schools staff, and the Town of Hillsborough staff. Project funding could include some combination of federal, state, and/or local funding and will be reviewed and approved in future fiscal years.

RECOMMENDATION(S): The Manager recommends the Board:

1. Receive the OUTBoard's recommendation of approval;
2. Receive comments and actions from Orange County Schools and the Town of Hillsborough;
3. Receive any written comments;
4. Close the public hearing; and
5. Consider approving and authorizing the Chair to sign the Resolution (Attachment 8) adopting the Safe Routes to School (SRTS) Strategic Action Plan (http://orangecountync.gov/planning/documents/UpdatedSRTSPlan-allchapterscombined.pdf).

COMPREHENSIVE PLAN/ FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENTOUTLINE

A. AMENDMENT TYPE

Map Amendments

☐ Land Use Element Map:
From: ---
To: ---

☐ Zoning Map:
From:- --
To:---

☐ Other:

Text Amendments

☐ Comprehensive Plan Text:

☐ UDO Text:
☐ UDO General Text Changes
☐ UDO Development Standards
☐ UDO Development Approval Processes

☒ Other: Safe Routes to School (SRTS) Action Plan

B. RATIONALE

1. **Purpose/Mission**

The purpose of the SRTS program is to:

- Enable and encourage children, including those with disabilities, to walk and bicycle to school;
- Make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and
- Facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools.

The NC SRTS Program works with schools, local governments and agencies, advocacy and non-profit organizations, and public health professionals at a

grassroots level to identify improvements that can help make bicycling and walking to and from school a safe and healthy transportation alternative. Orange County received a SRTS Strategic Action Plan Service Award in July 2008 for planning assistance to prepare an Action Plan for Grady A. Brown Elementary School, Cameron Park Elementary School and C.W. Stanford Middle School. In 2009 NCDOT contracted Greenways, Incorporated and Greene Transportation Solutions to work with County staff, local agency representatives, School Team leaders and principals of the three schools to identify non-motorized infrastructure improvements that enhance safety for walking and bicycling.

The Plan development process included a visioning and goals session and map working session with the project staff, steering committee, and consultants. This was followed by comprehensive fieldwork and a public workshop that sought input from residents, including parents, teachers, principals, children, Town of Hillsborough staff, and Orange County staff. This input and analysis led to the development of a draft plan that consisted of an analysis of existing conditions, and recommendations in the program's framework of engineering, education, encouragement, enforcement, and evaluation (the essential '5 E's' of the program).

2. <u>Analysis</u>

Additional analysis will be part of the subsequent evaluation and approval of project implementation actions.

3. <u>Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)</u>

Chapter 9: Transportation Element Goals 1, 2, 3 and 4 and their supporting objectives address a multi-modal transportation system, promotion of public health and safety, and transportation planning that serves development. Several objectives specifically speak to the provision of bikeways and walkways.

4. <u>New Statutes and Rules</u>

N/A

C. PROCESS

1. <u>TIMEFRAME/MILESTONES/DEADLINES</u>

a. Completion of Final Draft Plan by Consultant and NCDOT

December 2012

b. Orange County BOCC/Town of Hillsborough Commissioners Joint Meeting Updates

February 24, 2011
February 21, 2013

b. BOCC Authorization to Proceed

April 9, 2013 (Initial adoption steps):

- Joint staff planning meetings with Orange County Schools and the Town of Hillsborough;
- Meetings with the Orange County School Board and the Town of Hillsborough Town Board to provide information and receive endorsement to proceed; and
- The completion of updates to the draft SRTS Action Plan pertaining to the review of local planning document resources, federal and state funding sources, depicted school district boundaries, and general corrections such as the spelling of some road names, etc.

October 15, 2013 (adoption steps)

c. Joint Staff Meeting with Orange County Schools and the Town of Hillsborough

On April 30, 2013 Planning staff met with staff from the Town of Hillsborough, Orange County Schools, Orange County Health Department, and representatives from the state Community Transformation Grant program (a related program and possible funding source). Additional conversations and meetings occurred in May, June and July to discuss the progress of pre-adoption steps;

d. Meet with Orange County School Board and the Town Board of Hillsborough to Brief and Receive Approval for Initial SRTS Adoption Steps

On May 28, 2013 Planning staff presented an overview of the SRTS Action Plan and proposed pre-adoption steps to the Orange County School Board and received its endorsement.

On June 10, 2013 Planning staff presented an overview of the SRTS Action Plan and proposed pre-adoption steps to the Town of Hillsborough Board and received its endorsement.

e. Staff Editing of Draft SRTS Action Plan

Planning staff made minor edits to the Draft SRTS Action Plan through August pertaining to the review of local planning document resources, federal and state funding sources, revisions to depicted school district boundaries, and general corrections such as the spelling of some road names, etc. No revisions were made to project recommendations developed by the Plan steering committee.

f. BOCC Public Hearing

November 19, 2013 (OUTBoard members encouraged to attend)

g. Orange County Schools Adoption Consideration

February 24, 2014

h. Town of Hillsborough Adoption Consideration

March 10, 2014

i. BOCC Adoption Consideration

April 15, 2014

2. PUBLIC INVOLVEMENT PROGRAM

The Plan development process included a public workshop completed in April 2008 that sought input from residents, including parents, teachers, principals, children, Town of Hillsborough staff, and Orange County staff.

a. Advisory Boards:

OUTBoard - March 20, 2013 update
OUTBoard – December 18, 2013 review and recommendation

b. Local Government Review:

Town of Hillsborough, as noted in Section C.1. above

c. Notice Requirements

Not required for these adoption steps

d. Outreach:

☐	General Public:	The Plan development process included a public workshop completed in April 2008 that sought input from residents, including parents, teachers, principals, children, Town of Hillsborough staff, and Orange County staff.
☐	Small Area Plan Workgroup:	N/A
☒	Other:	Joint staff meetings with Orange County Schools and the Town of Hillsborough; and meetings with the Orange County School Board and the Town Board of Hillsborough.

FISCAL IMPACT

Other than staff time, there is no financial impact associated with receiving, considering and authorizing the staff to proceed with adoption steps for the SRTS Action Plan.

D. AMENDMENT IMPLICATIONS

N/A

E. SPECIFIC AMENDMENT LANGUAGE

N/A

Primary Staff Contact:
Abigaile Pittman
Planning Department
(919) 245-2567
abpittman@orangecountync.gov

Abigaile Pittman

To: Abigaile Pittman
Subject: FW: Orange County Safe Routes to School Strategic Action Plan

From: Edwards, Charles N [mailto:cnedwards@ncdot.gov]
Sent: Saturday, March 29, 2014 4:08 PM
To: Abigaile Pittman
Cc: Huffines, Donald R; Wilson, Patrick D; Mills, James M
Subject: Orange County Safe Routes to School Strategic Action Plan

Abigaile,

Per your request, I have reviewed the findings and recommendations contained in the above document relative to the Grady Brown Elementary School/Cedar Ridge High School area and provide the following general comments relative to feasibility and constructability and subject to available funding:

The study identified a number of recommended improvements along the State routes in the general area including 4 improvements denoted as priorities.

Corridor Improvements-
The study listed the following corridor improvements

- Construct sidewalk along the north side of Grady Brown School Road from Orange Grove Road to the western access at Cedar Ridge High School
- Construct sidewalk along the south side of Grady Brown School Road from Orange Grove Road to Dimmocks Mill Road
- Construct sidewalk and bike lanes along both sides of Orange Grove Road from Grady Brown School Road to S. Churton Street in Downtown Hillsborough
- Construct sidewalk along one side of Oakdale Drive from Cheshire Drive to Orange Grove Road (Priority Project #3)

Sidewalks located within NCDOT right of way must meet NCDOT and ADA design requirements and be located behind curb and gutter or roadway ditches to provide for appropriate pedestrian separation from vehicles and proper roadway drainage. Sidewalk can also be placed outside of the right of way on separate easements, however, the existing high relief topography and presence of potential jurisdictional streams and wetlands may make this alternative unfeasible due to extensive grading, environmental impacts and mitigation requirements, and right of way and easement requirements. Given the generally constrained existing right of way and roadway cross section, the most feasible approach for installation of sidewalk and bike lanes appears to be widening of existing pavement and installation of curb and gutter and storm drainage with sidewalk installed behind the curb. This approach would minimize, but not necessarily completely avoid impacts to adjacent properties, environmental features and utilities. The appropriate local government would be responsible for maintenance and operation of the sidewalk. Minor improvements within the existing right of way such as installation of paved shoulders or widening of existing travel lanes, enhancement of existing signs and markings, minor geometry changes at intersections may be feasible and constructible at a reasonable cost.

Crossing Improvements-
The study identifies three crossing improvements

- Construct sidewalk on both sides of Grady Brown School Road along the school property frontages and provide a mid-block pedestrian crossing on Grady Brown School Road (Priority Project #1)

Construction of the sidewalks along the property frontages appears to be feasible given the existing topography and availability of any needed right of way or easements on school system property. Additional study is recommended to quantify pedestrian volumes and appropriate traffic control requirements for such a crossing. Design considerations should include location relative to established travel patterns, separation from existing driveways and intersections and turn lanes storage requirements, available pedestrian and motorist sight distance, provision of appropriate lighting at the crossing and in the general area. Provision of a qualified crossing guard as recommended by the study is imperative. Installation of raised crosswalks and other similar traffic calming features would need to comply with NCDOT traffic calming guidelines which currently limits use of such devices to residential subdivision streets or streets of similar character. Installation of pedestrian refuge islands and island mounted signage is an acceptable treatment subject to compliance with NCDOT requirements.

- Crosswalks at the intersection of Grady Brown School Road and Orange Grove Road

Installation of crosswalks and pedestrian related traffic signal enhancements at this location are predicated on installation of appropriate and adequate sidewalk infrastructure to safely accommodate pedestrians crossing the road. Reductions to the existing intersection return radii should be evaluated to ensure that turning movement requirements of buses and other large vehicles is still accommodated.

- Crosswalks and Pedestrian Activated Signal at Orange Grove Road and Grady Brown School Road

Installation of crosswalks at this location is predicated on installation of appropriate and adequate sidewalk infrastructure to safely accommodate pedestrian movements. A traffic signal warrant analysis is required to determine if signal warrants as prescribed by the Manual of Uniform Traffic Control Devices (MUTCD) are met. Reductions to the existing intersection return radii should be evaluated to ensure that turning movement requirements of buses and other large vehicles is still accommodated.

Traffic Calming Measures

The study recommends the following traffic calming measures:

- Reduce Existing School Zone Speed Limit to 25 MPH
- Establish a School Zone on Orange Grove Road from Grady Brown School Road to Patriot's Point Apartments Access

School zones and associated speed limit postings must meet NCDOT guidelines. Further evaluation of the existing and proposed school zones is required.

- Install raised midblock crosswalks and refuge islands

Installation of raised crosswalks and other similar traffic calming features would need to comply with NCDOT traffic calming guidelines which currently limits use of such devices to residential subdivision streets or streets of similar character. Installation of pedestrian refuge islands and island mounted signage is an acceptable treatment subject to compliance with NCDOT requirements.

Long Term Improvements

- Construct Pedestrian Accommodations Along Orange Grove Road over I-40 (Priority Project #2)

The study identifies a pedestrian accommodation across I-40 as critical to connectivity of land uses on either side of the interstate. Reference is made to NCDOT TIP Project no. EB-4980. In 2010, the NCDOT Division of Bicycle and Pedestrian Transportation performed a feasibility study for a proposed bicycle and pedestrian bridge at this location and determined that such a project was not justifiable at that time due to the lack of supporting pedestrian facilities and sparse residential development but indicated that the project could be submitted again through the MPO for consideration for the TIP in the event of increased support to the support for the sidewalk system. The pedestrian bridge project has been submitted for consideration by the MPO and is currently being evaluated in accordance with the guidelines of the NCDOT Strategic Transportation Investments (STI), also known as the Strategic Mobility Formula.

Other Improvements

- Patriots Point Trail Connection (Priority Project #4)

The study recommends construction of a pedestrian trail from the Patriots Point apartment complex to Timbers Drive (non-system) in order to enhance access to Orange Grove Road. This location appears to be on private property and would be subject to acquisition of appropriate rights of way or easements and may be subject to concurrence of the affected property owners.

On Campus Improvements

The study identifies the lack of bike parking accommodations and internal sidewalk systems and noted traffic queues spilling from the student pickup/drop-off areas on to Grady Brown School Road. Further evaluation of internal pedestrian and motor vehicle flow is recommended. The NCDOT Municipal and School Traffic Assistance Unit (MSTA) is available to provide assistance.

I appreciate your patience. Feel free to contact me if you have any questions.

C.N. Edwards, Jr. PE
District Engineer
P. O. Box 766
115 E. Crescent Square Drive
Graham, NC 27253

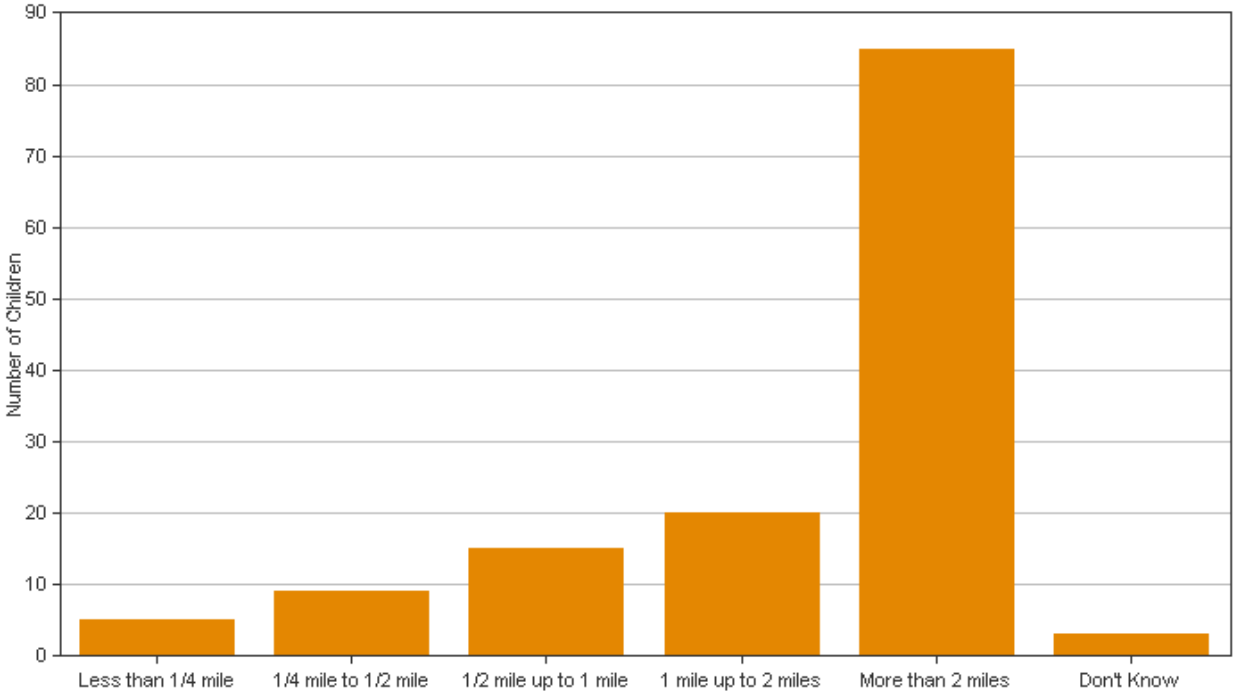
Phone(336) 570-6833
Fax (336) 570-6873

Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

Attachment 4

Grady Brown Elementary / Spring 2010

Number of Children by Distance they Live from School



Number of Children by Travel Mode to School and Distance Between Home and School

Mode	Less than 1/4 mile	1/4 mile up to 1/2 mile	1/2 mile up to 1 mile	1 mile up to 2 miles	More than 2 miles	Row Totals by Mode
Walk	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Bike	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
School Bus	3 (2.3%)	0 (0%)	2 (1.5%)	5 (3.8%)	48 (36.1%)	59 (44.5%)
Family Vehicle	2 (1.5%)	8 (6.0%)	11 (8.3%)	13 (9.8%)	34 (25.6%)	70 (52.7%)
Carpool	0 (0%)	0 (0%)	2 (1.5%)	1 (0.8%)	1 (0.8%)	4 (3.1%)
Transit	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Other	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Column Totals by Distance	5 (3.8%)	8 (6%)	15 (11.3%)	19 (14.4%)	83 (62.5%)	

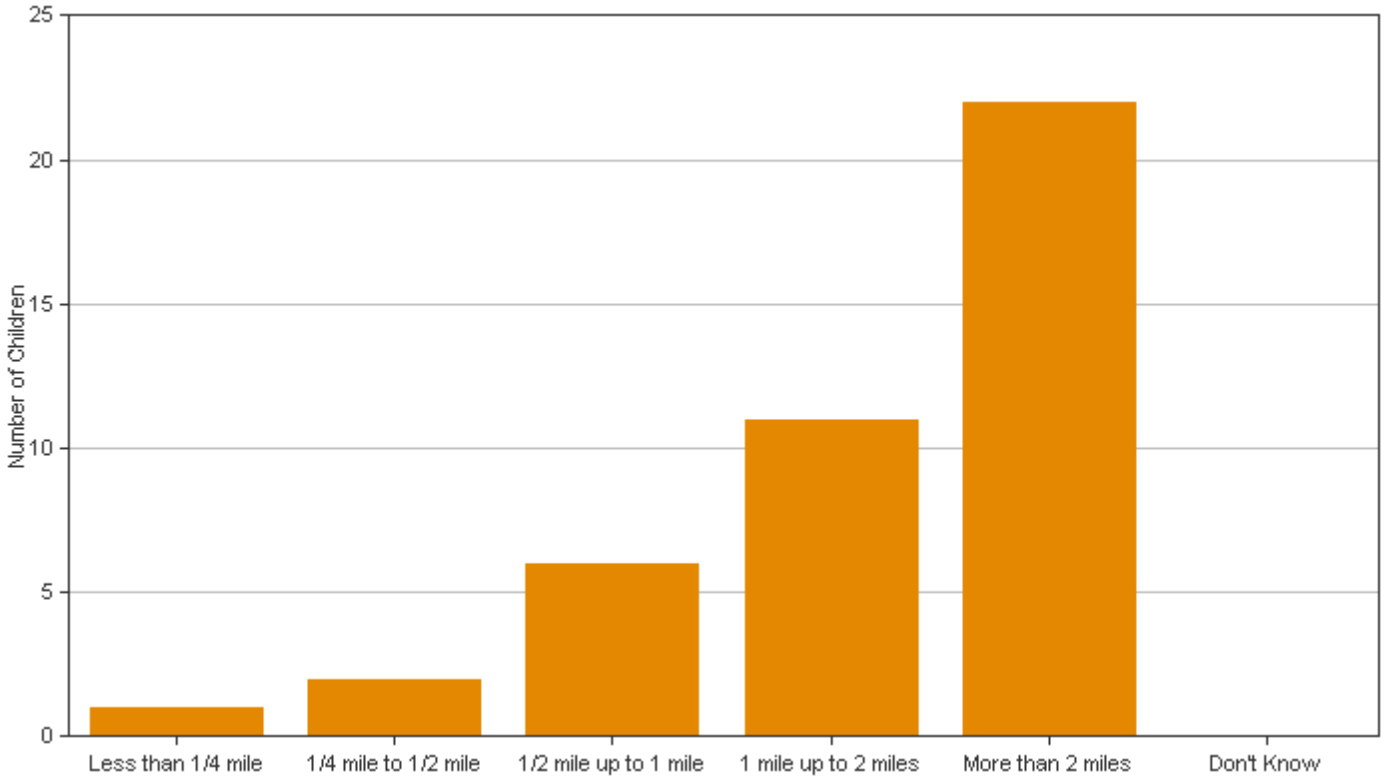
No Response: 7

(Percentages may not total 100% due to rounding.)

Attachment 4

C.W. Stanford Middle School / Spring 2010

Number of Children by Distance they Live from School



Number of Children by Travel Mode to School and Distance Between Home and School

Mode	Less than 1/4 mile	1/4 mile up to 1/2 mile	1/2 mile up to 1 mile	1 mile up to 2 miles	More than 2 miles	Row Totals by Mode
Walk	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Bike	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
School Bus	0 (0%)	0 (0%)	1 (2.4%)	4 (9.5%)	11 (26.2%)	16 (38.1%)
Family Vehicle	1 (2.4%)	2 (4.8%)	5 (11.9%)	5 (11.9%)	10 (23.8%)	23 (54.8%)
Carpool	0 (0%)	0 (0%)	0 (0%)	2 (4.8%)	1 (2.4%)	3 (7.2%)
Transit	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Other	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Column Totals by Distance	1 (2.4%)	2 (4.8%)	6 (14.3%)	11 (26.2%)	22 (52.4%)	

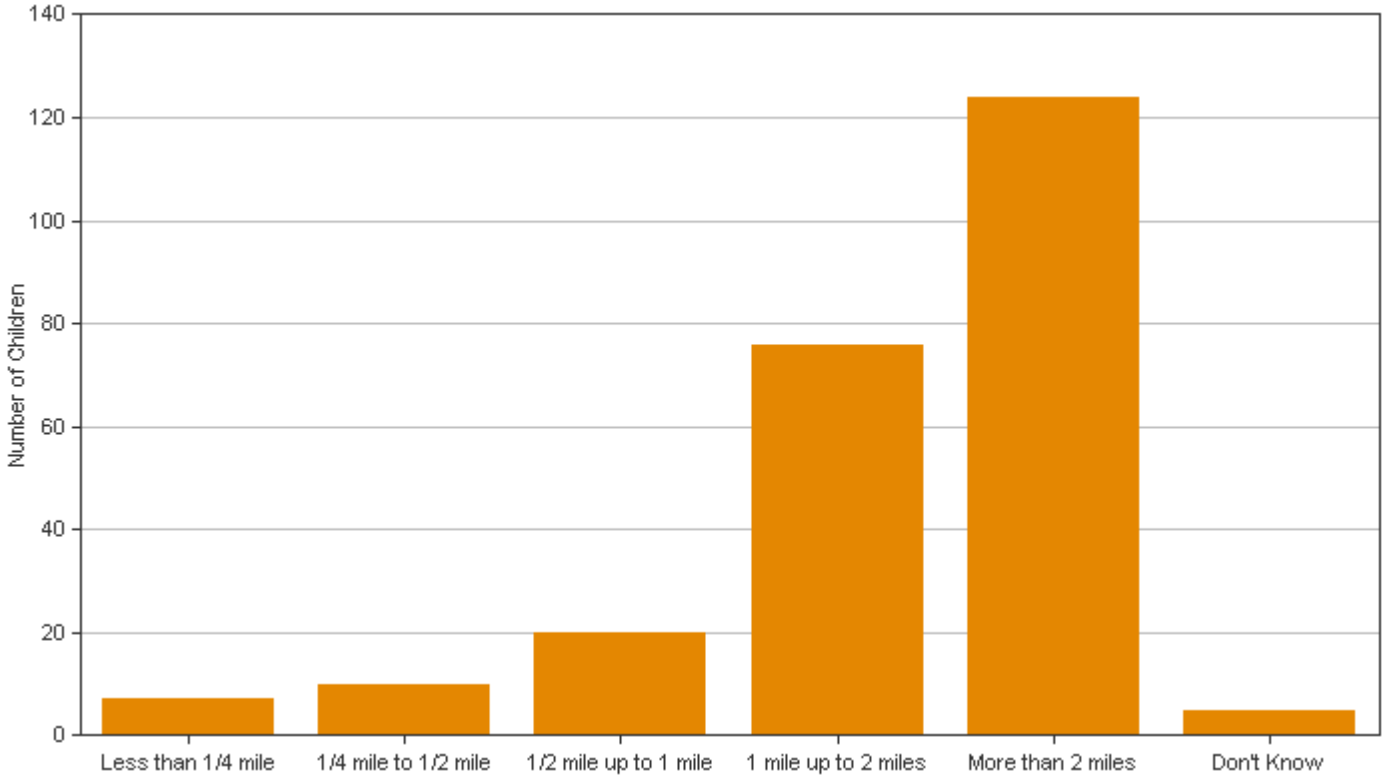
No Response: 1

(Percentages may not total 100% due to rounding.)

Attachment 4

Cameron Park Elementary School / Spring 2010

Number of Children by Distance they Live from School



Number of Children by Travel Mode to School and Distance Between Home and School

Mode	Less than 1/4 mile	1/4 mile up to 1/2 mile	1/2 mile up to 1 mile	1 mile up to 2 miles	More than 2 miles	Row Totals by Mode
Walk	2 (0.8%)	1 (0.4%)	0 (0%)	0 (0%)	0 (0%)	3 (1.2%)
Bike	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
School Bus	2 (0.8%)	1 (0.4%)	8 (3.4%)	31 (13.0%)	33 (13.9%)	79 (33.2%)
Family Vehicle	3 (1.3%)	7 (2.9%)	11 (4.6%)	44 (18.5%)	85 (35.7%)	150 (63%)
Carpool	0 (0%)	0 (0%)	1 (0.4%)	0 (0%)	5 (2.1%)	6 (2.5%)
Transit	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Other	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Column Totals by Distance	7 (2.9%)	9 (3.7%)	20 (8.4%)	75 (31.5%)	123 (51.7%)	

No Response: 8

(Percentages may not total 100% due to rounding.)

Attachment 5

Excerpt from Minutes – December 18, 2013 OUTBoard Meeting

Agenda Item IV: **Regular Agenda**
Draft Safe Routes to School (SRTS) Strategic Action Plan.

OUTBoard Action: This plan has been referred to the OUTBoard by the BOCC for review, with a request that a recommendation be returned to the BOCC in time for its February 18, 2014 regular meeting.

Abigaile Pittman gave an overview of the SRTS Plan.

Nancy Baker noted that the numbers are old and suggested staff contact the Board of Education to see if the schools have updated numbers.

Ted Triebel asked for the maximum distance one way.

Abigaile Pittman responded that the maximum distance is 2 miles.

Paul Guthrie asked about the distance for busing and Don Wollum asked about the greatest distance for busing.

Abigaile Pittman referred the Board to the map and advised that it shows the traveling distances.

Nancy Baker advised the Board that the County also buses students based on 'hazard' and literally have students who live across the street from the school who are bussed because it is not safe for them the cross the road. Additionally this program will make it accessible for walkers and bikes not only for the elementary students but also for the high school students at both Cedar Ridge and Orange High School as they are beside two of the chosen elementary schools. Nancy noted there are also large apartment complexes within easy walking distance from Grady Brown and some facilities there are going to help a large group of children. She noted that with Cameron Park being in downtown Hillsborough the benefits will include a lot of the residents.

Pascale Mittendorf noted that many children within walking distance are driven which creates a lot of traffic congestion. That is especially a concern with Cameron Park as there a bad corner on a hill with limited line of sight. It is a dangerous location.

Paul Guthrie commented that he was not involved in the placement of the schools but he was involved very heavily in the placement of 2 schools in the Chapel Hill district and he does not remember any time that they talked about the issue of walking to school. He said the only issue was the driving issue and the only place you could put a school with the acreage required was out where there aren't any people. He noted that the system has been built where the schools are located are out away from the towns, so he is very enthusiastic about the request.

Holly Reid agreed that the short term costs of locating schools where it is less expensive but then there is the great long term cost for busing in the County system. She pointed out that the project also helps the afterschool and extra-circular activities, and since the facility are available for public use it also benefits that use not just before and after school but multiple times a day and weekends.

Attachment 5

Abigaile Pittman noted that in the process of meeting with DOT regarding the maintenance for the facilities there will need to be a contract with the Town of Hillsborough to provide that maintenance. This will be one of the discussions at the joint meeting between the BOCC and the Town of Hillsborough in February. The final decision on the Plan will be postponed until after that meeting has been held. She noted it could be a March or April BOCC meeting.

Jeff Charles noted that if there are going to be bicycle lanes or bicycle areas there has to be maintenance in those area that involves running a power brush over them to get debris, gravel, broken glass, etc.

Abigaile Pittman advised she would make sure it was included in the discussion. She also told the group that Grady Brown School went into the project list for the DCHC MPO, who is allowed to submit 20 bike/ped projects up to DOT, and Grady Brown made it as number 19.

Nancy Baker asked Abigaile if that included the overpass and was told that it does.

Ted Triebel asked if there was any effort to prioritize between the three schools as to which one should go forward first. He noted that the possibility of getting funding for all three was slim and Abigaile Pittman responded that the Grady Brown projects have been prioritized by the BOCC.

Abigaile Pittman noted that Hillsborough submitted the Cameron Park projects as a package but it wasn't accepted as one of the 20 projects.

Alex Castro asked if the County would have to pay for 20% of the costs of the Grady Brown project.

Abigaile Pittman responded that there is money left over that was not obligated because very few of the plan are ready right now if this project can get there first with an adopted plan and constructability with DOT resolved and cost estimates that are fairly accurate, with the fact that the County has staff engineers that can lay out some pre-engineering work, the project can submit for some of the remaining SAFETEA-LU funds that have no matching projects. She added that if not, because DOT scored it in their scoring list, it would be eligible for the funds that have a 20% match.

Alex Castro asked if the project was in a position to do all of that and have all the work prepared.

Abigaile Pittman advised that was the goal.

Motion made by Alex Castro that the OUTBoard recommend to the County Commissioners that they consider approving the 3 SRTS action plans identified for Grady Brown, Stanford Middle School, and Cameron Park Elementary School projects. Seconded by Jeff Charles.
Vote: Unanimous

Attachment 6

Excerpt from Minutes – February 24, 2014 and March 10, 2014
Orange County Schools

The Orange County Board of Education met on February 24, 2014 in the Media Center at Orange High School with the following business taking place:

14-02-(2)-07 Safe Routes To Schools Strategic Action Plan – Abigaile Pittman, Orange County Planning Department, presented a report on the Safe Routes to School Strategic Action Plan required for implementing a Safe Routes to School (SRTS) Program in Orange County. Information and documents reviewed included: Unified Development Ordinance Amendment Outline; SRTS Strategic Action Plan Overview; Projects and Project Funding; Implementation-Next Steps; Process Flowchart. This agenda item will be brought back to the next board meeting for Board consideration for approval.

The Orange County Board of Education met on March 10, 2014 in its offices located at 200 East King Street, Hillsborough, NC with the following business taking place:

14-03-12 Safe Routes To Schools Strategic Action Plan Approval CONSENT – The Safe Routes to School Strategic Action Plan was approved (as presented to the Board of Education on February 24, 2014).

TOWN OF HILLSBOROUGH

MINUTES
HILLSBOROUGH BOARD OF COMMISSIONERS
Excerpt: Safe Routes to School Strategic Action Plan for Orange County Item
March 10, 2014
7:00 PM, Town Barn

PRESENT: Mayor Tom Stevens and Commissioners Kathleen Ferguson, L. Eric Hallman, Evelyn Lloyd, Brian Lowen, and Jenn Weaver

STAFF PRESENT: Town Manager Eric Peterson, Human Resources Director/Town Clerk Katherine Cathey, Police Chief Duane Hampton, Planning Director Margaret Hauth, Public Works Director Ken Hines, Town Engineer/Utilities Director Kenny Keel, Town Attorney Bob Hornik

10. ITEMS FOR DECISION – REGULAR AGENDA

A. Safe Routes to School Strategic Action Plan for Orange County

Abigaile Pittman, Transportation/Land Planner for Orange County, made a brief presentation. She requested that the board endorse the plan. Safe Routes to School is a federally funded program providing opportunities for bicycling and walking to school, to improve safety, to reduce congestion, and to improve children's health. The NCDOT gave Orange County an award to prepare the action plan in July 2008. Three schools were chosen to be included in the plan. NCDOT contracted with a consultant to develop a plan in 2009. It was delivered to staff in 2012. Some updates have been made since then. Stanford Middle, Cameron Park Elementary and Grady Brown Elementary are the chosen schools.

She reviewed funds -- SAFETEA-LU funds are funds with no local match. After that, MAP-21 funds are subject to the usual 80-20 match.

Following adoption, the subcommittee would be the advisory committee. The planning director would be the town representative.

NCDOT is taking a closer look at the Grady Brown site and coming back soon with preliminary information about the projects there.

Acknowledged issue of sidewalk maintenance that came up at Feb 27 joint TB/BOCC meeting. In April BOCC will vote on adoption.

Commissioner Weaver asked why DOT chose Grady Brown. It was the county's request. The pedestrian crossing on the bridge has been a priority for years. Anything we can do to get sidewalks to the bridge helps, Ms. Pittman answered.

7:46:35 PM Commissioner Hallman made a motion to adopt the resolution to endorse the plan. Commissioner Ferguson seconded. The vote was unanimous, 5-0.

Respectfully submitted,

Katherine M. Cathey

Katherine M. Cathey
Town Clerk

DRAFT

RESOLUTION ADOPTING THE
SAFE ROUTES TO SCHOOL STRATEGIC ACTION PLAN
For ORANGE COUNTY

WHEREAS, The Safe Routes to School Advisory Committee was appointed and began work with the goal of recommending improvements around 3 Hillsborough area schools to facilitate safe walking routes for students; and

WHEREAS, The Advisory Committee was made up of community advocates for walking, planning staff members and school staff members. The Committee was assisted by NCDOT and a planning consultant to formulate a the draft action plan; and

WHEREAS, The draft action plan provides a detailed inventory of existing conditions, planned improvements, recommended improvements and program recommendations to implement the goals; and

WHEREAS, The draft action plan was presented at a public workshop in April 2008 to solicit public comment and feedback; and

WHEREAS, The draft action plan has been updated to reflect changes in local conditions since the project inception and has been presented to the Orange County School Board, Town of Hillsborough Board of Commissioners, and Orange County Board of Commissioners for adoption and implementation,

NOW, THEREFORE BE IT RESOLVED BY THE HILLSBOROUGH TOWN BOARD OF COMMISSIONERS, that the Safe Routes To School Strategic Action Plan For Orange County is adopted by the Town of Hillsborough as a guide for improving walkability to the studied schools.

This the 10th day of March, 2014.

SEAL

Tom Stevens, Mayor

Katherine M. Cathey, Town Clerk

RES-2014-019

ORANGE COUNTY BOARD OF COMMISSIONERS

RESOLUTION APPROVING SAFE ROUTES TO SCHOOL (SRTS)
STRATEGIC ACTION PLAN, ORANGE COUNTY, NORTH CAROLINA

WHEREAS, The Safe Routes to School (SRTS) Strategic Action Plan was developed under the NC SRTS Program to identify improvements that can help make bicycling and walking to and from school a safe and healthy transportation alternative; and

WHEREAS, The SRTS Plan is consistent with the goals and objectives of the adopted Orange County 2030 Comprehensive Plan which supports the development of safe pedestrian and bicycling facilities to promote connectivity through the integration of land use planning and transportation planning; and

WHEREAS, Adoption of the SRTS Plan demonstrates local commitment to the objectives of the SRTS program and serves to improve project scoring and funding opportunities through the Statewide Transportation Improvement Program (STIP) project planning process; and

WHEREAS, The Safe Routes to School Advisory Committee was appointed in 2008 and recommended improvements around three Orange County schools to facilitate safe walking and bicycling routes for students; and

WHEREAS, The Safe Routes to School Advisory Committee was made up of community advocates for walking and bicycling, planning staff members and Orange County School staff members, and was assisted by NCDOT and a planning consultant to develop a draft action plan; and

WHEREAS, The SRTS Plan provides a detailed inventory of existing conditions, planned improvements, recommended improvements and program recommendations to implement the goals; and

WHEREAS, The Plan development process included a public workshop that sought input from residents, including parents, teachers, principals, children, Town of Hillsborough staff, and Orange County staff; and

WHEREAS, The SRTS Plan has been updated by staff to reflect changes in local planning documents and funding resources since the project inception; and

WHEREAS, The Orange Unified Transportation Board (OUTBoard) has reviewed the SRTS Plan and unanimously recommended approval; and

WHEREAS, The Orange County School Board and the Town of Hillsborough Board of Commissioners have reviewed and approved the SRTS Plan,

NOW THEREFORE BE IT RESOLVED by the Orange County Board of Commissioners that the attached document titled "Safe Routes to School (SRTS) Strategic Action Plan, Orange County, North Carolina" is hereby approved:

Adopted by Orange County:

This the ____ day of _____, 2014.

_____

Barry Jacobs, Chair
Orange County Board of Commissioners

_____

Donna Baker
Clerk to the Orange County Board of Commissioners

County Seal:

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 5-d

SUBJECT: Orange County Community Development Block Grant (CDBG) Program – FY 2014 Infrastructure Program - $3,000,000

DEPARTMENT: Housing, Human Rights, and Community Development

PUBLIC HEARING: (Y/N) Yes

ATTACHMENT(S):
Resolution
Application Summary

INFORMATION CONTACT:
James E. Davis, Jr., 919-245-2490

PURPOSE: To receive public comments regarding a proposed FY 2014 Community Development Block Grant (CDBG) Infrastructure Program Application, approve a resolution authorizing the submission of the formal application document due by May 1, 2014 and authorize the Chair to sign the application and corresponding attachments on behalf of the Board.

BACKGROUND: The County was recently notified by the N.C. Department of Environment and Natural Resources (DENR) of the availability of $26 million in CDBG funds for infrastructure activities. Eligible municipalities may apply for up to $3 million to install, construct or otherwise improve public water or sewer infrastructure to mitigate public and environmental health problems in areas where at least 51 percent of the community residents are low to moderate income persons. Applications for the second (and final) round of funding are due by May 1, 2014.

For several years, the Board of Commissioners and the Town Boards have discussed the extension of sewer service for the Historic Rogers Road Community. It has been determined that the funding for the extension of sewer services will need to come from the County's and Towns' general revenue sources and not from Solid Waste reserves. The estimated cost of extending sewer services to the Historic Rogers Road Community is $5,800,000.

Since February 21, 2012 the Historic Rogers Road Neighborhood Task Force has met to discuss, among other things, investigating and making recommendations to the Board of County Commissioners, the Chapel Hill Town Council and the Carrboro Board of Aldermen for neighborhood improvements to include sewer service to the Historic Rogers Road neighborhood. The Task Force has also discussed options for funding the extension of sewer service to this area and the financial impact it will have on the County and Towns. This proposed application, if successful, would lessen the financial impact to the local governments for the provision of sewer service to this community.

In order to receive this funding, the County must conduct two public hearings. The first hearing was held on October 15, 2013 and provided an opportunity for the public to comment on the

CDBG needs in Orange County. In accordance with the application guidelines, a second hearing is necessary to afford residents the opportunity to comment on the proposed funding application to extend sewer services to the Historic Rogers Road Neighborhood.

FINANCIAL IMPACT: Application for these funds may result in an additional $3,000,000 available for extending sewer service to the Historic Rogers Road Community.

RECOMMENDATION(S): The Manager recommends that the Board:

1) Open the public hearing to receive public comments on the CDBG Infrastructure Program for the extension of sewer service to the Historic Rogers Road Community;
2) Close the public hearing;
3) Approve and authorize the Chair to sign the resolution authorizing the submission of the formal application document by May 1, 2014; and
4) Authorize the Chair to sign the application and corresponding documents on behalf of the Board.

RES-2014-020

RESOLUTION

AUTHORIZING AN APPLICATION FOR CDBG INFRASTRUCTURE FUNDING TO EXTEND SEWER SERVICE TO THE HISTORIC ROGERS ROAD COMMUNITY

WHEREAS, Title I of the Federal Housing and Community Development Act of 1974, as amended, has established the U.S. Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, and has authorized the making of grants to aid eligible units of government in funding the cost of construction, replacement, or rehabilitation of water and wastewater infrastructure, and that the North Carolina Department of Environment & Natural Resources (NCDENR) Division of Water Infrastructure (DWI) was delegated the authority by the state legislature to administer the water and wastewater infrastructure portion of the state grant monies received from the U.S. HUD CDBG program by Session Law 2013-360, Section 15.15(a) as amended by Section 5.3 of Session Law 2013-363, and

WHEREAS, Orange County has need for and intends to construct a wastewater collection system described as the Historic Rogers Road Community, and

WHEREAS, Orange County intends to request state grant assistance for the project,

NOW, THEREFORE BE IT RESOLVED, BY THE ORANGE COUNTY BOARD OF COMMISSIONERS:

That **ORANGE COUNTY** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system.

That **ORANGE COUNTY** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That the **Chair of the Board** and successors so titled, is hereby authorized to execute and file an application on behalf of the **Orange County** with the State of North Carolina for a grant to aid in the construction of the project described above.

That the **Chair of the Board** and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That **ORANGE COUNTY** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 15th day of April, 2014 at Chapel Hill, North Carolina.

_____

(Signature of Chief Executive Officer)

_____

(Title)

Application Summary

FY2014 Orange County Historic Rogers Road CDBG Infrastructure Program Application

Background

The General Assembly allocated $26 million in federal CDBG funds to the infrastructure program, and transferred the funds to the North Carolina Department of Environment and Natural Resources (NCDENR) to administer. Orange County received notice from NCDENR that eligible municipalities may apply to receive up to $3 million dollars over a three (3) year period to construct public water and/or sewer infrastructure in areas where the percentage of low to moderate income persons is at least 51 percent. The purpose of this program is to mitigate public and environmental health problems in these lower income areas. Orange County will apply for the maximum award of $3 million dollars to install sewer service in the Historic Rogers Road area.

Application Highlights

Eligibility Criteria

1. Property owners must have incomes below 80% of the published HUD Area Median Income.
2. All area properties must connect to the public sewer system once the system is installed.

Terms of Assistance

All CDBG financial assistance will be in the form of a grant that is proportionally forgiven over the applicable term of recapture.

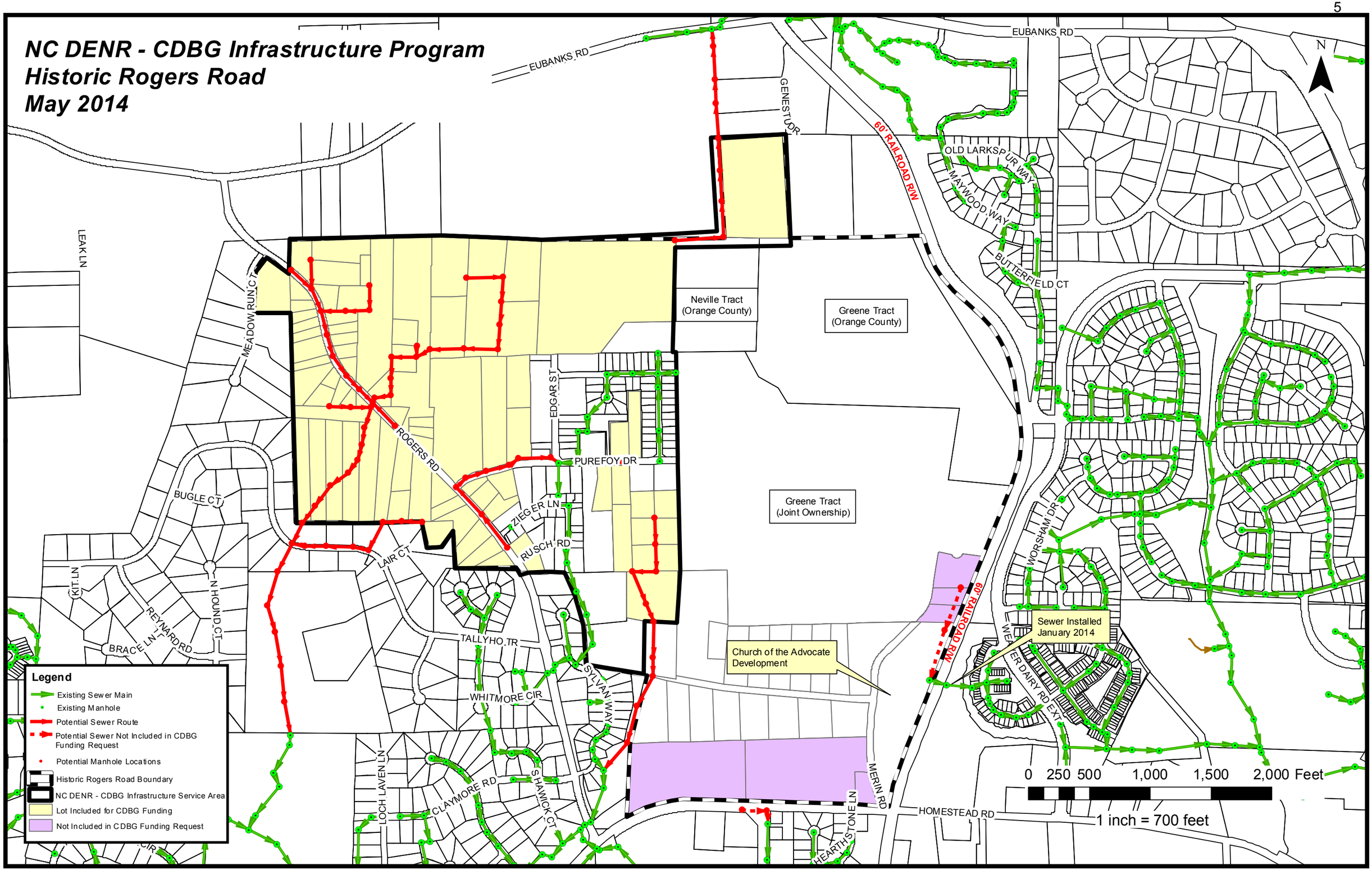
Target Population

This program will extend public sewer service to the 86 identified parcels in the Historic Rogers Road Community as shown on the attached map.

Project Costs

The budget for the proposed application is estimated to be approximately $5.8 million dollars to cover the cost of system design, system construction, septic system abandonments and individual house connection costs.

The application requests $3 million dollars in CDBG funds over three years with the remainder of the project costs covered by local funds.


NC DENR - CDBG Infrastructure Program
Historic Rogers Road
May 2014
EUBANKS RD
GENESTO DR
60' RAILROAD R/W
OLD LARKSPUR WAY
MAYWOOD WAY
BUTTERFIELD CT
LEAK LN
MEADOW RUN CT
Neville Tract (Orange County)
Greene Tract (Orange County)
EDGAR ST
ROGERS RD
PUREFOY DR
BUGLE CT
ZIEGER LN
RUSCH RD
Greene Tract (Joint Ownership)
WORSHAM DR
LAIR CT
KIT LN
N HOUND CT
REYNARD RD
BRACE LN
TALLYHO TR
Church of the Advocate Development
Sewer Installed January 2014
WEAVER DAIRY RD EXT
SYLVAN WAY
WHITMORE CIR
LOCH LAVEN LN
CLAYMORE RD
SHAWICK CT
MERIN RD
HOMESTEAD RD
HEARTHSTONE LN
N
0 250 500 1,000 1,500 2,000 Feet
1 inch = 700 feet
Legend
Existing Sewer Main
Existing Manhole
Potential Sewer Route
Potential Sewer Not Included in CDBG Funding Request
Potential Manhole Locations
Historic Rogers Road Boundary
NC DENR - CDBG Infrastructure Service Area
Lot Included for CDBG Funding
Not Included in CDBG Funding Request

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 5-e

SUBJECT: Orange County's Proposed 2014 Legislative Agenda

DEPARTMENT: County Commissioners **PUBLIC HEARING: (Y/N)** Yes

ATTACHMENT(S):
1) Public Hearing Notice

UNDER SEPARATE COVER

2) Proposed Orange County 2014 Legislative Matters Resolution on Statewide Issues with Exhibits
3) NCACC 2013-14 Adopted Legislative Goals

INFORMATION CONTACT:
Commissioner Earl McKee, 245-2130
Commissioner Renee Price, 245-2130
Greg Wilder, County Manager's Office, 919-245-2300

PURPOSE: To:

1) Conduct a public hearing on Orange County's potential legislative items for the 2014 North Carolina General Assembly Session;
2) Close the public hearing and review and discuss the Legislative Issues Work Group's (LIWG) proposed 2014 legislative package and any other potential items for inclusion in Orange County's legislative agenda package for the 2014 North Carolina General Assembly Session;
3) Consider approval of one proposed legislative matters resolution on Statewide Issues; and
4) Consider identifying three to five specific items from the entire package to highlight for priority discussion at the April 28, 2014 meeting with Orange County's legislative delegation.

BACKGROUND: The North Carolina General Assembly will convene on Wednesday, May 14, 2014. In past years the Board of Commissioners has appointed two Commissioners to serve on a Legislative Issues Work Group (LIWG) to work with staff to develop a proposed legislative package for the County. Based on the work of the LIWG, the BOCC has then reviewed and approved packages of legislative items to pursue for the respective North Carolina General Assembly sessions. Commissioners Earl McKee and Renee Price are serving on the 2014 LIWG and have worked with staff on the proposed 2014 legislative package which is attached.

At its April 1, 2014 regular meeting, the Board approved an item on the Consent agenda authorizing a public hearing on Orange County's proposed 2014 legislative agenda during tonight's regular meeting (Attachment 1 - public hearing notice which was published in three different local newspapers). The notice of the public hearing was also posted on the County's website.

After closing the public hearing, the Board will likely want to review and discuss the LIWG's proposed 2014 legislative package items and any other items as may be addressed during the public hearing. The Board will then need to consider the legislative matters resolution based on the public hearing and Board discussion.

The proposed legislative matters resolution (Attachment 2) for Board consideration addresses a broad range of statewide issues.

Following consideration of the resolution, and in preparation for its April 28, 2014 meeting with Orange County's legislative delegation, the Board may want to consider identifying three to five specific items from the entire package to highlight for priority discussion.

The work of the Legislative Issues Work Group to this point is based on the current information available for the 2014 General Assembly Session. The issues addressed by the Group may evolve and change over the session and require additional attention by the Group and Board of Commissioners. New issues may also arise necessitating additional review.

For reference purposes, staff has provided the North Carolina Association of County Commissioners (NCACC) 2013-14 Adopted Legislative Goals (Attachment 3) which were adopted by NCACC in late January 2013. Some of the items in the legislative matters resolution regarding statewide issues (Attachment 2) generally coincide with NCACC's goals and those items are noted in the resolution accordingly.

FINANCIAL IMPACT: There is no financial impact associated with holding a public hearing other than the newspaper advertisement costs which were included in the approved FY 2013-14 budget.

RECOMMENDATION(S): The Manager recommends the Board:

1) Conduct a public hearing on Orange County's potential legislative items for the 2014 North Carolina General Assembly Session;
2) Close the public hearing and review and discuss the Legislative Issues Work Group's (LIWG) proposed 2014 legislative package and any other potential items for inclusion in Orange County's legislative agenda package for the 2014 North Carolina General Assembly Session;
3) Approve the proposed legislative matters resolution on Statewide Issues; and
4) Consider identifying three to five specific items from the entire package to highlight for priority discussion at the April 28, 2014 meeting with Orange County's legislative delegation.

Attachment 1

ORANGE COUNTY BOARD OF COMMISSIONERS
PUBLIC HEARING NOTICE
FOR
Tuesday, April 15, 2014 at 7:00 p.m.

A public hearing will be held on Orange County's potential legislative agenda for the 2014 North Carolina General Assembly Session. The issue areas to be addressed include:

- Revenue and Taxation
- Transportation Responsibility
- Mental Health
- Smart Start/More at Four
- Bond Referendum for Education
- Broadband
- Jail/Inmate Reimbursement
- Agriculture/Solar Energy
- E-911 Funds
- Electronics Advanced Recycling Fee
- County Civil Rights Ordinance – Additional Authority
- Concealed Weapons in Parks
- Clean Water Management & Other Trust Fund Support

The Board of Commissioners welcomes all comments on all items as may be introduced or addressed at the public hearing. The meeting is open to the public and will be held on Tuesday, April 15, 2014 at the Southern Human Services Center at 2501 Homestead Road in Chapel Hill beginning at 7:00 p.m. If you need additional information, please call Greg Wilder at 919-245-2300.

Attachment 2

RES – 2014 – 021

NORTH CAROLINA

ORANGE COUNTY

RESOLUTION REGARDING LEGISLATIVE MATTERS

BE IT RESOLVED by the Board of County Commissioners of Orange County that the Board hereby requests the Senator and Representatives representing Orange County take the following positions on legislation regarding the following Statewide matters:

1) *** Revenue Options for Local Government** – Support legislation that authorizes any local government to enact any revenue source that is presently available to one or more local governments in the state. Local governments have experienced significant budget cuts in recent years. Providing flexibility regarding revenue options to fund local government services will allow local governments to tailor their respective funding plans based on individual needs and goals;

2) *** Oppose any shift of state transportation responsibilities to counties** – Oppose legislation to shift the state's responsibility for funding transportation construction and maintenance projects to

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An item denoted with a "*" generally coincides with a similar North Carolina Association of County Commissioners (NCACC) 2013-14 Legislative Goal.

counties. Counties cannot afford to assume costs for maintaining secondary roads and/or funding expansion projects. Unlike counties in other states, whose traditional funding responsibilities are secondary roads, North Carolina counties are responsible for the administration of local human services programs, and fund educational operating and capital expenses. The North Carolina Association of County Commissioners (NCACC) estimates that a transfer of secondary road maintenance responsibilities would cost counties more than $500 million annually. Some of the more rural counties would have to increase property taxes by as much as 30 cents per $100 in valuation to generate the amount of revenue needed to maintain the same level of service;

3) **Broadband** – Support legislation, funding, and other efforts to expand broadband capability to the un-served and under-served areas of the State to enhance quality of life as well as expand opportunities for jobs creation, small business development, and growth in farm enterprises. Orange County opposes legislation limiting local governments' efforts to provide broadband and supports legislation and regulations that

would preserve local option and authority where needed to deploy community broadband systems and ensure community access to critical broadband services;

4) **<u>* Sales Tax Exemption</u>** – Support legislation to exempt counties, cities, school boards, community colleges, and the Orange Water & Sewer Authority from payment of state and local sales taxes on purchases within North Carolina. The legislation should contain a provision permitting the state to repay the last refund over a multi-year period to minimize state budget impacts. Alternatively, Orange County supports legislation to fully restore public schools' access to sales tax refunds;

5) **<u>* Smart Start and More at Four</u>** –Orange County supports legislation to increase and ensure secure and stable funding, enhanced quality early care and education, and family access and benefits in settings public and private. The County advocates sustaining teacher quality; evidence-based learning objectives; healthy life styles; and community engagement. Quality early childhood education has proven to help alleviate the achievement gap; curb the need for costly services (including special education); and reduce societal cost

by increasing graduation rates. Orange County Schools and Chapel Hill-Carrboro City Schools are ardent allies in ensuring that actions at the state level support local implementation. Orange County remains strongly supportive of the Orange County Partnership for Young Children in the effective administration and evaluation of services reaching all children throughout the County **(Exhibit A is a summary from Partnership Director Robin Pulver.)**;

6) **County Jail System/Housing State Inmates Reimbursement** – Orange County seeks legislation to protect the fiscal viability of the county jail system by reinstating a reimbursement rate for state inmates housed in county jails and increasing the reimbursement rate for state inmates awaiting post-trial prison transfer. The County appreciates past efforts, in particular the establishment of a Statewide Misdemeanor Confinement Program to provide housing for misdemeanants serving periods of confinement of more than 90 days and up to 180 days. Orange County does not participate in the program due to limited space in the County Jail. The Program which houses misdemeanants serving periods of confinement of more than 90 days and up to 180 days is

working, with Orange County inmates routinely transferred out of Orange County to other facilities;

7) **Agriculture/Solar Energy** – Orange County supports renewable energy initiatives such as House Bill 495/Senate Bill 473 (2011) and Senate Bill 694 (2011) to create a market for agricultural-sourced energy credits. Both provide incentives for farmers to produce renewable energy, which will become increasingly important to preserving and strengthening the agricultural economy and rural infrastructure as well as maintaining Orange County's rural heritage and culture. The lack of continued effective solar energy incentives is a lost opportunity for all North Carolinians, but this is especially true for the agricultural sector. Farmers use a lot of electrical power and are uniquely positioned to become energy producers. Every south-facing barn roof is a candidate for a photo-voltaic (PV) array, and farms usually have open acreage that can support a stand-alone PV array;

8) **Authority to Amend the Orange County Civil Rights Ordinance** – Orange County seeks legislative action to provide the County the authority to include sexual orientation and sexual identity as protected classes.

The Board of Commissioners adopted the Orange County Civil Rights Ordinance in 1994 with the purpose and policy to promote the equal treatment of all individuals. In subsequent years, the County has requested, to no avail, additional legislative authority to amend the Ordinance to include additional protected classes. The Orange County Human Relations Commission formally acted in October 2011 requesting that the Board of Commissioners take the appropriate steps to amend the Orange County Civil Rights Ordinance to include sexual orientation and sexual identity as protected classes. Approximately 89% of Fortune 500 companies prohibit discrimination based on sexual orientation, including Bank of America, Lowe's, Duke Energy, Branch Banking and Trust (BB&T), and Reynolds American (the five largest North Carolina-based public companies in that order);

9) *** E-911 Funds** - Orange County supports permanently extending the authorization to use E911 funds for all public safety disciplines. Orange County appreciates past efforts and supports future initiatives to expand the uses for these funds within the public safety disciplines related to emergency communications and Emergency Medical Services. North Carolina General

Statute (NCGS) 62A-47 Section 9 allowed local governments to use 50% of the funds in the Emergency Telephone System to provide for public safety needs, without limitations imposed under NCGS 62A-46. Public Safety expenditures authorized under Section 9 had to be completed by June 30, 2012;

10) *** Mental Health** – Orange County seeks legislation to ensure that State-funded mental health, developmental disability, and substance abuse services are available, accessible and affordable to all residents and that sufficient state resources fund service provision costs inclusive of sufficient crisis beds;

11) **Land, Water and Agricultural Preservation Funding/Conservation** – Orange County supports Park, Agricultural Preservation, Clean Water and other existing trust funds established for the protection of the State's land, water, biological resources, agriculture, and special places before they are irreversibly lost, and requests that these funds receive additional funding (See Exhibit B - RES-2013-015 regarding funding for the Clean Water Management Trust Fund); and also supports a conservation option under the Use Value Program and a revision to the

revenue and acreage requirements of the Use Value Program to address operations that meet the revenue requirements, but do not meet the minimum ten acres threshold for agricultural operations;

12) **Machinery Act** – Orange County believes that local governments need more flexibility to remedy measurement and/or condition property appraisal errors related to local property tax functions. North Carolina property tax law substantially limits the ability of local governments to address property tax discrepancies, such as prohibiting the refund of prior years' taxes paid after a measurement and/or condition property appraisal error is discovered. Just as local governments can recoup prior years' property taxes from owners for "discoveries", local governments should likewise be authorized to refund prior years' taxes paid when situations such as measurement and/or condition property appraisal errors are discovered;

13) **Homestead Exemption** – Support revisions to the Homestead Exemption provisions of the Machinery Act to

   a) provide greater opportunities for low-income seniors to remain in their homes and not be displaced due to property tax burdens by

approving a one-time ten percent (10%) increase in the income qualification standard; and maintaining the current provisions which increase the income qualification standard each year based on any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year;

b) diminish the discriminatory features of the current exemption provisions relating to married couples by establishing graduated income qualification standards for single individuals versus married couples; and

c) address the ineffectiveness of the exemption provisions in communities where property values increase at substantial rates over short periods of time by capping the increase in additional taxes to be paid to the increase in the Consumer Price Index (CPI) for the preceding year;

14) **Bond Referendum for Education** – Orange County supports a statewide bond referendum to provide State assistance to meet public school and community college construction needs caused by increased enrollment, mandated reduction in class size and other factors;

15) **Electronics Advanced Recycling Fee** - Orange County supports legislation requiring an advance recycling fee (ARF) – for the collection and recycling of computer, television, cell phone and other discarded electronic equipment – to fund the shortfall from the existing producer responsibility funding. The producer responsibility provisions for electronics recycling require manufacturers to maintain records by category on equipment sales and pay corresponding fees to the State of North Carolina. The State in turn distributes those funds to North Carolina counties. The producer responsibility funds only cover a portion of the expenses that North Carolina counties incur for electronics recycling (Example: Orange County receives funding equal to approximately ten percent (10%) of its actual electronic recycling expenses);

16) **Concealed Weapons in Parks** - Seek legislation authorizing counties to fully regulate the carrying of concealed weapons in parks. Specifically the Orange County Board of Commissioners supports revision of North Carolina General Statute 14-415.23, which limits the authority of local governments to regulate the carrying of concealed weapons in parks and other areas where large numbers of children may congregate. Parks

are areas where families with young children spend significant amounts of time. Ensuring there are no firearms present which may accidentally or unintentionally discharge is a legitimate interest of local governments in furthering the safety of their residents.

An item denoted with a "*" generally coincides with a similar North Carolina Association of County Commissioners (NCACC) 2013-14 Legislative Goal.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution was adopted this the 15th day of April, 2014.

I, Donna Baker, Clerk to the Board of Commissioners for the County of Orange, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a meeting held on April 15, 2014 as relates in any way to the adoption of the foregoing and that said proceedings are recorded in Minute Book No. ____ of the minutes of said Board.

WITNESS my hand and the seal of said County, this ___ day of April, 2014.

_____
Clerk to the Board of Commissioners

EXHIBIT A

Orange County Partnership for Young Children
Robin Pulver, Executive Director
Smart Start NC Pre K Information

Smart Start 2014-2015:

- Maintain Smart Start funding or increase funding to prior year levels.
- Continue the focus on developmentally appropriate early literacy and evidence based programs for early care, education, and services.
- Increased funds will allow OCPYC to fund necessary programs in our community and expand funding to Early Intervention/Health and Family Support projects. Continued cuts to Smart Start funding over the years have decimated these programs.
- Continue the waitlist reduction for child care subsidy in the upcoming year.
- Enhance and maintain quality in early care and education in all settings (public and private) by supporting teacher quality; evidence based learning objectives; healthy life styles and community engagement.

NC Pre K (MAF) 2014-2015:

- Support and increase funding to serve more children in quality early education.
- NC Pre K should continue to be offered in a variety of settings, including child care, public schools, head start, etc. Maintaining this diversity allows the maximum of parent choice and funding.
- Maintain the definition of "at-risk." At a time when more children are living in poverty, more NC Pre K slots need to be available for children.

OCPYC in conjunction with school districts, CHTOP Head Start and 5 private child care centers continue to work collaboratively to provide the highest quality Pre K services. The school districts have been supportive of OCPYC and its administration and implementation of NC Pre K in Orange County.

Conclusion:

I want to thank the Orange County Board of County Commissioners for the opportunity to give an update on the status of Smart Start and NC Pre K funding. We know that quality early childhood programs help to alleviate the achievement gap, reduce the need for costly services including special education, and reduce overall societal cost by increasing graduation rates. I also want to thank Commissioner Mark Dorosin and Assistant County Manager Clarence Grier for their service to the OCPYC Board as well as thanking the County Department Directors who serve on our Board and provide guidance and assistance to early childhood services in Orange County.

Please do not hesitate to contact Robin Pulver, OCPYC Executive Director at 919-967-9091 or rpulver@orangesmartstart.org if you need any additional information.

ORANGE COUNTY BOARD OF COMMISSIONERS

Resolution to Support 2013-2015 Funding for the Clean Water Management Trust Fund

Whereas, the 1996 North Carolina General Assembly established the Clean Water Management Trust Fund to provide an innovative and non-regulatory approach to the protection and restoration of the surface waters all across the state; and

Whereas, the Clean Water Management Trust Fund is a non-regulatory program established to help meet infrastructure needs of municipalities and counties, restore degraded surface water, protect watersheds, increase recreational opportunities, and enhance quality of life in this state, all critical components for communities to obtain a competitive edge in their economic development; and

Whereas, the Clean Water Management Trust Fund has funded 452 infrastructure projects to assist North Carolina communities balance infrastructure needs with environmental protection and to help struggling communities become self-reliant with future infrastructure needs; and

Whereas, infrastructure needs across the state addressing drinking water, wastewater, and stormwater are estimated at $16.6 billion between 2005 and 2030; and

Whereas, the Clean Water Management Trust Fund has leveraged more than $1 billion of private, local and federal funds to support projects, and Orange County has, either directly or in partnership efforts with other entities, benefited from approximately $2.6 million in grants and approximately $2.3 million in loans from the Fund; and

Whereas, the General Assembly has reduced funding for the Clean Water Management Trust Fund by 78% since 2010; and

Whereas, limited funding for the Clean Water Management Trust Fund left 88% of 2012 critical local needs unmet; and

Whereas our economic vitality, health and ability to sustain ourselves and the natural environment all rely on clean water; and

Whereas, surface water must be protected to ensure sufficient drinking water supply for the state's growing industrial base and population; and

Whereas, Clean Water Management Trust Fund has provided grant(s) to Orange County to do one or more of the following: to protect, restore or enhance surface water quality for the benefit of the state's agriculture, military, recreation and tourism economies and to protect our natural heritage for the benefit of all North Carolinians;

NOW, THEREFORE, BE IT RESOLVED by the Orange County Board of Commissioners at its meeting on February 19, 2013 that Orange County supports the Clean Water Management Trust Fund and requests that the Fund receive an increase in recurring funding from the Governor and the North Carolina General Assembly for the 2013-2015 biennial budget.

This the 19th day of February 2013.

Barry Jacobs, Chair
Orange County Board of Commissioners

NORTH CAROLINA
ASSOCIATION OF COUNTY COMMISSIONERS

Top Five Goals for 2013-14

1. Oppose shift of state transportation responsibilities to counties
2. Reinstate ADM and lottery funds for school construction.
3. Oppose unfunded mandates and shifts of state responsibilities to counties.
4. Ensure adequate mental health funding.
5. Preserve the existing local revenue base.

Agriculture Legislative Goals

AG-1: Adequately fund agricultural research and extension services.
Support legislation to fund the agricultural and research extension offices through the University of North Carolina system, principally at N.C. State University and N.C. A&T State University. Extension offices are located throughout the state and facilitate programs that assist residents in a wide variety of programs focused on agricultural economic development. Adequate funding of these programs benefits the agriculture economy in every county.

AG-2: Support and promote conservation of working lands and farmland preservation.
Support legislation to promote and preserve working farmlands by including these lands in the state tourism plan, by retaining the current authority for the present use value system, by maintaining funding for the Ag Development and Farmland Preservation Trust, and by exploring the impacts of transfer of development rights.

Environment Legislative Goals

ENV-1: Restore state funding and responsibility for river basin monitoring, streamline rulemaking, and enhance regional cooperation.
Support legislation to enhance monitoring for all river basins in North Carolina and review the rule-making process to enhance regional cooperation. Increased monitoring would allow jurisdictions to better assess compliance with water quality rules and, over time, allow the Division of Water Quality to make better decisions regarding future promulgation of water-quality rule making.
Seek legislation to streamline local water supply reservoir permitting without sacrificing the scientific rigor of Environmental Impact Assessment and ensure adequate opportunities for public and local official comment. North Carolina is a fast-growing state that has already experienced drought-related challenges to its water supply, impacting both quantity and quality. It is likely that many new sources of drinking water will be needed to meet future demand, yet the timetable to bring a new water reservoir on line can take years, even decades, to satisfy all the environmental permitting requirements mandated by the state.

ENV-2: Eliminate requirement for a 10-year solid waste management plan and add a requirement in the Solid Waste Management and Facilities annual report for long-term planning.
Support legislation to eliminate the statutory provisions requiring units of local government to prepare 10-year solid waste management plans in order to simplify the process, reduce costs and produce results more relevant for local governments. Currently, a 10-year plan and any changes to it, including mandatory three-year updates, must often be approved by multiple units of government, even those that may not utilize local waste disposal facilities. The original and primary reason for requiring 10-year plans was to measure remaining landfill space to ensure future space availability. Other state rules require an annual survey of all landfill facilities to calculate remaining space and, with modern Geographical Information Systems, there is no need for the 10-year plan to duplicate this effort.

ENV-3: Authorize some county oversight of bio-solids application.
Support legislation that provides county governments some opportunity to regulate and/or have input into, but not prohibit, bio-solids application activities, including the acceptable "classes" of bio-solids for application and the prohibition of bio-solids application in certain environmentally sensitive areas such as critical watersheds. The appropriate application of bio-solids for agricultural use should be allowed with counties playing a role in the process.

ENV-4: Modify spray irrigation systems classification for volunteer fire departments.
Support legislation to change North Carolina Division of Water Quality (DWQ) wastewater system classification rules that currently classify a spray irrigation system such as one utilized by volunteer fire departments as "commercial." When the flow generated by the system is domestic quality/non-industrial process wastewater, the system should be held to the same monitoring and testing standards as a residential wastewater system under DWQ jurisdiction. In the alternative, volunteer fire departments should also be excluded entirely from the "commercial" classification. The annual inspections and testing costs associated with a "commercial" designation for a spray irrigation system serving a volunteer fire department can be several thousands of dollars. Accounting for the type of flow actually treated by a system rather than assigning a blanket "commercial" designation to the system would significantly reduce volunteer the annual costs for fire departments across the state, saving taxpayer dollars supporting these services.

ENV-5: Monitor and protect counties from negative fiscal and environmental impacts caused by natural resource extraction and oppose removal of Virginia's ban on uranium mining.
Support state legislative and regulatory actions to protect county budgets and services from any negative impacts resulting from natural resource extraction. The state is moving forward in exploring new means of, and additional locations for, natural gas extraction. Such activities have the potential to affect county government operations and quality of life in impacted areas, and therefore could increase county service costs.

Health & Human Services Legislative Goals

HHS-1: Ensure adequate mental health funding.
Seek legislation to ensure that state-funded mental health, developmental disability, and substance abuse services are available, accessible and affordable to all residents and that sufficient state resources fund service provision costs inclusive of sufficient crisis beds and supportive housing. While North Carolina counties largely fund social services administration and health services, the state has been traditionally responsible for mental health expenses.
The state is undertaking a massive restructuring of community mental health services, converting and merging existing local management entities into managed care organizations charged with overseeing a capitated model of funding. State budget cuts and federal policy changes have reduced statewide resources to support crisis services, chronic mental health management, and state psychiatric hospital capacity. Policy changes have shifted public guardianship responsibilities from LMEs to county social services staff.
The state has purchased local hospital beds set aside for the mentally ill, but additional funding is needed for increased bed capacity. Recent federal action to relocate adult care home residents suffering from mental illness to community-based housing will require increased and sustained state funding to build local supportive housing resources and wrap-around services.

HHS-2: Retain county management of nonemergency Medicaid transport.
Seek legislation that allows counties to retain the management and coordination of Medicaid nonemergency medical transportation services. A special provision in the 2013 State Appropriations Act directed the N.C. Department of Health and Human Services to develop and issue a request for proposals to privatize the management of nonemergency medical transportation services for Medicaid recipients. A statewide transportation management brokerage firm could remove all coordination efforts currently in place to share transportation services costs amongst funding sources.
North Carolina is recognized nationally for its coordinated system of community human services transit systems. Largely managed by professional transit administrators under the oversight of county management, these coordinated systems provide efficient trip scheduling and travel for an array of human services clients including veterans, elderly citizens, children in daycare, and Medicaid recipients. Shared trips to the same geographic area equate to shared costs among the clientele, with cost efficiencies evidenced by North Carolina's cost-effective per member per month (pmpm) cost of $2.45. Other states have pmpm costs averaging $6 and above.

HHS-3: Preserve federal block grants and state aid to counties for county-administered programs and oppose unfunded workload mandates.
Seek legislation and monitor state budget activities to ensure that federal block grant and state aid to counties funds, traditionally used to support county-administered social and health services, are not redirected to offset state administrative expenses. Support human services administrative simplification efforts and resist changes in state policies and procedures that add to county administrative costs.
Counties have already experienced an annual loss of $36 million in federal welfare reform funds and looming federal deficit reduction measures are likely to compound these losses for health, social services, and mental health programs. The state has eliminated its $5.4 million annual appropriation in state aid to counties for social services, although some state aid dollars remain

for county health expenses. The state has backfilled state budget cuts in childcare and other human services programs with federal dollars once designated for direct county programs. County budgets must be protected as the state continues to grapple with anemic revenue growth, and as fewer federal dollars are made available for community-based human services.

HHS-4: Restore local autonomy to LME/MCO governance structure.
Seek legislation to restore local autonomy to LME/MCO governance structure, to ensure that each county be allowed to appoint, at a minimum, one county commissioner to its local LME/MCO Board. S191, enacted in the 2012 legislative session, sets maximum size limitations of 21 members on LME/MCO boards, and stipulates board membership composition for 10 of these members to specific consumer, health, insurance and finance disciplines. Counties participating in an LME/MCO with at least 12 county members cannot be assured of appointing one of its county commissioners to represent its interests and that of its constituents on the LME/MCO governance board. LME/MCOs with population catchment areas of 1.25 million or more are exempt from these limitations.

HHS-5: Oppose weakening of smoke-free restaurant and bars law.
Oppose any bill or amendment that weakens current statutory regulations requiring smoke-free restaurants and bars. The 2004 General Assembly enacted a comprehensive ban on smoking in all restaurants and bars and set up a regulatory framework to ensure compliance with the smoke-free requirements.

HHS-6: Increase Nursing Home Community Advisory Committee membership flexibility.
Seek legislation to provide greater flexibility in the membership of Nursing Home Community Advisory Committees. Per G.S. 131E-128, every county having a nursing home within its boundaries must establish a nursing home advisory committee to monitor nursing home care and resolve grievances of nursing home residents. As a part of its monitoring responsibilities, each advisory committee must visit each nursing home within its jurisdiction at least four times per year. Counties with four or more nursing homes must appoint NHCA subcommittees to manage this on-site workload. Advisory committees and subcommittees cannot include any members who are persons or family members with a financial interest in a home served by the committee, an employee or governing board member of such a home, or an immediate family member of a nursing home resident. These exclusions limit the number of interested parties wishing to serve on an NHCA, and counties throughout the state are having difficulty identifying persons to serve on these committees.

HHS-7: Increase childcare subsidies to reduce waiting lists and support funding for Smart Start and NC Pre-K.
Support an increase in childcare subsidies to ensure access to affordable childcare and support funding for early childhood and pre-kindergarten programs. Continuing state budget challenges have diminished state resources to backfill one-time federal dollars for childcare expenses and offset state cuts in childcare subsidies Smart Start and N.C. Pre-K. As of July 2012, nearly 37,500 children were waiting for childcare services, likely preventing their parents from remaining in, or joining, the workforce. Smart Start and N.C. Pre-K faced 20 percent state budget cuts in 2011, despite continued growth in the Pre-K population.

HHS-8: Increase Medicaid rates to cover costs.
Support a rate increase for Medicaid services to at least cover cost of service. In an effort to curb Medicaid costs, legislative actions over the past 10 years routinely show a Medicaid service-provider rate reduction or a reduction in the inflationary increases for reimbursement rates, increases to keep pace with medical inflation. Despite a 50 percent plus increase in Medicaid clients, fewer physicians are choosing to treat Medicaid clients given lower reimbursement rates than that offered under private insurance plans.

HHS-9: Support an increase in food and lodging inspection fees to cover costs.
Seek legislation to increase food and lodging inspection fees or authorize county governments to charge cost-based fees for restaurant and facility inspections. Unlike other inspection fees such as building inspections fees that can be set to recover costs, food and lodging inspection fees are set statutorily and do not reflect county costs of inspections operations and administration. The state collects the current fee, which is set at $75 per annual business inspection, and returns 66 percent of these revenues to the county of origin. Not only is this fee well below actual inspections costs, no additional fees are permitted should county inspectors need to revisit an individual business multiple times to ensure compliance with health and safety regulations.

HHS-10: Restore state funding of public health accreditation.
Seek legislation to restore state funding for the state-mandated accreditation program for county public health departments. G.S. 130A-34.1 requires all local public health departments to obtain and maintain accreditation, which examines a local health department's capacity to provide essential public health services, its facilities and administration, its staffs' competencies and training procedures or programs and its governance and fiscal management. The process includes a self-assessment, a site visit by a team of experts to clarify, verify, and amplify the information in the self-assessment and accreditation approval by the Local Health Department Accreditation Board, which is housed and staffed by UNC's Institute for Public Health. Failure to obtain and maintain accreditation by July 1, 2014, will jeopardize state and federal funding for public health services. The 2012 State Appropriations Act eliminated the $300,000 in recurring funding to support UNC administration of the public health accreditation program.

Intergovernmental Relations Legislative Goals

IGR-1: Oppose any shift of state transportation responsibilities to counties.
Oppose legislation to shift the state's responsibility for funding transportation construction and maintenance projects to counties. Counties cannot afford to assume costs for maintaining secondary roads and/or funding expansion projects. Unlike counties in other states, whose traditional funding responsibilities are secondary roads, North Carolina counties are responsible for the administration of local human services programs, and fund educational operating and capital expenses. The NCACC estimates that a transfer of secondary road maintenance responsibilities would cost counties more than $500 million annually. Some of the more rural counties would have to increase property taxes by as much as 30 cents to generate the amount of revenue needed to maintain the same level of service.

IGR-2: Allow more cost effective methods for second primary elections.

Support legislation to authorize alternatives to second primary elections that minimize excessive costs while protecting the integrity of the electoral process. The costs for second primary elections can be very high, especially when compared to voter turnout. New and expanded alternatives, similar to one-stop voting or limited early voting sites and schedules, should be explored and piloted for second primaries and run-off elections.

IGR-3: Maintain current requirements for county commission approval of Extraterritorial Jurisdictions (ETJ) designations and expansions.
Support legislation that maintains the current requirements for county approval of ETJ changes. With recently enacted changes to the annexation laws, ETJ will certainly be a focus of planning and growth. In certain jurisdictions with higher populations, current law calls for Board of County Commissioner approval for ETJs beyond any one-mile expansion. Counties would like to maintain that level of input and make sure that the county voice is included in further ETJ expansion.

IGR-4: Implement combined motor vehicle registration and property tax collection system by July 1, 2013.
Support legislation to ensure that the combined motor vehicle registration and property tax collection system be implemented by its statutory deadline of July 1, 2013. In 2005, the NCACC included this issue in our legislative goals and supported its passage. Implementation of the combined motor vehicle registration/property tax system has been delayed several times given the complex automation systems needed for operations, but the program is still important to county governments. North Carolina is the only state that continues to collect motor vehicle property taxes in arrears of license plate registration and renewal. Property tax collection rates for motor vehicles alone are 10 percentage points below that of all other property. It is estimated that once this system is up and running, counties will reap more than $50 million annually in currently uncollected property taxes on motor vehicles.

IGR-5: Allow county participation in the State Health Plan.
Support continued legislative action aimed at allowing optional participation by counties in the State Health Plan (SHP). Proposed language would allow counties to participate on a short-term basis in order for the State to determine the impacts from the Federal Affordable Health Care Act.

IGR-6: Support legislation to grant counties the option to provide notice of public hearings and other legal notices through electronic means in lieu of required publication in any newspaper.
Seek legislation to provide counties with options for notice of public hearings, notice of delinquent taxpayers, and other legal notices, through electronic means. Current statutes require counties to purchase expensive ads in local newspapers when announcing various public hearings, meetings or other items. With many more citizens now getting their news online instead of from traditional newspapers, allowing counties to post these notices on their county-owned Web sites will save taxpayers money and make it easier on taxpayers to find the information at their demand.

IGR-7: Increase informal let bid threshold for NCDOT local projects.

Support legislation that increases the informal bid limit of $1.2 million for NCDOT projects. Current law permits local NCDOT divisions to approve projects that are less than $1.2 million in scope instead of completing the more lengthy and cumbersome formal bidding process. Board of Transportation approval is still required, but this informal bid limit does help to streamline and expedite the building process. The $1.2 million cap was established several years ago and has not been adjusted to compensate for increased construction costs involved in road construction.

IGR-8: Oppose collective bargaining for public employees.
Oppose legislation to authorize local governments to enter into collective bargaining agreements with public employees, or to mandate dues check-off programs. Salaries and benefits for public sector employees remain strong in North Carolina because different jurisdictions are competing over the same highly skilled and specialized employees, such as police, firefighters, emergency medical personnel and public school teachers. Lifting the state's ban on collective bargaining would require every county in the state to negotiate for salaries and benefits with groups representing local teachers, firefighters, sheriff's deputies, EMS employees and others that are unionized. Collective bargaining for public employees would neither improve county government efficiency nor result in improved services to citizens. The likelihood is that collective bargaining would increase operational costs for county governments, would create an adversarial relationship between management and employees, and would create two classes of employees – those in unions and those not in unions.

IGR-9: Support maintaining local control of the NC ABC System and preservation of local ABC revenues.
Support legislation to protect local control of the local ABC system, including all local revenue streams generated through local ABC store operations. Given the state's dire budget situation, legislative leaders have considered privatizing all or parts of the state's system of alcoholic beverage control to generate significant amounts of cash in the short term. Many counties recognize ABC revenues in their budgets. The loss of these revenues would create holes in county budgets. In addition, cities and counties are better suited to make decisions about alcoholic beverage distribution, including where to locate stores and whether to merge with other systems.

IGR-10: Support release of Help America Vote Act (HAVA) funds to assist counties with election costs.
Support legislation that provides the state maintenance-of-effort match to draw down the $4 million in remaining federal HAVA funds. Counties use various county, state, and federal funds to operate election services. Taking advantage of Help America Vote Act (HAVA) funds would be very beneficial to ease funding pressures at the county level.

Justice & Public Safety Legislative Goals

JPS-1: Seek legislation to limit the amount that providers can charge counties for inmate medical care to no more than what is allowed by the Department of Correction.
Seek legislation that would authorize medical care providers to charge counties for inmate medical services at a rate not to exceed the rates paid by the State Department of Public Safety to inmate medical providers. Counties are responsible for medical costs when inmates are incarcerated in county jails, and counties often pay full, non-negotiated rates for inmate medical care, resulting in great expense to counties. State reimbursement rates have been capped in recent state budget provisions, and counties seek the same cap on inmate medical expenses to save taxpayer dollars on these costs.

JPS-2: Seek legislation to expand county governments' use of 911 funds, protect and enhance current funding streams and maintain full operational flexibility and autonomy.
Seek legislation to protect and enhance current e911 funding streams, as well as increase flexibility in use of those funds for the betterment of county 911 systems. Significant strides were made in 2010 to revamp 911 laws and give counties greater flexibility in utilizing 911 funds. At the same time, the 911 Board was directed to adopt a funding model and standards. Counties have expressed concern about decisions made at the Board level related to the funding model, as well as the adoption of certain standards that would have negative economic impacts on county 911 systems.

JPS-3: Oppose legislation that would limit a county's ability to operate a pretrial release program.
Oppose legislation that would limit counties from operating pretrial programs. Such limitations would result in increased costs to counties and put additional burdens on county jails. Counties throughout the state operate pretrial programs that help to evaluate individuals awaiting trial in county jails. These programs assist the judicial system in determining if those individuals can safely be released, saving taxpayer dollars and saving space in county jails. In addition, many pretrial programs offer needed services to individuals awaiting trial in an effort to reduce recidivism rates.

JPS-4: Support legislation to fully fund the Justice Reinvestment Act of 2011.
Support increased funding for the Justice Reinvestment Act Initiatives. Last session, lawmakers approved a budget that fell short of fully funding the initiatives included in the legislation. Policies in the comprehensive criminal justice bill include new tools for probation officers to hold offenders accountable, longer sentences for individuals with repeat breaking and entering offenses, and increased funding for drug treatment programs in prison and in the community. Without adequate funding, the programs will not achieve the desired goals.

JPS-5: Provide greater funding of state crime labs.
Support legislation to increase state funding for state crime lab operations. Court officials throughout the state have noted that North Carolina's State Crime Laboratory now has fewer resources, money and personnel than in past years. That situation greatly impacts court proceedings by causing defendants and prosecutors to often wait a year or more for results. Without a substantive increase in funding for the lab, criminal court proceedings across the state

will continue to lag. These delays can cause overcrowding in county jails and the need for additional county resources as individuals await trial.

JPS-6: Preserve current county authority for local electronic offender monitoring.
Support legislation to maintain county authority for electronic monitoring. In 2011, a bill was passed authorizing counties to collect a fee from individuals ordered to be placed on electronic monitoring as a condition of the offender's bond or pretrial release. Utilization of electronic monitoring helps with county jail overcrowding and also reduces the amount of taxpayer dollars needed for incarceration. The fee allowed by law is capped and cannot be collected from those entitled to court-appointed counsel. Counties want to ensure that the authority for this fee is preserved.

JPS-7: Provide funding for gang prevention, adolescent substance abuse and domestic violence prevention, intervention and treatment.
Support legislation to provide state funding for gang prevention, adolescent substance abuse and domestic violence prevention, intervention and treatment. In past budget years, the state budget has included funds for these critical programs. These programs pay dividends because they help reduce criminal activity. Failure to fund these types of programs will result in significantly higher costs to the legal system.

JPS-8: Request the reduction of detention center space requirements in existing and new detention center facilities in all counties in North Carolina, consistent with the language in N.C. G.S. 153A-221.
Seek legislation to provide all counties with the authority to house 64 inmates in each county detention dormitory, as permitted for counties with populations in excess of 300,000. Counties with populations of less than 300,000 can only house up to 56 inmates in each dormitory. The same minimum space requirements still apply to these additional inmates. Allowing all counties to have this same authority will make the law consistent for all 100 counties and allow for cost-savings when constructing new jail facilities.

JPS-9: Restore state funding for Drug Treatment Court (added at Legislative Goals Conference).
Seek legislation to restore funding to Drug Treatment Courts in North Carolina. In 2011, the General Assembly eliminated all state funding for Drug Treatment Courts. These courts were created by the General Assembly in 1995 and have been utilized across the state to address substance abuse issues in the criminal justice system, reduce alcohol and drug-related caseloads, and promote effective use of resources for substance abuse treatment. Without funding for these courts, many counties have lost a valuable resource for managing judicial caseloads and addressing substance abuse issues.

Public Education Legislative Goals

PE-1: Reinstate ADM and lottery funds for school construction.
Seek legislation to fully reinstate the Average Daily Membership funds and Lottery proceeds to the Public School Building Capital Fund. The Public School Building Capital Fund is housed in the N.C. Department of Public Instruction and is comprised of two sources of revenue: a set-aside from the corporate income tax, known as the ADM fund, which is allotted based on average daily membership (ADM) in each county; and 40 percent of the net proceeds from the N.C. Education lottery. Counties have relied on these funds to repay debt service for public school construction and renovation.
Since 2009, the General Assembly has redirected the ADM Fund's corporate income tax proceeds to offset state dollars for public school operations, costing counties from $50 to $100 million each year. Since 2010, the legislature has set the county lottery appropriation below the statutory 40 percent of net lottery proceeds, with the 2012 allocation appropriated at $100 million or 22.7 percent of expected net proceeds. The total loss for the past two biennia amount to nearly half a billion dollars in school construction funds. Counties are forced to delay school construction projects, use their emergency fund balances to make up the debt service losses, or reduce funding for other essential services.

PE-2: Maintain state responsibility for replacement and risk management exposures for operation of school buses.
Seek legislation to ensure that the state retains responsibility for the purchase, repair and replacement of school buses, and to preserve state insurance coverage under the State Tort Claims Act for school bus accidents and other school bus risk management exposures. North Carolina counties are financially responsible for the initial purchase of new school buses, either to service new schools or new routes. Since the 1930s and per G.S. 115C-240(e)(f), the state is financially responsible for school bus replacement, generally based on mileage (250,000 miles) or age (20 years or older). The state's tort claims act has traditionally covered school bus driver negligence. In 2011, in an effort to manage growing state budget deficits, Governor Bev Perdue proposed shifting school bus replacement and tort claim coverage to counties, costing counties $57 million and $4.6 million, respectively, for these new responsibilities. While the House rejected these proposals outright, the Senate initially considered the school bus cost shift to counties. The adopted budget retained state responsibility for both school bus replacement and school bus risk management exposure.

PE-3: Provide sufficient funds for community college workforce training programs.
Support legislation to restore and maintain state funding for workforce development training and programs through the community college system. State budget cuts over the past two biennia have reduced community college funding for classroom operations by $83 million. New tuition fee increases have helped minimize the impact of these losses, and several new programs such as non-recurring funds for N.C. Back to Work, a $5 million retaining program for long-term unemployed, have been authorized. Continuing and increased state investments are needed to provide community colleges with 21st century equipment to support training that leads to third party credentials in career areas such as advanced manufacturing and STEM (science, technology, engineering and math).

PE-4: Restore local control of school calendar.
Support legislation to restore control of the local school calendar to local boards of education. The General Assembly enacted H1464 in 2004, which restricted a local board of education's ability to open schools prior to Aug. 25 or to close schools prior to June 10. It is believed that the Legislature was reacting to concerns by resort communities regarding earlier school openings, which in turn shortened the summer vacation season and reduced the teen labor force for the service industries. The State Board of Education was authorized to grant waivers based on the number of weather-related closures historically experienced or for good cause based on educational purposes. In 2012, the General Assembly further restricted LEA school calendar control, by eliminating start/end date waivers based on educational purposes.

PE:5: Authorize the option for counties to acquire, own and construct traditional public school sites and facilities. (added at Legislative Goals Conference).
Support legislation to authorize counties the option to acquire, own and construct traditional public school sites and facilities. N.C. counties are statutorily responsible for funding the construction, renovation, and maintenance of all school facilities, but schools retain title and ownership of school facilities. This divergence of funding versus ownership requires administrative work-arounds to obtain sales tax refunds on school construction materials and results in an imbalance of liabilities to assets, as county-issued school debt shows as a liability on the county's financial statement, while the building increases the LEA's assets.

Tax & Finance Legislative Goals

TF-1: Preserve the existing local revenue base.
Support legislation that recognizes the importance of county revenues and ensures that the existing tax base is maintained and preserved. During the current recession, one of the means used by the General Assembly to balance the state budget has been to shift some local funds to state use and make cuts in some county programs. For example, in 2009-10, the General Assembly diverted to the state's general fund the portion of the Corporate Income Tax that was dedicated to school construction, costing counties approximately $200 million for the biennium. For 2010-11, the General Assembly reduced the county share of lottery proceeds by $63 million. Counties also saw numerous state cuts to county programs approaching $75 million in 2009-10 alone. Counties face similar revenue declines as that experienced by the state and cannot afford to sacrifice any additional revenues to the state.

TF-2: Oppose unfunded mandates and shifts of state responsibilities to counties.
Oppose legislation that establishes new or expanded state mandates without a commensurate increase in state resources to support service provision. A continuing difficult state financial status may increase the likelihood of attempts to balance the state budget by shifting more responsibilities to counties without corresponding funds.

TF-3: Authorize local revenue options.
Seek legislation to allow all counties to enact by resolution or, at the option of the Board of Commissioners, by voter referendum, any or all revenue options from among those that have been authorized for any other county. Several counties have access to certain revenues, such as prepared meals taxes, occupancy taxes, and land transfer taxes, that are not available to other

counties. Granting counties the authority to implement these revenue options would lessen the reliance on property tax and give counties more flexibility in designing a revenue system that reflects their community's preferences and is best suited for their tax base.

TF-4: Protect county revenues in tax reform consideration.
Support legislation that recognizes the importance of county revenues and secures existing county resources as the state considers tax reform strategies. The General Assembly will be considering comprehensive tax reform this legislative session. Specifics of these changes to tax statutes are uncertain and likely to be fluid throughout the session. County revenues should be protected in any final outcome.

TF-5: Repeal moratorium on contingency fee audits.
Seek legislation to repeal the moratorium on contingency fee tax audits beginning July 1, 2013. Allow counties the flexibility to contract for tax audit services by fee-based or contingency-based arrangements. If a repeal of the moratorium is unviable, work with the state Department of Revenue on alternative solutions.

TF-6: Improve and maintain incentive programs, workforce development and job creation programs, NC's tax credit programs, and increase access to tax credit financing for smaller economic development projects.
Support legislation to defend and maintain the state's tax credit programs to help stimulate economic development activity in rural and economically distressed counties. In an era of fiscal constraint and economic challenges, North Carolina's legislators may be tempted to terminate the state's tax credit programs in an effort to increase tax revenues. However, these programs – including Historic Preservation Tax Credits, the Renewable Energy Tax Credits, and the Article 3J Tax Credits – stimulate investment and business growth that otherwise might not take place in our state. These tools are particularly important to stimulating economic development in rural and Tier One counties.
Support legislation to improve access to tax credit financing for smaller economic development projects. In order to finance commercial projects, businesses frequently benefit from being able to attract investors who can utilize the tax credits generated by the project to offset their own tax liabilities. However, it is difficult for small business owners to identify investors who may be interested in their tax credits, and it is often prohibitively complicated and costly to broker tax credit finance deals. Furthermore, tax credit investors are typically only interested in multi-million dollar projects – a threshold that excludes many potentially eligible economic development projects, especially in small rural counties. As a result, many tax credit-eligible projects do not move forward because they are not able to access the potential equity generated by their tax credits. The Legislature could help make this process less complicated and more accessible to small businesses by: 1) enabling the "bundling" of multiple smaller projects into projects that are large enough to attract investors; 2) establishing a central tax credit "exchange" that brings tax credit-eligible projects together with potential investors; and 3) supporting increased technical assistance and training in the utilization of tax credits.

TF-7: Explore and authorize use of alternate, sustainable revenue options and funding sources for beach, inlet and waterway maintenance.

Support legislation to explore and authorize use of alternate, sustainable revenue options or funding sources like licenses, taxes and/or fees for beach, inlet and waterway maintenance (as proposed via 2009 CRC and CRAC resolution for Trust Fund; Senate DRS85164-SB-12 Beach Management Study Commission Section 2.2 (3) Trust Fund, 2012 Session H1181 Study Municipal Local Option Sales Tax, and 2004 Session H142 Dare County Sale Tax).

TF-8: Replace current non-profit sales tax refund process with a revenue-neutral exemption.
Support legislation to eliminate the requirement for tax-exempt non-profit corporations to pay sales tax. The current burdensome process, which requires the eligible non-profits to pay sales taxes and then seek a refund from the State has resulted in significant negative impacts upon county budgets. Sales tax revenues received by the local governments that include payments from tax-exempt corporations overstate the amount of funding actually available to the local government, and state audit adjustments result in unpredictable repayment obligations over which the local government has no control.

TF-9: Replace current refund sales tax process for public institutions with a revenue-neutral exemption.
Seek legislation that streamlines the sales tax refund regulatory process by exempting public institutions (counties, cities, school boards, community colleges, local utility authorities, etc.) from payment of state and local sales taxes on purchases within the state and thereby diminish the administrative burden on the local and state level to pursue/account for/recoup sales tax proceeds.

TF-10: Extend Article 44 hold harmless.
Seek legislation that extends hold harmless payments for local governments whose expected Article 44 receipts do not replace their repealed state reimbursements. The 2004 Appropriations Act (H1414) amended G.S. 105-521 by guaranteeing hold harmless payments through 2012 for local governments. The 2012-13 payment is scheduled to be the last unless additional legislation is passed. The Article 44 hold harmless payments are approximately $15 million, and these funds are an important source of revenue for the economically distressed counties and municipalities that receive them.

TF-11: Allow counties to provide triple credit toward renewable energy portfolios.
Support legislation similar to legislation passed in 2010 (Cleanfields of 2010) to allow counties to provide triple credit toward renewable energy portfolios.

TF-12: Authorize greater county oversight of legal electronic gaming operations and support legislation to authorize counties to levy privilege license taxes on these operations.
Support legislation to authorize counties to levy privilege license taxes on internet sweepstakes businesses. Counties do not have the same authority as municipalities to levy a privilege license tax on video sweepstakes businesses, and this disparity may create an incentive for such businesses to locate in rural areas outside the corporate limits of municipalities. Seek legislation similar to H1180 from the 2011-12 session that would give counties and municipalities the same authority to levy privilege license taxes on internet sweepstakes businesses in order to discourage the proliferation of those businesses in rural areas outside corporate limits.

TF-13: Promote county property tax system modernization.
Seek legislation that enhances the county property tax system through effective modernization strategies.

TF-14: Authorize design build option for all counties.
Seek legislation to authorize for all counties the option of using the "Design Build" process to construct and/or renovate public facilities. A number of counties in North Carolina have special legislation allowing the "Design Build" method, which allows the bidding of design and construction of a project in the same package, often resulting in cost and time savings. The "Design Build" option should be made available as an alternative process for construction/renovation of county facilities and schools statewide.

TF-15: Require payment of property taxes on manufactured homes and other titled properties before transfer of title.
Seek legislation to require that all taxes levied on manufactured homes be paid before the home may be moved, repossessed or sold on site. County property tax collection efforts for delinquent taxes on manufactured homes are often hampered by ownership and location transfers.

TF-16: Clarify centralized listing and assessing of cellular and cable companies.
Seek legislation to implement the central listing and assessment of cellular and cable companies. The Department of Revenue's Local Government Division would manage the listing and assessment process, similar to its assessment of other utilities such as telephone, power and railroad. DoR supports this change.

TF-17: Support local county law enforcement and rehabilitation services through an increase in the beer and wine tax revenues.
Support an increase in the excise tax on beer and wine by 10 cents or 20 cents with the total increased amount distributed to counties. For each 10 cent increase, 7 cents would be dedicated to law enforcement and 3 cents would be dedicated to rehabilitation purposes.

TF-18: Preserve scrap tire disposal tax proceeds.
Oppose the use of Scrap Tire Disposal Tax Proceeds for other than what is allowed by current statute (G.S. 105-187.19).

TF-19: Compensate counties for property acquired by the state and removed from the ad valorem tax base.
Develop state Payment in Lieu of Taxes (PILT) for game lands or other revenue sharing in lieu of taxes on state-owned wildlife/gamelands. Large portions of some counties are not subject to property taxes because they are owned by the State. Most of these lands are wildlife or game lands. In addition, the state continues to buy land using conservation funds. The lands purchased are already being used for agriculture or timber and therefore require a low level of service. Although transferring the lands to state control does not affect the levels of service provided by counties, it does force the tax burden onto a smaller population.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-a

SUBJECT: MINUTES

DEPARTMENT:

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):

Draft Minutes

INFORMATION CONTACT:
Donna Baker, 245-2130

PURPOSE: To correct and/or approve the minutes as submitted by the Clerk to the Board as listed below:

February 24, 2014	BOCC Quarterly Public Hearing
March 6, 2014	BOCC Regular Meeting

BACKGROUND: In accordance with 153A-42 of the General Statutes, the Governing Board has the legal duty to approve all minutes that are entered into the official journal of the Board's proceedings.

FINANCIAL IMPACT: NONE

RECOMMENDATION(S): The Manager recommends the Board approve minutes as presented or as amended.

` **Attachment 1**

DRAFT **MINUTES**
ORANGE COUNTY BOARD OF COMMISSIONERS
QUARTERLY PUBLIC HEARING
February 24, 2014
7:00 P.M.

The Orange County Board of Commissioners met with the Orange County Planning Board for a Quarterly Public Hearing on February 24, 2014 at 7:00 p.m. at the DSS Officers, Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Barry Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee Bernadette Pelissier, Renee Price and Penny Rich
COUNTY COMMISSIONERS ABSENT:
COUNTY ATTORNEY PRESENT: James Bryan (Staff Attorney)
COUNTY STAFF PRESENT: Interim County Manager Michael Talbert and Deputy Clerk to the Board David Hunt (All other staff members will be identified appropriately below)
PLANNING BOARD MEMBERS PRESENT: Planning Board members Maxecine Mitchell, Johnny Randall, Paul Guthrie, Herman Staats, Tony Blake, and H.T. "Buddy" Hartley
PLANNING BOARD MEMBERS ABSENT: Chair Pete Hallenbeck, Lisa Stuckey, Andrea Rohrbacher and James Lea

Chair Jacobs called the meeting to order at 7:03 pm. He reviewed the following items at the members' places:

- Booklet/Blue Sheets/Cream Sheets/PowerPoint – Item C-1 – Class A Special Use Permit
- Letter – Item C-3 - Unified Development Ordinance (UDO) Text Amendment

A. OPENING REMARKS FROM THE CHAIRS

B. PUBLIC CHARGE

The Chair dispensed with the reading of the public charge.

C. PUBLIC HEARING ITEMS

Planning Board Member Buddy Hartley introduced this item.

1. Class A Special Use Permit - To review a Class A Special Use Permit application seeking to develop a solar array/public utility station on two parcels of property, totaling approximately 52 acres in area, off of Redman Road between the railway and Interstate 85/40 in Cheeks Township.

Buddy Hartley: An item involving a special use permit is a quasi-judicial setting, so approval or denial of such permits are based on sworn testimony and evidence from individuals who are speaking before the Board. So, we will ask that all individuals that wish to speak on this be sworn to before the clerk.

Those who were speaking to this item were then sworn in.

Michael Harvey: Good evening. I am Michael Harvey of the Orange County Planning Department. I have been duly sworn, and my job here this evening is to present to you a Class

A special use permit application proposing the development of a solar facility south of Redman Road.

What I would first of all like to do this evening is reiterate to the Board what you have before you. The applicant, in this case Strata Solar, has provided you a copy of affidavits that they will be reviewing and entering into evidence this evening, outlining their presentation. As also has been explained, you have three colored pieces before you. The first, a green item, is an email correspondence submitted by the Chair, Chair Jacobs. This email specifically documents the Efland Home for Girls, provides some background information on this particular parcel property. There is a blue piece of paper. This is email correspondence between County planning staff and Strata Solar to an adjacent property owner. Last but certainly not least is a cream yellow piece of paper that's been issued by another adjacent property owner, specifically Redman Rhino, LLC, offering their support for the project.

The first thing I would like to do before I begin with the presentation is ask that Board recognize that the abstract, which we have before you this evening, which includes: Attachment 1, an application packet; Attachment 2, a property vicinity map; Attachment 3, staff comments concerning this project; and Attachment 4, the notification materials and certification for the mailing, be entered into the record.

Commissioner Dorosin arrived at 7:08 pm.

Chair Jacobs: So do you need a motion to that effect?

Michael Harvey: I just need an acknowledgement.

Chair Jacobs: We acknowledge that it has been entered into the record. Thank you.

Michael Harvey: Thank you very much. Without further ado, I know we have a long meeting ahead of us. I'll be as quick as I can.

Michael Harvey reviewed the following PowerPoint slides:

FEBRUARY 24, 2014
AGENDA ITEM: C-1
QUARTERLY PUBLIC HEARING
CLASS A SPECIAL USE PERMIT
DEVELOPMENT OF A
SOLAR ARRAY - PUBLIC UTILITY

PROPERTY INFORMATION

- PIN(s): 9844-06-5971 and 9844-17-2687.
- Size: 52 acres.
- Zoning: Rural Residential (R-1), Upper Eno Protected Watershed Protection overlay, and Major Transportation Corridor (MTC) Overlay District.
- Future Land Use Map Designation: Commercial Industrial Transition Activity Node (CITAN).
- Growth Management System Designation: Urban.

SURROUNDING USES: Map

REQUEST:

- Erect individual solar array panels on both properties (52 acres).

- Typical array is between 7 and 8 feet in height, with approximately 2 to 3 feet of ground clearance, and approximately 63 feet in length.
- Arrays will be screened by existing vegetation and an 8 foot high chain link security fence, topped with 3 strand barbed wire, shall enclose the perimeter of the array to prevent access.

REQUEST (Continued):

- Gravel paths/drives will be installed around these arrays in order to permit access by Strata Solar technicians to service the panels. In certain areas there will be natural, grass, paths depending on soil.
- Vehicular access to the site is restricted by a 24 foot access gate off of Redman Road.
- An overhead, medium voltage, power line will be installed along the western portion of the property allowing the proposed facility to tie into the power grid via an adjacent Duke Energy substation.

SITE PLAN: Map

REQUIRED REVIEW:

Project involves the review of a Class A Special Use Permit in accordance with the provisions of Section 2.7 of the UDO.

- Held in a quasi-judicial format meaning all parties, for and against the application, provide sworn testimony as well as competent material and substantial evidence on the merits of the proposal.
- Applicant has burden of demonstrating project complies with the provisions of the UDO.

REQUIRED REVIEW (continued):

- Anyone opposing the application is required to demonstrate through sworn testimony and competent material and substantial evidence that the project does not comply with the provisions of the Ordinance.
- Hearsay or unsubstantiated opinions are not sufficient testimony.
- If applicant proves compliance with applicable standards, and there is no evidence in the record the project does not comply, the permit must be issued.

REVIEW PROCESS:

- Step One: Review of application at a joint Quarterly Public Hearing by BOCC and Planning Board. BOCC adjourns the public hearing to a date/time certain to receive the Planning Board recommendation.
- Step Two: Review of application by Planning Board who will make a recommendation on the application based on the evidence and testimony offered into evidence during the public hearing.
- Step Three: BOCC reconvenes public hearing to receive Planning Board recommendation. No additional public comment/testimony is accepted. BOCC takes action on the proposal.

STAFF INITIAL REVIEW:

- Applicant has submitted all documentation required for the review of a the solar array (Section 5.9.6)
- Applicant has submitted required documentation for a Class A Special Use Permit (i.e. required by Section 2.7.3)
- There are policies within the Comprehensive Plan lending credence to the viability of the proposal

RECOMMENDATION:

1. Receive the application,
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the County Board of Commissioners in time for the May 8, 2014 BOCC regular meeting.
4. Adjourn the public hearing until May 8, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

RECOMMENDATION:

1. Receive the application,
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comments.
3. Continue the Public Hearing until March 18, 2014 to allow the applicant and staff to meet with local property owners and respond, in writing, to their concerns.

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Michael Harvey: This project, and this refers to attachment 2 of your packet, involves two parcels of property owned by Stout Farm, LLC, totaling 52 acres in area. The parcels of property are zoned Rural Residential, Upper Eno Protected Watershed Protection Overlay, and are located in the MTC overlay – the major transportation corridor overlay district, which is along the interstate. The area in question is located within the Commercial Industrial Transition Activity Node and is designated an Urban area on our Growth Management System designation map. And you have a copy of the PowerPoint presentation before you in the packet you have. In fact you have copies of all PowerPoint presentations that are going to be reviewed this evening, including the one from Strata Solar in that packet.

This is an expanded view of that last map we just showed you, showing surrounding uses. Again, here are the two parcels of property. This is Redman Crossing Road here. To the north of the railroad tracks, you have residential land uses located in the Ten Year Transition area per our Comprehensive Plan Land Use Map. You have property to the east, large tracts, undeveloped property located in a commercial industrial transition activity node. You have a residential property, the Efland Home for Girls, here. It is also located in the commercial industrial transition activity node. You have an existing Duke Energy substation here; the NCDOT weigh station here; an existing commercial operation in the economic development transition activity node; and several undeveloped large parcels of property, also in the economic development transition activity node.

As I previously indicated, the applicant is erecting individual solar panels on both parcels of property, which Strata Solar is going to be leasing. A typical array is anywhere between 7 and 8 feet in height, depending on the slope and angle of the actual array, with approximately 2 to 3 ground clearance, and they are going to be approximately 63 feet in length. This is also summarized in our abstract. Arrays are going to be screened by existing vegetation and which will be augmented with additional vegetation as necessary and required by County regulations, also enclosed by an eight foot high chain link security fence, topped with barbed wire that will enclose the perimeter of the property. There will be gravel paths throughout the site in order to permit access to the individual arrays by Strata Solar technicians to service the panels. As stipulated not only in application, but on the site plan, in certain areas there are going to be natural grass paths, depending on the soils. Vehicular access to the site is restricted by a 24 foot wide access gate off of Redman Road. There will be - this site will have an overhead power line connecting to Duke Energy and to the adjacent power – excuse me – the adjacent existing substation, which I identified for you just a few moments ago.

And this is the site plan. What I would like to bring to the Board's attention is as follows: You have approximately 11 to 12 acres of open and landscaped space on the property. The area in this general vicinity has several streams that will be protected by a 60 foot – 65 foot stream buffer. That includes these wetland delineated areas, here and here. This shows the MTC transportation corridor buffer that's required to be 100 feet. There is the required mandated 50 foot type D land use buffer along this property line. According to the applicant, they are going to maintain either existing foliage or plant new foliage to our existing buffer standard. The height of the trees is actually anticipated to get anywhere from 15 to 20 feet in height before it has to become managed or topped, and that's to insure that they are not going to have shadow created on the actual individual solar panels; but you are looking at a 15 to 20 foot high buffer. This set of panels along this area of the property here is actually set back 150 feet from the identified residence, again the Efland – the former Efland Home for Girls, which is currently being lived in. Here is the access point off of Redman. You will also note on the site plan, planning staff has required the applicant to reserve/identify a potential future road right of way. As this Board will recall, we have an access management strategy in the Efland area to insure perpetual ingress/egress access to several parcels of property, both to the west and the east, that are landlocked. They have shown the required access area that would be running through this property, consistent with that plan. Once again, here is the utility substation, which is where the power – where the facility is going to be tied in to. And this of course here is the existing Rhino manufacturing plant.

As the planning board Representative Hartley has indicated, this is reviewed under the Class A special use permit process, as identified within section 2-7 of our Unified Development Ordinance. It is held in a quasi-judicial format, meaning that all parties both for and against the application will provide sworn testimony as well competent material evidence on the merits of the proposal. The applicant ultimately bears the burden of demonstrating the projecting complies with the provisions of the UDO. Anyone opposing the application is required to demonstrate through sworn testimony and competent material and substantial evidence that the project does not comply with the UDO. And I will remind you, as we have identified in our abstract, hearsay and unsubstantiated opinions are not sufficient testimony. Last, but certainly not least, if the applicant proves compliance of applicable standards and there is no evidence in the record that the project does not comply, there is a requirement that we issue the permit.

At this juncture, what I would like to do is call the Board's attention to page 6 of our abstract, just so I can run down staff comments, which are contained in Attachment 3 of your abstract. First being that we have heard from the Sheriff's department that has indicated they have no concerns over this project, and I will go back to the site plan. EMS staff has actually indicated that the Efland Fire Department – not Eno – I apologize for the typo - will serve this site and they will provide emergency services as well. Both Deputy Chief Hallenbeck and Orange County Emergency Services have indicated they have no concerns over the development of the proposed site. As we have identified in this abstract, and as with other solar projects, there is no septic or well systems proposed for the property; so there will be no requirement for environmental health review or permitting. We have met with representatives of the Department of Environment Agriculture Parks and Recreation, who have provided you a memorandum specifically on the Efland School for Girls – indicating in this memorandum, which you will find in Attachment 3, that given the substantial buffer that is being proposed and the setback of the array from the facility, they do not anticipate any negative impact on that historic structure. Orange County Solid Waste has indicated the request, if approved, will not impact their ability to provide services.

We have submitted this to the State Clearing House, as we are obligated to do by our ordinance for environmental review. We have gotten no negative comments back from the State concerning this project. It goes without saying that, if approved, this project will have to go through all local permitting, including: storm water, erosion control, zoning, building and what not. There will be issues identified and addressed at those permitting stages to address various independent issues. One concern that has been brought to our attention, and I would like to address to the Board now and have Strata Solar expand on this answer if they feel necessary. One concern expressed that this will create additional runoff problems in this portion of the property and even here for the manufacturing use. What I would like to remind the Board is, per our ordinance and consistent with State law, Strata Solar is obligated to basically insure and maintain existing runoff that is predevelopment, post development; meaning once all the trees are removed; the solar panels are erected, all the storm water generated from the site has to be maintained and kept on the site consistent with how the property existed before it was touched. The property, based on the contour data on your site plan, actually slopes in this general direction. So, as development occurs, existing storm water patterns will be maintained, and Strata Solar has informed staff you should not see any negative impacts on adjacent property. Having said that, I will just remind the Board one last time, once they go through the storm water process they are going to have to guarantee to the satisfaction of County staff and according to our local regulations: 1. There will be no off site impacts; and 2. They are going to be maintaining the storm water flow as currently exists on the property.

With that, Mr. Chairman and members of the Board, what I would like to do is turn this over to Strata Solar and let them present their application. I will get into staff's recommendation at the appropriate time, and if you have any initial questions for me, I will be more than happy to answer them.

Buddy Hartley: Any questions or comments from the Board? Any questions or comments from the planning board?

Commissioner Price: On the storm water runoff, how much land disturbance will there be?

Michael Harvey: I'm going to let Strata Solar answer that question, but what I will tell you quite candidly is that there will be sufficient disturbance on this site to require a storm water permit.

Buddy Hartley: Would the applicant want to make the presentation to the Board?

Dave Neill: Thank you Chairmen, members of the Commission, members of the Planning Board. My name is Dave Neill. I am an attorney with the law firm of Smith, Moore, Leatherwood, 434 Fayetteville Street, Suite 2800, Raleigh, NC, and I have the pleasure of appearing before you today on behalf of Strata Solar and the Stout Family Farm, under which we have negotiated a long term ground lease for the – for the site that's been referenced by Mr. Harvey.

This evening, we lawyers don't get to put on – we don't get to provide the evidence, but we do get to play ringleader or ringmaster and provide those who can provide that evidence that you need to render your decision. Let me give you a preview of the four witnesses that we would bring for your information this evening. First, Louis Iannone, and I'll ask – sneaking up behind me – Louis, immediately at my six o'clock – Project Director and site acquisition for Strata Solar, who will speak about Strata Solar, its background, and its overall plans for this site, to the extent that information has not been already provided by staff. Behind him in second will be Brent Niemann, Public Engineer, with a focus in civil engineering, who is also employed by Strata and

is the project engineer on this project. He will speak to a number of the detailed engineering questions, including the storm water runoff potential and grading issues that may be of interest to the Board members and the planning board. Also, another engineer, Gabe Cantor, who is the director of engineering at Strata Solar – his background is in mechanical and manufacturing engineering. He has worked with Strata and has designed the electrical systems for Strata over the years, and he will be available to speak to questions that may arise regarding matters related to electrical engineering in particular for a facility such as this. And finally, as I know you will all be excited to hear, a fourth witness, Mr. Rich Kirkland of Kirkland appraisals, and MAI appraiser, licensed here in North Carolina, who will provide information on his findings, that are at your place, relating to his market study and appraisal relating to the lack of offsite impacts from a low impact development of this nature.

Rather than belabor this any further, we would just like to ask, to the extent it has not already been done, that the application by Strata Solar be entered into the record as our evidence that we will provide foundation for; and also that staff report, to the extent it has not already been, we would endorse it and have it entered into the record, as it does provide a cogent summary of the materials that you will hear later this evening. And with that, I will turn it over to Lois Iannone, Site Acquisition and Project Director for the Stout Farm Project.

Louis Iannone: Thank you Board members and Planning Board members. Mr. Neill covered quite a bit of my introduction. That's a list of the professionals that will speak. I am Louis Iannone. I am a real estate developer and I work in site acquisition and entitlement for Strata Solar. I've been a developer for 25 years.

Louis Iannone presented the following PowerPoint slides:

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Strata Solar Development
Stout Farm
Solar Electric Power Plant
Orange County, NC
Public Hearing Presentation

Strata Representatives

- Louis Iannone, Site Acquisition & Entitlement
- Brent Neimann, PE, Civil Engineering
- Gabe Cantor, PE, Electrical Engineering
- Rich Kirkland, MAI, Real Estate Appraiser
- Dave Neill, Land Use Attorney
-

Schedule of Presentation

- Strata Solar
- Solar Electric Power Plants
- Similar Visual Impacts
- Appraisal Analysis
- Engineers' Affidavits
- SUP Conditions

Strata Solar

- NC is 5th ranked state in solar energy generation
- Strata is largest solar developer in NC and the sixth largest solar contractor in the nation
- Operate 50 5-MW farms

- Will construct approx. 50 farms this year

Job Creation

- 80 professional staff: engineers, project managers, attorneys, accountants, technicians
- 500 – 1,200 construction staff
- Average 1,000 NC jobs throughout the year

Fuquay Solar Farm (photo)

5MW Solar Farm

- 30-50 acres total, 25 ac panel footprint
- 25,000 3'x5' Solar Panels, fixed on aluminum racks, up to 10' high excluding utility poles
- Use existing land contours; very minimal grading, 100 SF around each inverter pad
- 1% impervious surface

White Cross Solar Farm (photo)

- Panels – Polycrystalline Silicon Photovoltaic Cell Panels; flat-blue color
- Sun passes through glass, hits high-grade silicon and releases electrons in DC current
- DC current is captured in a tributary system, converted to AC current and transferred Duke Energy local lines
- No fuel used, no waste, no emissions

- NC Utility Commission issues Certificate of Public Necessity and Convenience for Solar Plant (NC Public Policy to promote renewable energy)
- Power sold to Duke Power under a long-term Power Purchase Agreement (PPA)
- PPA is regulated by NC Utility Commission
- Project is financed through combination of tax credit investors and PPA revenue

- DENR Erosion Control Permit, DOT Driveway Permit and Local Municipal Electrical Permit
- Project does not impact municipal services, schools, utilities, etc.
- Typical project is surrounded by installed or existing buffers which are subject to conditions added by the municipality
- Easily removed; Salvage Value > Removal Cost

Stout Solar Farm Area (photo)

Visually Similar Impacts

- Single-Family Development
- Manufacturing Facility
- Warehouse
- Public Works / Public Utilities
- Schools

Appraisal Analysis

- Low Impact Development
- No noise
- No Emissions
- No Odor
- No Hazardous Materials
- No Traffic

Appraisal Analysis

- Much lower in height, traffic, noise, light etc. than most other development
- "Dark at night."
- Passive Use Harmonizes with Adjacent Uses
- Establishes certainty of a long term, low intensity use

Professional Engineers' Affidavits

- Will not endanger public health or safety
- Project will meet all codes
- Project will generate less traffic than one house.
- No utilities are required or used.

Solar Farm Meets SUP Conditions

- Use will maintain or promote the public health, safety and general welfare
- Use will maintain or enhance the value of contiguous property, and the use is a public necessity
- Location and character of use are in harmony with area and in compliance with Comprehensive Plan

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Brent Nieman, professional engineer, will speak to some civil engineering issues. Gabe Cantor, PE runs all of our engineering, but he will speak principally to electrical engineering issues. Rich Kirkland, MAI on some evaluation issues, and Mr. Neill you've heard. The schedule of the presentation will be that I will tell you a little bit about Strata Solar; describe a solar electric power plant; describe some similar visual – some uses that we feel like are similar visual impacts; the appraisal analysis; and the engineers will speak and then just briefly touch on the S.U.P. conditions.

North Carolina is the 5th ranked state in solar energy generation and Strata is the largest developer in North Carolina, and we are actually the 6th largest developer in the nation. We have just completed approximately 50, 5 megawatt farms, and this plant will be a template 5 megawatt project that we do. And our goal is to construct another 50 this year; so we are operating 50 of these plants at this point. So we do everything from this point – site acquisition, entitlement. We construct the plants. Of course we design it, get all necessary approvals, and then we own and operate the plants for 20 years or more.

We create quite a bit of jobs. We have 80 professional staff approximately in Chapel Hill. That includes engineers, project managers, attorneys, accountants, technicians; and we employ anywhere from 500 to 1200 construction staff on about a dozen jobs at one - at any given time. It's about a 3 to 4 month construction cycle, so – and about 100 to 200 people on each job, so we can have quite a bit of employees at any point in time. We average about 1,000 employees over the course of a year in North Carolina.

This is a typical 5 megawatt farm. This is in Wake County, in Fuquay. That's a 40 or 50 acre project with a 25 acre panel footprint - a typical project. A typical 5 megawatt farm is 30 to 50 acres with a 25 acre footprint, approximately 25,000 3 x 5 solar panels fixed on aluminum racks, up to ten feet high, excluding a handful of utility poles that we will install to connect to the existing power lines. We basically do not grade. We will clear trees and use existing land contours, very minimal grading, 4 or 5 ten foot square 100 square foot pads inside the plant that have an inverter and a transformer. And then we will re-plant the project, and at the end of the day the project will have approximately 1 percent impervious surface.

This is a project just completed in Orange County. This is the White Cross Solar Farm. This gives you an idea of – that's just a pretty good perspective of what panels look like and how we follow the existing contours. I feel like that's been very positively received in the County - The White Cross Solar Farm. The panels are polycrystalline silicon photovoltaic cell panels. As you just saw, they are flat blue in color. Sun hits the panels, hits really what is very similar to computer chip material, and that creates a small amount of DC current. Each one of those panels is like a giant tributary. It's sort of like water coming down a mountain. The DC current accumulates in this tributary system. It's converted to AC current in each one of these inverters and then the transformers convert it to exactly the same power that's in the Duke Energy local lines. This is a completely passive system. There is not fuel; there is no waste; no emissions; no noise; no moving parts; no operator. It's a truly passive renewable energy system.

We are required to obtain, from the North Carolina utility commission, a certificate of public necessity and convenience for each plant. We've obtained probably 70 of these at this point. And it is the policy – it is the public policy of the state of North Carolina to promote renewable energy. The power is sold to Duke Power under a long term 20 year power purchase agreement contract. That contract is also regulated by the utility commission, and the projects are financed through a combination of tax credit investors and the income from these power purchase agreements. We will of course obtain all necessary DEANR permits, DOT permits and a local electrical permit. We don't usually get a building permit, because we don't really do any construction. The project will not impact municipal services, schools, utilities. A typical project is surrounded by either the installed buffers Mr. Harvey spoke about, or has existing buffers, and those buffers are generally subject to conditions that you all could set. At the end of the 20 or 30 years, if the project is extended, they are easily removed, and the site is put back to – close to - its original condition, and in general, the salvage value exceeds the removal.

This - I think Mr. Harvey had a better map – shows the location of the project, and it's surrounded by a variety of uses - I believe within the center –in a long range plan area-designated area for commercial development. These are some of the uses around the facility and things that we think create a similar impact- a large scale single family residential development; a manufacturing facility; warehouse; there is a public works facility adjacent to the site; a large school facility. Mr. Kirkland will speak in more detail about this, but solar farms are low impact developments. They create no noise, no emission, no odor, no hazardous materials and almost no traffic – one trip a month to maintain the site. They are much lower in height, traffic, noise, light, etc. than most other development. They are literally dark at night. We don't propose any lighting on this sight. It is a passive use and it generally harmonizes with adjacent uses and it establishes the certainty of a long term, low intensity use. Our engineers will speak to the following issues in general. This project will not endanger the public health or safety. The project will meet all of your codes. The project will generate less than trip per month, and no utilities are required or used.

In conclusion, these are your general SUP conditions, and we would just like to close by saying that we feel like we are going to present evidence that we meet all three of these conditions. The use will maintain or promote the public health, safety and general welfare. The use will maintain or enhance the value of contiguous property, and the use is a public necessity. And the location and character of the use is in harmony with the area, and in compliance with your comprehensive plan. Thank you very much. If you have any questions, I would be glad to answer them.

Dave Neill: Mr. Iannone, in the Board's package, under tab one is a document titled, Affidavit of Louis Iannone. Is this your statement?

Louis Iannone: Yes

Dave Neill: Is it truthful?

Louis Iannone: Yes, sir.

Dave Neill: And does it contain your signature that was given under oath?

Louis Iannone: Yes

Dave Neill: We would offer the affidavit of Louis Iannone into the record.
Our next witness is Brent Neiman, civil engineer and project engineer for the project.

Brent Neimann: Good evening. My name is Brent Neimann. I am a civil engineer with Strata Solar. I have been sworn into the record this evening. I prepared the plan that was submitted with the application. I am very familiar with this type of development. I have been with Strata Solar for about a year and a half. In that year and a half I have worked on approximately a hundred solar farm sites of this size or larger in general. This is the standard size project that we undertake. It is a five megawatt AC facility. This particular site is pretty much covered in vegetation as it exists today. As Mr. Harvey spoke to, we will prepare the necessary approvals. We worked closely with Wesley Poole on our White Cross Farm, and we will prepare the erosion and sedimentation control plans that are consistent with the ordinances. As he spoke to, there are existing streams and wetlands in the southwest corner of the property. In general, the property slopes that direction, including from the northeast towards the southwest. As the other gentleman has spoken to, this is a very low impact development. We don't propose any grading. The only grading we do will be the installation of the access, which we will obtain a NCDOT driveway permit for. And there is a minor amount of grading at the inverter areas to divert surface water away from the facilities- basically just to keep them dry, but that is very minimal activity. In general this is a very pervious project. We have provided a letter to Mr. Harvey as well, from the state of North Carolina DEANR, division of water quality, to that effect. The panels on the racks have approximately one inch gap between each panel, and the racks themselves have anywhere from four inches to eight inches between those racks. Water hits the panels, finds those voids between the panels, hits the ground, and you have surface drainage just like you had before. No change in the surface pattern, so there is no introduction of additional water. We are not moving water to other areas of the site. It hits the ground as it did pre-development and continues on that path. You do have a requirement in your ordinance for a pre and post calculation for the one year 24 hour storm. We will certainly meet those requirements as well.

A little bit about our construction practices - We utilize logging mats for temporary stabilization of the site. We don't use gravel. The logging mats are placed on site to prevent rutting, or in wet areas, or as construction sites go - during rain events it's going to get muddy. So those are in place to allow access of material, specifically where the staging area is for delivery of material. The staging areas are not nearly large enough to store material. We strategically plan deliveries and installation of material so that the material sits for a very minor amount of time – a day or two – before it is placed into the areas of the site that it will be installed in, and then it is immediately installed. That staging area is temporary only. There will not be any permanent storage of any materials on the site. As they stated, there is no noise associated with this. It is a fixed rack. We drive the post into the ground with a machine similar to what NCDOT uses to drive guardrail posts. Embedment depths range anywhere from three feet to eight feet,

depending on soil conditions. This site - we can drive the post in approximately 3 to 4 days, so it's a very quick operation. From there, the racking – the underground begins. We do some underground trenching toward the inverters. The only overhead we do is when we interconnect to the utility once we've converted it to AC power and stepped up the voltage. So we have some underground going and the racking begins, and this is a progressive project; so, as one operation has started with the racking and it progresses to another area, in that area we can start to put the modules on the rack. So again, the material is staged and it's put right into use. The typical construction time from for this is anywhere from three to four months. We do have, you know, some clearing to do on this particular site; so it may take us a couple weeks longer to get through those trees. But it's about a four month process on a site like this for us, from the day that we show up to put the driveway in to the day that we stabilize the site. As they discussed, we will be grading this at the end, just to smooth everything out; prepare the bed for seed; and we will seed and straw this. We have typically been using Bermuda grass. That's what we hope to do. If not, it will be some other native grass that we can get to grow, hopefully.

Mr. Harvey spoke to it. We do have some buffers proposed, and we will evaluate the potential to use the existing trees wherever possible; and if they don't satisfy the buffer requirements or if the species is not right, then we will plant the buffer per – I believe it's a type D land use buffer. So we have discussed this, and we are aware of it. This project generates almost no traffic, following construction. Everything is monitored remotely. Each inverter area – we can see down to the combinations of panels together, what's performing and what's not performing; so the maintenance is basically an as needed. So, it's monitored on the web. We can see when it's making power, when it's not making power, and we can tell which areas of the sites are a problem and do a lot of pre-diagnosis before we come out. Quite often, the most frequent trips for maintenance are actually the vegetation maintenance. So we take full responsibility for that and have that in house as well. We mow the grass. We trim the bushes – whatever is necessary for the farm – fertilize. So that's - it generates far less traffic than any single family home would, because there is no manned activity there on a daily basis. This project doesn't affect traffic obviously, because of that requirement. There is no noise associated with the project. There is no dust. There is no odor. There is no light reflection. The panels are designed to absorb the light, not reflect the light, so there is no glare. I spoke to the storm drainage. We will comply with the Orange County requirements. I believe that the location and character of this use is in harmony with the area in which it's located. It's a very low intensity, low impact development project. We have built many farms in this same type of environment. So, to summarize, it is my professional opinion, based on my experience as an engineer of record on many rural solar farm facilities in North Carolina and my familiarity with the proposal and its design, an establishment, maintenance and operation of the proposed solar farm will not be detrimental to endanger the public health, safety, morals, comfort or general welfare. It is also my professional opinion, based on the familiarity with this proposal and my review of the applicable provisions of the Orange County UDO, that the proposed solar farm facility meets all of the requirements of the UDO for issuance of the requested special use permit. I'll be happy to answer questions you may have.

Dave Neill: Mr. Neiman, you know what I'm going to ask you. Are you familiar with this instrument?

Brent Neimann: Yes, I am.

Dave Neill: Is this instrument titled, Affidavit of Brent Neimann, PE, and is it a fair summary of your testimony this evening?

Brent Neimann: Yes, it is.

Dave Neill: And did you execute it under oath?

Brent Neimann: Yes, I did.

Dave Neill: We would offer tab 2, Affidavit of Brent Neimann, into evidence. I would also ask, Mr. Nieman, do these panels move, track, with the sun? How does that work?

Brent Neimann: No, this is a fixed tilt system. Our panels are oriented due south, sometimes a slight adjustment to the west, depending on the topography; but this site is set up at due south. It's a fixed tilt. It's tilted at about 25 degrees from horizontal, but there are no moving parts.

Dave Neill: Our next witness is Gabe Cantor, electrical engineer, and Director of Engineering for Strata Solar.

Gabe Cantor: Hello, my name is Gabe Cantor. I have been sworn in this evening, and I have been asked to talk about – give an opinion about – if there's any potential health effects from electromagnetic fields generated from the proposed solar farm. Electromagnetic fields are generated whenever there is a charge that's moving. So, whenever electricity is used, an electromagnetic field is generated. They are generated from natural sources, such as the earth's magnetic field, such as solar flares, or from power distribution lines. Electromagnetic fields decrease rapidly with distance, so as you double the distance, the field intensity will increase by the cube of that distance. So, double the distance and the field intensity decreases by 1/8; triple the distance, it's decreased by 1/27, and so on and so forth. At the perimeter, the electromagnetic field generated by our equipment is indistinguishable from background electromagnetic fields. In – I guess in summary, I mean, based on my education, research and experience in the solar industry, it is my professional opinion that the proposed farm does not generate any more EMF than the existing electrical lines and will not materially endanger the public health or safety.

Dave Neill: I have before me the affidavit of Gabriel Cantor, PE. Are you familiar with this document?

Gabe Cantor: Yes, I am?

Dave Neill: Is it a fair summary of your testimony?

Gabe Cantor: Yes, it is?

Dave Neill: Dave Neill: And on the last page, is this your signature, given under oath?

Gabe Cantor: Yes, it is.

Dave Neill: And we would offer tab 3, affidavit of Gabriel Cantor, PE into evidence this evening. Our final witness is Rich Kirkland, of Kirkland appraisals. I would direct your attention to tab 4. In addition to the affidavit that hopefully his testimony will support, you will find behind that, the Kirkland Appraisal market study that I understand Mr. Kirkland will be referencing frequently; so you may want to have that out.

Rich Kirkland: Good evening. Again, my name is Rick Kirkland. I am a commercial general certified appraiser in North Carolina. I've been working the Triangle as an appraiser for 19 years. Focus is commercial, but a big focus of what I do is land. I do a lot of land appraisals, subdivisions and things of that nature. I was hired by Strata Solar to look at the question of whether or not there is going to be an impact on the property value of the adjoining properties to the solar farm. To that end, I have visited a number of solar farms across the state. I have done research through the appraisal institute's loan library. I have gone out and looked at raw data. I have gone out and looked at solar farms; looked at - for what we call matched pairs. The textbook answer for whether or not a property is going to be impacted – the way you look for that, the appraisal institute teaches, is you look for what's called a paired sale analysis, or a matched pair. Essentially, you are basically looking for two properties that are identical in every way, except for one difference, and that is what you are measuring for. In this case we are measuring for, adjacent to a solar farm. The best example I was able to find was in Goldsboro. There is a solar farm that Strata Solar built, called the AM Best Solar Farm, and there is a new subdivision being built adjoining this solar farm. They have lots that back up to the solar farm, and they have lots that don't. They are all being marketed the same. They are all being sold. There are a number of sales that have happened; I believe there are five that have happened in 2013, of homes that back up to the solar farm. These are selling for the same houses, for the same floor plans as the ones that are across the street or down the street away from the solar farm. I talked to the brokers. They said the solar farm is a non-factor as far as things go. I walked down the street. I knocked on doors. I talked to the folks who bought these homes that live next to the solar farm. No one expressed any concern about it. Some of the property owners were aware that the solar farm was under construction when they bought, and some were not. Regardless of whether they knew or didn't know, they were paying the same prices. So, this really is a strong indication that there is really no impact on these adjoining property values. Homes in this subdivision are selling in the $240,000 to $260,000 price range. And so, that is the textbook way you look for this. This is – as far as it goes, there is nothing else to adjust for. These are identical uses. Since then, it's not actually in my report, but I've actually found a couple of other matched pairs that I would just briefly discuss. Specifically, the White Cross - the tract of land – the parent tract that that solar farm was built on – They sold off that piece in 2013, and it sold for a price – I can reference it here – I'll tell you the right amount – It's selling for $7,500 an acre. Again, I've done a lot of work in that area lately for the local environmental groups. Looking at the recent sales, there was a sale – very similar size tract of land – 27 acres sold for $7,900 an acre, slightly more - the comp that's not next to the solar farm, but that one also had mature timber on it, which is the difference that I saw there. So, that again showed that, for residential agriculture land, no impact adjacent to the solar farm. I've also identified property that I reference in my report as the Zebulon Solar Farm. It's in Zebulon, North Carolina. Some of the information there is actually dated. Since I wrote this report last month, I've identified since then that a tract of 25 lots – a package of 25 lots – that are referenced in there as "The Meadows of Duke's Lake." Those sold to a builder. A builder picked up all of those lots – paid $25,000 a lot for those. Again, that's a package deal where you buy 20 some odd lots. You don't – it's like when you buy a can of coke. If you buy a case, you're going to pay a lot less per can than you would if you just bought one can. Same thing with builders when they buy lots; when they buy a big package, they get a discount of 30 to 50 percent off of sort of market value. But I compare those to some other bulk sales that have happened in that Wendell/Zebulon area in 2013, and there were two other sales of similar packaged lots that were selling for $15,000 a lot and $12,000 a lot. So, again, this one that was next to this proposed solar plant actually was selling stronger than other similar developments in that area. So, all the matched pairs are really showing strong information that there is no impact from the solar farm adjacency – that it's not really affecting property values in any way. And that goes in well with how you normally look for what would cause a problem, or a discount, or a

diminishment in value. There is normally something you would point to, such as a use that is going to cause a lot of noise, or something that's going to bring an odor, or something that's going to bring an awful lot of traffic to that area. But, the solar farm is not going to have any of those things. It's silent. I've visited over 25 of these farms so far, and I have never heard anything outside the fence. I have never smelled anything. I've never experienced anything that would suggest to me that there was an issue. The one issue that folks come up with and I'll point out, is appearance, you know, they don't like the way it looks. I've looked and included in there – I've shown pictures of greenhouses, which is the most similar use I can think of other than – well it's the most similar other type of development use I have found. I take pictures of greenhouses all the time now. Again, they are very similar, very compatible use, which makes sense. A greenhouse really is just trapping solar energy also. And again – proximity to greenhouses – there has never been anything to suggest that has ever been a problem either. So, for all those reasons, it is my professional opinion that the proposed solar farm is going to have no impact on adjoining property values. I also looked at the question of harmonious use, and I've broken down a list of the adjoining uses on a number of the solar farms I've looked at, and it shows that most of the adjoining uses where these are going are residential or agricultural in nature. Most of these are not being located in industrial areas necessarily. There certainly are some examples where they are in those transition areas, but most of these solar farms are being located in areas where agricultural and rural uses are transitioning into more residential suburban areas. That is one of the other reasons I'd conclude that this is a harmonious use, and so it is my professional opinion that this is a harmonious use for that.

Dave Neill: Mr. Kirkland, I have here under tab 4 in the Board and commission's package, the affidavit of Richard C. Kirkland, MAI. Are you familiar with that document and its contents?

Rich Kirkland: I am.

Dave Neill: And they are truthful?

Rich Kirkland: Yes

Dave Neill: And that is your signature, given under oath?

Rich Kirkland: It is.

Dave Neill: We would offer tab 4, the affidavit of Mr. Kirkland, as our last exhibit of evidence for this matter for our case. Unless there are questions from members of the Board, or from the commission, we would offer to the Board, our application and ask for your support, as I know the seat still has to go before the planning board and back to the commission later on. We believe that we've provided competent material and substantial evidence of the requirements and compliance with the requirements of the special use permit, a class A special use permit, and we stand ready to answer any additional questions and would also welcome questions or comments from others who are here this evening who may have competent evidence to offer.

Buddy Hartley: Are there any questions or comments from the Board?

Commissioner Rich: I have a question about the noise, or lack of noise. I met with someone today that is not – that is going to be a neighbor to another proposed solar farm, not this one, and they are concerned about the noise. It's just that hum. Their property backs into where the proposed farm is going to be. So, can you just talk a little bit about – I mean I understood what he said, that you can only hear it if you are close to it. But, if your property actually backs into

where the proposed farm is going to be, if you are sitting on your deck and reading the newspaper, are you going to hear that hum?

Gabriel Cantor: We typically locate - the inverter has a fan for cooling purposes. That's the piece of equipment that converts the DC electricity that's generated by the panels in the fields to AC, which is the same type of electricity that flows through the wires in your house. That piece of equipment has a fan for cooling purposes and a transformer associated, so there is a small hum. Those are typically located in the middle of the field. In this case, the closest one to a property line is about 300 feet. You would not be able to hear that until you approach within about 50 feet has been my experience. So, you have to be inside of the property line to hear it.

Commissioner Price: I have a question about the vegetation maintenance. You say you are going to plant grass. I don't know how you're going to mow it underneath all those panels, but I'll let you worry about that; but what about other vegetation? I mean, is there going to be weeding, or you mentioned fertilizer? Will there also be any other pesticides, and how much, because I am concerned about that runoff?

Brent Niemann: We actually have specialized mowing equipment that can make a pass underneath the panels. It's actually pretty interesting. It works pretty well. We wouldn't use any more treatment to the grass than any other residential home would to establish a yard. So, to the extent necessary to maintain weeds – we would not be applying any pesticides above and beyond what you would apply to your house to grow grass. We treat it just like a lawn. It will be just like a lawn.

Commissioner Price: So, would you be able – I mean I'm asking you this now; but for future, would you be able to provide a list of what chemicals you would be using, and how much. I mean personally I don't use any on my lawn, so I can't gauge.

Brent Niemann: Ok, so I personally have someone treat my lawn at home.

Commissioner Price: I mean if you can't give an answer now -

Brent Niemann: I don't know the specifics.

Commissioner Price: Well could you provide that for us, or to staff?

Brent Niemann: Sure, yes, we can do that, absolutely.

Commissioner McKee: It was mentioned earlier in the presentation, about the runoff basically, as I understood it, staying on the property. Will there be – Are you talking about building sediment basins and control ponds to keep that on the site, or how are you going about that? I am hearing some concern over that.

Brent Niemann: Sure, as any development project, especially with the amount of clearing and growing associated with this project – I believe your question earlier – I forgot to address that. It's about 44 acres, is about the project disturbance acreage. Yes, we will be providing sedimentation and erosion control features; more than likely a sediment basin or two, depending on topography and location relative to the project. Post construction, at the White Cross Solar Farm, because we have such low impervious values, less than one percent, we are able to install typically, vegetated swales to treat the runoff.

Chair Jacobs: I have a question for Mr. Harvey. It's not dissimilar to Commissioner Rich's question. How many solar farms do we currently have in Orange County?

Michael Harvey: We have one solar facility, the White Cross Solar farm that was permitted by this Board with the issuance of a Class A special use permit. We have several private property owners who have erected solar facilities on their property. Several examples include: Mr. Bob Nutter, off of Dairyland Road; there is one at the Eco-Institute off of Pickards Mountain Road; and we have several small properties that have solar facilities, solar panels, either on the houses or on the residential property. But, as far public utility facilities, this will be our second.

Chair Jacobs: And are you aware of any complaints that have been brought to you by adjoining property owners regarding those panels or facilities.

Michael Harvey: I can testify I have not received any noise complaints, and there have been no investigations conducted by the planning department or the Sheriff's department, who would obviously enforce a noise ordinance.

Johnny Randall: Now, I am all for solar. I have a solar water heater. I hope to have photo-voltaics on my house, and some of my best friends are in the solar business; but I would like to make a couple of comments to Strata Solar about this, and I'm sorry if I haven't had the opportunity or made the opportunity to make these before, as a planning board member. But, in terms of property value, I don't know if they've considered the fact that this wooded site is between I-85 and the residential area, which I'm sure provides a significant sound buffer. And I don't know how that will affect what will be coming from I-85 subsequent to the logging of that site. I know that there is railroad track right behind those residences, so you know they get intermittent noise, I'm sure; but that's different than a constant sound from I-85.

The other comment is also for Strata Solar. This is clearly not a significant natural area; however, looking at aerial photos, it's largely hardwood and maturing trees and I would just like to say that for future site choices, I would encourage you to choose sites that are perhaps redevelopment sites, gray fields, brown fields that would be more in line with your sustainability mission. Because losing 52 acres of trees, which are going to suck up not only pollutants, but a lot of carbon dioxide and sequester that over the long term, kind of offsets what you – the philosophy – What I believe your organization, your company, does is to reduce carbon emissions to the environment, but by taking out 52 acres, there's 52 acres that's not going to be taking up carbon, sequestering that. But, at the same time I know this can be re-developed or developed in other ways, apartment complex for instance, which you know - So, I'm just pointing that off for your future land use. And as far as the runoff goes, let's say there are, you know on the low side, a hundred trees per acre, and you've got 52 acres, 5,200 trees. A modest size tree can transpire over 100 gallons of water per day; therefore, 520,000 gallons of water per day could be leaving that site. So, you might need to calculate that as well, in terms of about how much water is going to be running off the site. I don't know if you're going to check the amount of runoff post tree harvest or pre tree harvest, but I think you should do that post tree harvest. That's all I've got.

Megan Toben: Hi thanks for the opportunity to jump in here. My name is Megan Toben and I've been sworn in. I'm going to tell you the truth; I actually came to speak in support of the agricultural zoning, which we're going to talk about later. But, I didn't realize Strata was her proposing one of these, and I actually was one of the first – our farm was one of the first sites that Strata put a solar farm on, probably was it like six years ago on Pickards Meadow. It's

been three or four, I don't know, it's been awhile, and it's been wonderful. They come quietly and take care of whatever needs to be taken care of. We usually don't even notice that they come. They take care of the grass. The grass is beautiful there. It's better than it is in our pastures. The solar panels are gorgeous and it's actually a place of pride for us and for our neighborhood, that, you know, North Carolina was maybe lagging in renewable energy development before Strata came in, and now, you know if we have the choice between any of the choices we have for energy, be it hydro fracturing or coal or nuclear, this is by far and away the one that we want to support, Orange County. So, please give them every courtesy. Thanks.

Commissioner Gordon: I just wanted to ask a technical question, because Johnny Randall was sworn, but we didn't enter into the record what his credentials are to make those statements. I don't know if that's important, but he does have credentials. You might want to enter those into the record.

Johnny Randall: I am a professional biologist, plant ecologist, and botanist – Master's, PhD in botany and plant ecology.

A motion was made by Commissioner McKee, seconded by Commissioner Price to:

1. Refer the matter to the Planning Board with a request that a recommendation be returned to the County Board of Commissioners in time for the May 8, 2014 BOCC meeting.
2. Adjourn the public hearing until May 8, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Commissioner Rich: Commissioner Dorosin brought to my attention that we have two recommendations on the back of the presentation and only one recommendation in the packet. Is the recommendation in the packet the one that we're going with?

Chair Jacobs: On the sheet that I'm operating from, there is only one.

Michael Harvey: If I may - We have a recommendation in the packet to take this, essentially to adjourn your public hearing to May 8 and submit this to the planning board for them to move forward. As I discussed with Chair Jacobs and Mr. Hartley, given some of the comments we received from adjacent property owners via email, we suggested if the Board had additional questions or comments, that there was an alternative that this Board could conceivably engage in, with respect to adjourning this hearing to a day and time specific if they felt additional testimony was necessary. Which is why, Commissioner Rich, you are seeing this on your PowerPoint presentation; but the motion obviously was to go with staff's recommendation as it is currently contained in the abstract.

Chair Jacobs: So, is it your intention to ask for a substitute motion, or are you satisfied with the motion?

Commissioner Rich: No, I just think for me it would have been good to have both of these here, so I would have known what we were doing. It's fine. I'm fine with that motion.

Commissioner Gordon: I have a question about this. If we don't continue the public hearing until March 18th, then there won't be a chance for applicant and staff to meet with local property owners. Is that correct?

Michael Harvey: Without speaking for Strata Solar, in your packet, and it has already been introduced into evidence, Strata Solar has committed to meeting with adjacent property owners to address or discuss their concerns. Staff has also indicated to Strata Solar that we will be meeting with them with the property owners. There will be time. Obviously you can accept written evidence, written updates, as the planning board can. I think, Commissioner Rich, just to further explain why you have the dual recommendations. We didn't get adjacent property owner comments until after the, obviously, abstract went out. So, we were trying to, quote, hedge our bets and give the Board as much leeway, and give the Board as much support in terms of a motion that would address your needs.

Commissioner Gordon: Well I'll move a substitute motion of the second recommendation.

Chair Jacobs: Well why don't we hear from Commissioner Dorosin first. He's been waiting to speak.

Commissioner Dorosin: I just want to ask a procedural question. We're having this public hearing today. We're going to vote to send it to the planning board for their consideration, and they're going to hold a – receive public comment in their meetings?

Michael Harvey: They can receive written comments per the Unified Development Ordinance (UDO), which become part of the record and part of their deliberation. Now, if I am an interested party and wish to comment or talk about what I've written, that's been allowed at the planning board; but typically it's only written comment.

Commissioner Dorosin: So there is going to be some – It's going to go to the planning board. They're going to take in everything they heard today. They're going to review it. They're going to make some comments, maybe, and come back, and we're going to meet again. This is going to come back, according to the first motion, on May 8th, and then at that time we're going to not take any additional public comment. It's going to be one of those fake public hearings, where it's a public hearing, but the public is not allowed to give comment, and then we're going to vote at that time on the CUP, presumably.

Chair Jacobs: Yes, presumably, right, with whatever additional materials were presented to the planning board, which presumably could include neighbor's concerns as addressed to Strata Solar or the planning board.

Commissioner Dorosin: Right. Well, I just – So, I understand that's the way that things have been done, and that's how it's been set up; but it strikes me as being not the most efficient process. If we value the planning board's input in this, I would think that input would be relevant to the actual public hearing where the public gets to comment as well. So, I just wonder if, in the future, it wouldn't make more sense to have the planning board review the application and bring forward a recommendation, and then we – and that is part of this public hearing that people get to comment on. So they get to see what the planning board has said. They get to see how the applicant has responded to the planning board's suggestions, and then – Now of course it might take another round after that, but conceivably at this point, we could have a vote, with all the people here. So, maybe this is something to put onto our procedural review agenda, but it seems to me that this doesn't seem like the most efficient or expeditious way of doing it. And I have concerns about that.

Michael Harvey: If I may add, that subject matter is actually coming up later this evening.

Commissioner Dorosin: Excellent. I wish it had come up first, but thank you. I know there is some discussion about this.

Michael Harvey: And again, without belaboring the point, we have a staff recommendation. We wanted to provide you with an additional recommendation if you felt it may be necessary to continue this public hearing to allow any additional public comment. So, we wanted to give you both concepts of what you would like to do.

Commissioner Rich: I'll be quick. I wasn't criticizing. I actually think it's important to see the different options that – I mean often we don't see the different options, and I think it's important to see that. I wasn't criticizing.

Michael Harvey: And I didn't take it that way. I just wanted to make sure you understood why, all of a sudden, you are seeing it here instead of also in the staff report.

Commissioner Gordon: So staff doesn't have a recommendation.

Michael Harvey: Staff's recommendation is that you send this to the planning board, adjourn this to May 8th. If you believe additional testimony is necessary, you cannot adjourn the public hearing until May 8th, because no additional testimony will be accepted. If you believe additional public comment is necessary then our recommendation then will be that you adjourn this public hearing until the March 18th regular meeting where you reconvene the public hearing to accept additional public comment.

Commissioner Gordon: Otherwise, it goes to the planning board and people can write their comments.

Michael Harvey: Yes, ma'am.

Commissioner Dorosin: So, I just wanted to ask, could we, instead of – Could we do some combination of this? In other words, couldn't we potentially amend the motion on the floor to allow for additional public comment when it comes back on May 8th? You just described it as saying, if we wanted more public comment we should set it for March 8th, and then presumably at that point we would adopt the proposal that's on the floor. And I'm just wondering if – Couldn't we do them both at the same?

Michael Harvey: My concern would be that the planning board would then begin deliberations with comments made this evening. Any additional comments, this would be a reconvening of the public hearing with just the County Commissioners. So, the planning board would begin deliberation on this item based on everything they've received here this evening, and I wouldn't advise the planning board to make a recommendation until after the March 18th if you do continue this. Because, obviously they're basing their decisions on matters entered this hearing, but they aren't going to have comments from March 18th until afterwards. So, if you forward this to the planning board for the March regular meeting, they can discuss the merits of the application based on the testimony they've received, but they can't make a decision if there is going to be an extended public hearing; which is why it is just more appropriate, if you're going to extend the public hearing, to do that, and then submit this to the planning board for their April regular meeting, where they have all the facts to deliberate on.

Commissioner McKee: I realize and also agree that the process is a bit cumbersome. My concern is that we not change up the process in the middle of a project, that we move this

forward under the process that we've got; and then that we, either later in this when we talk about it, or in a later meeting we discuss what process we need to go to, if we need to go to another one. But, I would prefer to go ahead with the process we've got in place, and move this project forward.

Commissioner Gordon: I have a procedural question for the attorney or somebody, and that is, some people just came in who wanted to speak. We haven't actually closed the public hearing yet. We've got a motion on the floor and a second, but we haven't voted on it. If people wanted to withdraw those motions and let people speak, could they?

James Bryan: Yes.

Commissioner Gordon: Well that's what I would suggest.

Commissioner Pelissier: Well that was also one of the things that I wanted to say is that we should accept additional public comment, and I do want to make another comment about the public hearing. I thought, and I can't remember at the last meeting, that when we make such motions that we adjourn the public hearing to receive the planning board comments, when it comes back, it's not really a public hearing; so I wouldn't call it a fake public hearing. And I think we have to make sure we have the correct title so that we are not misleading anybody in the public about what we're doing, and this is our public hearing, tonight.

Commissioner Dorosin: So, we are the body that makes the decision on the CUP, right, not the planning board? So, I don't understand why their deliberations would necessarily have to be subject to testimony under oath or anything else. And I think if we are going to receive the planning board's comments as part of the record, then the public hearing is not over. So, either that becomes part of the record of the public hearing, and so then there's opportunity for more comment; so again I think it's either, if we're taking more evidence, which is what I think the planning board recommendation would be considered, then the public hearing is still open; and if it's still open, then anybody should be allowed to comment; and if it's closed, then there shouldn't be any evidence added to the record, which is why the planning board's recommendation should come at the front end.

Chair Jacobs: Let me suggest two things – one is that I think there is sentiment on the board, if the motion maker and the seconder are comfortable, to table consideration of the motion to entertain whether there is any additional public comment at this time – secondly, as far as your point, as Mr. Harvey pointed out, we have a whole discussion of process, and I think some of your points relate directly to that process and are well taken in regard to calling something a public hearing when it's not, or else actually having a public hearing, if that's what we're going to call it. But, I would suggest that, while your points are well made and well taken, that looking at all the people who are here for other items, and the fact that we are going to discuss this toward the end of the meeting, that we just at this point table the motion for consideration until we see if there additional public comments and then have this discussion of process; and we could always talk about how it may relate to other items. But, at this point, move forward and see if there are people who had comments about this proposal. If you do, you need to come identify yourself, and come forward and be sworn. If you sent written comment, then it will be included in the record anyway, and you don't necessarily have to speak.

Commissioner McKee: Mr. Chairman, I will withdraw or table the motion until we get further public comment, since we have someone who wishes to speak, if the seconder will agree to that.

Commissioner Price: Oh, I definitely will agree.

Chair Jacobs: Was there anyone else here who wanted to speak on this item, who would not need to come forward and be sworn? If not, I'm going to say that we have a motion that was previously tabled and seconded, to move this item -

Commissioner Gordon: I am withdrawing my substitute motion.

Chair Jacobs: Commissioner Gordon is withdrawing her substitute motion.
- to refer this to the planning board to return a recommendation for our May 8th 2014 meeting. Now do we any additional comment on this motion?

VOTE: UNANIMOUS

2. **Zoning Atlas Amendment** - To review an application seeking to rezone an approximately 12 acre parcel of property located at 5908 US 70 East in Eno Township from Economic Development Eno Low Intensity (EDE-1); Economic Development Eno High Intensity (EDE-2); and Lower Eno Protected Watershed Protection Overlay to Economic Development Eno High Intensity (EDE-2) and Lower Eno Protected Watershed Protection Overlay.

Michael Harvey said this item is not a special use permit, but is a legislative action to review a re-zoning request. He reviewed the following PowerPoint slides:

BACKGROUND

- PIN – 0803-11-5662.
- Size of Parcel – 12 acres with approximately 8.6 acres zoned EDE-2 and 3.4 zoned EDE-1.
- Future Land Use Element Map Designation – Economic Development Transition Activity Node
- Growth Management System Designation -- Urban.
- Existing Conditions -- The property supports a previously permitted Class 2 Kennel and telecommunications tower.
- Access -- The property has direct access onto US Highway 70.

REQUEST:

- Applicant requests EDE-2 zoning for entire property,
- Believes EDE-2 zoning designation is more appropriate for the property given its frontage along US Highway 70,
- Represents a logical extension of the district.
- Existing land use (i.e. Class II Kennel) is a conforming land use in EDE-2 zoning district.

EDE-1 VERSUS EDE-2 LAND USES:

- EDE-2 would allow the following additional uses:
  - Animal Hospital/Kennels (Class II require SUP) – STAFF NOTE: kennel already operating on property
  - Manufacturing/Assembly uses (i.e. fabricated metal, electronic equipment, food products, furniture, etc.)
  - Retail (i.e. restaurant, retail sales, etc.)
  - Services (i.e. hotels, research facility, etc.)

– Wholesale trade

STAFF ASSESSMENT:

- The application is complete,
- The property is of sufficient size,
- Consistent with the Orange County 2030 Comprehensive Plan, Growth Management System Map, and adopted Eno Economic Development District Area Small Area Plan,
- Logical extension of existing EDE-2 district,
- Would help property owner address issues associated with expansion of existing kennel operation.

RECOMMENDATION:

1. Receive the proposal to amend the Zoning Atlas.
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
4. Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Buddy Hartley asked if there were any questions from the boards.

Michael Brough, representing Sunny Acres, said he and the owners of the kennel are available for questions. He said this will essentially eliminate split zoning of this property. He said the reasoning behind this request is a possible future expansion of the kennel in future. He said it is in the interest of the general public to have a single tract of land, under single ownership, zoned the same way.

Commissioner Dorosin referred to the skinny rectangle in the middle of the map, as well as the front small piece, and asked if these were separate parcels.

Michael Brough said these were separate and he is not sure whether these have been combined, but if not, this will happen as part of the next step. He knows there has been an acquisition of additional acreage since the property was first purchased. He said he has a survey, and this may be combined or it may not be. He said it is all effectively one tract of land.

A motion was made by Commissioner McKee, seconded by Commissioner Price to:

1. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
2. Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

3. Unified Development Ordinance (UDO) Text Amendment - To review an application seeking to amend Section 5.6.5 (A) (2) (b) *Kennels (Class II) – Standards of Evaluation* to reduce required setbacks for Class II Kennels developed within the EDE-2 zoning

district.

Michael Harvey said there is no formal presentation for this item. He referred to a display of the text markup. He referred to page 65 of the abstract and the proposed text amendment on Attachment 1.

He said this is referring to a Class 2 kennel, which involves the keeping, boarding, care, and training of more than 20 animals. He said the current requirement is a 150 foot setback from all established property lines. He said the applicant is currently operating under an existing Class 2 kennel permit, issued in 1986. He said the applicant has dog run areas within the required setbacks, and the proposed text amendment would drop the required setback to 25 feet. He said this would, in effect, adhere to general zoning setbacks already established for this district.

Michael Harvey said staff has some concerns, which are identified in the abstract and the staff memorandum. He reminded the Board of an email in front of them from Mrs. Easterland.

Michael Brough referenced a handout. He said the purpose of this is to correct an unfortunate situation where the applicant is in violation of a zoning ordinance as a result of the 150 foot setback situation. He said it did not occur to the owners when the property was purchased that the replacement of an existing fence would create a zoning problem. He referred to a handout and a comparison of past and current site plans. He said the 1986 permit was evidently in violation of the setback requirement, and the new owners were not aware of the setback requirement. He said the initial notice of the zoning violation occurred back in 2006, and there is no mention of the 150 foot setback requirement.

He said the amendment reduces the 150 foot setback that applies to kennel 2 uses, only in the EDE-2 zoning district and where the property adjoins other property that is zoned EDE-2. He said it does not apply to any other zoning district. He said the 25 foot setback would continue to apply to this use, although the owners prefer to keep their existing fences where they are. He said the change in ordinance only applies to the exercise yards, and it doesn't apply to buildings. He referred to the proposed new language which states this. He said the change to the 150 foot setback does not apply to buildings, as buildings can already go up to the 25 feet.

Michael Brough said the most important aspect of the change is that the amendment only applies in the EDE-2 district and where the property adjoins other EDE-2 properties. He said this is important because the uses in the EDE-2 district are fairly intensive as compared to other districts. He said there is low likelihood of any other type of uses in this area, due to the location and lack of sewer. He said that makes this a very narrow amendment. He said the benefit to the public of maintaining that 150 foot buffer is marginal, if it exists at all; however the hardship that it creates for the owners is pretty extreme. He said there are no other practical areas to place the exercise yards, and these are integral to maintain the business. He said there are 300-400 signatures from customers and community members in support of this business. He said there are 20 or more employees, whose livelihood depends on the business. He noted the members of the audience in attendance to support this amendment.

Commissioner Gordon addressed Michael Harvey and referred to the staff analysis page 73. She asked for clarification on this, specifically items 6 through 9.

Michael Harvey said he would reject some of what Michael Brough said. He said the setback being referenced was enforced in 1986, and the applicants were made aware of the problem, as were their attorney and their surveyor. He said the existing language of the UDO, as was enforced in 1986, indicated that the minimum setback distances would not apply if all elements of the operation were in an enclosed facility; but the ordinance clearly states that all buildings and runs must meet the setback requirements.

He referred to Commissioner Gordon's question and said staff's initial observation is that impacts observed from kennel operation are universal and are not mitigated because the operation is in a non residential district. He believes the question here is what constitutes an appropriate setback for a kennel in an effort to address impacts on adjacent properties. Staff is concerned that the reduction of the setbacks to 25 feet will increase complaints related to the operation of the kennel and its impact on adjacent property development. He said staff is not convinced that the 25 foot setback will provide sufficient separation from adverse impacts. He said staff is also concerned that this proposal is inconsistent with the Comprehensive Land Use Plan. He said staff understands the situation that the kennel is in, but it is their opinion that the cons outweigh the pros.

Commissioner Gordon said it sounds like there is a situation of existing use, but the remedy is to change the whole zoning ordinance.

Michael Harvey said that is the applicant's contention.

Commissioner Gordon asked if there is any other approach, such as a variance under the Board of Adjustment, for hardship.

Michael Harvey said no, not in his opinion. He said there is an existing special use permit, and the kennel is in violation of that permit.

Commissioner Price asked why the variance is out of consideration.

Michael Harvey said this facility is operating under a previously issued special use permit, and the facility is now out of compliance with that permit and with the ordinance. He said the kennel has to bring the site into compliance with the code in order for the special use permit to remain valid and the operation to continue. He would also argue that this situation is self created, and the operation has been expanded. He said, as a result, this would not qualify for a variance because the hardship is not unique, and it is self induced.

Commissioner Dorosin asked if the Board could amend the terms of the conditions of the special use permit.

Michael Harvey said the ordinance would have to be amended in order for the conditions of the special use permit to be modified. He said the 150 foot setback applies.

Commissioner Rich questioned whether an amendment to this ordinance would mean anyone with a kennel could request this change as well.

Michael Harvey said it would only apply if a kennel was in the EDE-2 zoning district. He said there are no other kennels in the EDE-2 zoning district.

Commissioner Rich noted that this conversation started in 2006, and she asked what has happened between 2006 and 2014.

Michael Harvey said there have been a lot of changes in attorneys and surveyors, and there was no proposal to address the problem until recently.

Commissioner Pelissier asked how many acres in Orange County are zoned EDE-2.

Michael Harvey said, according to Craig Benedict, the amount is approximately 200 acres.

Commissioner McKee said he is hearing two different versions, that the setback amount it was unknown, and that it was known.

Michael Harvey said he stands by his answer to the Board.

Chair Jacobs said this is that what the Board of Adjustment is for, to allow someone to articulate their beliefs and then to have County staff articulate what it believes the facts to be. He said there is then a rendering of an opinion on whether an exceptional situation exists, or is allowed to exist.

Michael Harvey said staff issued an opinion in 2006, and that opinion was not appealed; so that opinion is the full force of law. He does not believe the owners have standing to appeal it now.

James Bryan said he would encourage the Board not to focus on this particular petitioner. He said the Board has an obligation to consider all of the ramifications of this. He said the question of how much EDE-2 is in the County, is a very relevant one. He said whether this petitioner will benefit from it or not, or whether the petitioner has alternatives available to them, is not a valid basis for an eventual decision.

Chair Jacobs said he feels that one of the things the Board is looking for is an alternative to making a universal decision to address an individual circumstance. He asked if there is an alternative avenue other than changing the buffer requirement in the entire district from 150 feet to 25 feet. He said this would be to address the difference of opinion, interpretation, understanding or experience.

James Bryan said there are three alternatives: One is a variance; one is a new or amended conditional use permit; and the third would be an appeal to any staff decision. He does not know the details of all of these. He said a new or changed SUP is not viable, because the Board cannot eliminate requirements in the ordinance. He said an appeal is basically the back and forth that has been heard tonight, and the details would have to go through a a quasi-judicial hearing with the board of adjustment. He said a variance is very much akin to the SUP process, but it is fact dependent and the likelihood is not good.

Michael Harvey said a conditional use is not applicable here, since this district allows Class 2 kennel operations and guidelines and restrictions have been established. He said the UDO has language mandating that those guidelines and restrictions be observed in the conditional use permitting process.

Commissioner Dorosin said he appreciates the attorney's advice that this is a legislative decision and not a quasi-judicial one. He thought he read in the packet that the general setback is 25 feet, so if this change were made, it would change the kennel setbacks to match the setbacks of all the other permitted uses in the EDE-2.

Michael Harvey said this is correct.

Commissioner Dorosin said he would make a motion to adopt this change.

Chair Jacob said it is still early in the process.

Commissioner Price clarified that in order for the kennel to apply for a variance, it would first have to come into compliance

Michael Harvey said his interpretation is that the kennel has an existing special use permit that is governing the operation of their site. He said his problem is that the owners cannot meet the criteria to then justify the issuance of the variance.

Commissioner Price said it is for the panel to decide if this is a hardship or not. She is just clarifying that the kennel would have to come into compliance first.

Michael Harvey said the owners can apply for a variance, but it is his opinion that it cannot be issued if it is to comply with local ordinance and state law.

Commissioner Gordon asked if it would be an option to have another hearing and make this a non-conforming use, and eliminate kennels from EDE-2.

Michael Harvey said if the use is eliminated, then you have an illegally established use. He said under the confines of the non-conforming ordinance, the logic is that it could continue operation; however it is already in violation of the permit it was issued in 1986.

Commissioner Gordon said the question is whether the Board wants to make a universal change for a specific circumstance. She said the consideration is whether it is universally acceptable to have a 150 foot setback for a kennel. She said this is a legitimate question.

Commissioner Pelissier referred to her original question about the EDE-2 total acres, and she asked if information can be provided on how much of the EDE-2 is already developed and how much is not.

She wants to make sure that the public understands that letters sent, even before the public hearing, become part of the public record.

Michael Harvey said this is correct on both counts.

Tony Blake, representative for Bingham Township, said he agrees with Commissioner Dorosin. He said the intent of this ordinance is to protect people from noise and annoyance from a kennel, and this is the additional setback. He questioned, in the case of EDE-2, who cares. He said there should be an ability to tweak this kind of stuff, or the County ends up putting people through unnecessary hardship or putting them out of business.

Commissioner Gordon clarified that this is a public hearing, and no decision will be made tonight.

Mike Schmidt said he would use his three minutes to tell a story. He said he was having a tough day at work. He said he drops his dog off early in the morning and usually picks up late at night, but he took off early and picked up his dog early. He drove up the driveway and saw his dog chasing bubbles that someone was blowing. He said he asked about this and he was told that the kennel had researched how to create dog sensitive bubbles to give the dogs different play and interaction. He said he was told long ago that you can judge someone by their actions when they don't know they are being observed. He said these people really care about these animals, and he wants to tell about the great benefit he receives, along with the hundreds of others that signed the petition.

Jane Bozart said she sent an email, and if this is in the record she does not need to repeat it.

Ken McNish said he has been bringing his dog to Sunny Acres for three years, and he feels that the key feature that makes it different is the open space for the dogs to run. He said there are a lot of complicated things being discussed tonight; but this is simple, and the proposal makes sense.

Susan Heske said her dogs have been at Sunny Acres for two years, and aside from the benefit of the dogs being able to run and socialize, it is also a very professional business. She is amazed at the staff and the commitment. She said it is located in an area that can use some business. She is not aware of any neighbors waging any complaints. She said she is more concerned with the process and why this situation has not been adjudicated in 8 years. She said a fair amount of money was invested in improving an existing fence. She said this is about process, and her concern is why this has remained dormant for so long. She said this is a low impact business, and there is nothing harmful to the environment. She said the kennel provides jobs to people and is a benefit to hundreds of dogs.

Peter Eckhoff said he has been a customer of Sunny Acres for 4 and a half years. He said his son came down with cancer, and his dog was boarded for 2 months at Sunny Acres. He said the dog was high energy, and he was able to go out in the runs. He said when the dog came home and was then taken back to the kennel; he dragged the owner to the front door. He has had other dogs at other kennels, and it wasn't the same experience. He wonders what the basis is for the ordinance, and he noted the proximity of the highway and the noise created by that.

Michael Brough said he would like to address a couple of issues. He said if the choice of a variance was available, that would have been pursued. He said the consensus was that the variance opportunity is not a real possibility. He said the conditional use permit is out as an option, and so is an appeal. He said the only realistic way to cure this is the legislative solution before the Board. He addressed Commissioner Gordon's question about a universal change. He said he is very sensitive to this, and he represents a number of local governments. He is very sensitive to an ordinance change being broader than the needs of the particular applicant; however he is frequently called upon to craft legislative solutions to deal with particular situations like this one.

He said the reality is that the applicant has drafted a very narrow amendment, and it only affects 200 acres, and quite likely it will only affect this property owner. He said this is not a question of amending an ordinance of universal applicability or not. He said the realistic choice

is whether you are going to keep an ordinance on a theoretical basis that is going to have the practical effect of driving this business out of business. He said there have never been any complaints about noise or smell, which indicates there will not be a problem to make the legislative choice before the Board.

Michael Brough said the owners have confirmed to him that they did not know about this 150 foot setback requirement until the past couple of months. He said that is their representation to the Board. He urged the Board to adopt this ordinance.

Commissioner Gordon asked, given the item that came before this, where the property is located, and whether it has to be re-zoned EDE-2 in order to qualify.

Michael Harvey said the rezoning for the previous item is necessary because it is improper to have split zoned property. He said re-zoning does provide an abundance of additional area where dog runs can be placed in compliance with the 150 foot setbacks.

Commissioner McKee said for him it boils down to aligning the setbacks with the zoning. He said the EDE-2 zoning is high intensity, so you don't expect the same kind of setbacks and development as would happen in a residential or EDE-1. He sees no problem with moving the setback to 25 feet.

Commissioner Gordon questioned, given the statement that there is room for compliance if the re-zoning is granted, why that cannot be done.

Michael Brough said this was anticipated, and this was examined. He said looking at the maps, it looks as if there is sufficient space; but it is very difficult as a practical matter. He said the three houses would have to be moved or trees cut down, and there is a creek through the center of the remaining property, as well as some substantial elevation changes. He said the application of the setback makes it a very narrow area, and there is also a required setback from the cell tower on the property. He said, given these things, it becomes very difficult and expensive, and it is of no benefit to anyone to do it.

Commissioner Gordon said it could be done, but it is expensive.

Michael Brough said he cannot say that it can be done, as he cannot survey it out.

Chair Jacobs said he assumes the Easterlings would know which was more onerous, hiring a lawyer or moving the fence, and they chose to hire a lawyer. He said, based on what Michael Brough is saying, it seems it is highly problematic to move the fence. He said he has used Sunny Acres for years. He said this comes down to the Board being forced to make a choice between an abstract and a specific. He said sometimes the answer is to be inflexible in the name of a greater good, and sometimes the answer is to recognize the situation in front of you and choose that over the abstract.

He said a decision cannot be based on the property being recombined until a vote is actually taken to recombine it, so this is also abstract. He would rather have dealt with this in another way, but there is no other option.

Maxine Mitchell said she would want to see a layout of the area and some pictures at the next discussion.

Tony Blake said one more point would be to find out if the adjacent owners have been notified to find out if this is a problem for them.

Michael Harvey said the adjoining property owners were made aware of the text amendment. He said no complaints have been received.

Judy Foster said she owns the property next door to the kennel, and she has no objection to the 25 foot setback. She said she would agree to this, and she is right next to their parking lot.

Commissioner Gordon said she is not unsympathetic to this; she is just trying to find out what the options are. She said the question is a general question about universal standards versus specific standards. She said she loves dogs, and this is a wonderful operation that has not conformed with the regulations, so it is a difficult question.

A motion was made by Commissioner Dorosin, seconded by Commissioner Pelissier to:

1. Accept the applicant's proposed amendments to the UDO as detailed in this abstract and attachments.
2. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for the April 15, 2014 BOCC regular meeting.
3. Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

3. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments and Zoning Atlas Amendments** - To review government-initiated amendments to the text of the Comprehensive Plan and UDO and to the Zoning Atlas to establish two new zoning overlay districts in the Efland area.

Perdita Holtz reviewed the following PowerPoint slides:

Comprehensive Plan Text, Unified Development Ordinance Text, and Zoning Atlas Amendments for Two New Zoning Overlay Districts in the Efland Area
Quarterly Public Hearing
February 24, 2014
Item C.4

Background

- Heard at November 2012 quarterly public hearing
- Denied by BOCC in February 2013
- 1 year waiting period required for a new application in cases of denial
- This proposal is the staff-recommended version considered on February 5, 2013

Basic Charge

- Implement recommendations in the adopted Efland- Mebane Small Area Plan to establish design and site planning standards for this area of the County served by public (or quasi-public) water and sewer systems.

- Amend plans and regulations as necessary in order to establish two new zoning overlay districts.

Comprehensive Plan Text Amendment (chart)

What is a zoning overlay district?

- Regulatory tools that create a special zoning district, placed over the existing base zones, which identifies special provisions in addition to, or in lieu of, those in the underlying base zone.
- Purpose is to guide development within the specified area.
- Overlay district regulations can be more restrictive or less restrictive than the regulations that apply to the underlying base zones.

Zoning Atlas Amendment (map)

Future Land Use Map (Map)
Relationship to Existing Efland-Cheeks Overlay District (map)

UDO Text Amendments

- Amendments to several sections necessary to implement the new zoning overlay districts
- Intent of the new districts:
  - Allow for a more urban style of development in the Efland Interstate Overlay District
  - Allow for an urban village style of development in the Efland Village Overlay District

Why Necessary?

- Different development regulations necessary in order to reflect the reality of smaller sized lots (both existing and anticipated) served by water and sewer.
- Encourage high quality growth in an area of the county proposed for additional growth while protecting existing development and community character.
- Ensure good planning practices related to site design, transportation, and architecture are achieved.

General Information

- Many of the proposed changes in the amendment packet contain footnotes explaining the reason/rationale for the proposed change.
- Website contains more information
  - Questions and Answers
  - Synopsis of Proposed New Regulations and/or Differences from Existing Regulations
  - (Orange County, Planning Department, “Current Interest Projects”)

Exceptions and Existing Uses

- Single-family detached residences (both existing and new) are not subject to the requirements of the overlay districts.
- Other existing land uses are not required to come into conformance with the new regulations so long as the property continues to be used as it is currently being used.
- The requirements of the Major Transportation Corridor (MTC) Overlay District are not being altered.

Synopsis of Changes
(Applicable to Both Districts)

- Side and rear setback can be less
  - Intent is to allow required buffer and minimum setback to be the same
- Smaller (less wide) buffer between lots
  - In keeping with those required in the existing Efland Cheeks Overlay District along Highway 70
- No more than 1 entrance/exit point, unless justified
- Large projects must provide an internal pedestrian circulation system
- Must provide intra-site accessibility
- Requirements for driveways and shared access
  - Shared access only applicable if fronting on Mount Willing Road or Highway 70

Synopsis of Changes
(Efland Interstate Overlay District only)

- Site Planning must take into account need for connecting roadways shown on the adopted Access Management Plan for the area
- Requires that national prototype architectural styles of chain businesses be altered as necessary to complement the surrounding area

Synopsis of Changes
(Efland Village Overlay District only)

- Changes in front yard setback requirements
  - Minimum of 30-feet along Highway 70
  - If not along Highway 70: front setback in keeping with adjoining uses
- No fences in front yards unless a demonstrated need can be shown
- No chain link or similar fencing
- No outside storage of materials
- Allows up to 15% of parking to be located in the front yard (setback area)
- Encourages shared parking and puts a cap on parking
- Limits signage to monument style signs that do not exceed 6-feet in height and prohibits pole signs
- Does not permit modern corporate franchise building design
- Principal building must face fronting street and have a functional doorway
- Requires that buildings be designed to contribute to a “human scale”
- Prohibits drive-throughs and mirrored glass

Public Notification

- Completed in accordance with Section 2.8.7 of the UDO
  - Newspaper legal ads for 2 successive weeks
  - Mailed notices to affected property owners
  - Mailed notices to property owners within 500-feet of affected properties
  - Posted 25 signs in strategic areas of the affected area

Recommendation

- Receive the proposal to amend the Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas.
- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.

- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
- Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Perdita Holtz said there is already a similar overlay district along Highway 70. She reviewed the comprehensive plan graphic and said the zoning districts need to be consistent with the comprehensive plan. She said the area where the proposed overlay district is located is a commercial/industrial transition activity node. She said staff is also suggesting a tick mark be added in the other three transition land use classifications, so that any future overlay districts that are contemplated will not require a comprehensive plan amendment.

She reviewed the map of the Zoning Atlas Amendment, as well as the Future Land Use Map and the map of the overlay district mentioned earlier. She said the proposed text amendments contain amendments to several areas. She said the current development regulations primarily address development on large size lots.

Referring to the slide "Synopsis of Changes (Efland Village Overlay District only", she noted that varied setbacks along an individual street create a more chaotic feel and look. She said it is good urban design for a village setting to have consistent setbacks.

Chair Jacobs asked for an explanation of how all of this came to be proposed.

Perdita Holtz said this is part of the Efland Mebane small area plan, which was a plan made up of appointed residents in the area. She said this is a community driven plan, and it is based on recommended standards for achieving good development.

Commissioner McKee noted that the Efland Mebane small area plan was brought forward in 2004, and the committee ran for two years. He asked if staff has gone back to the community since 2006.

Perdita Holtz said committee meetings were held when the zoning overlay districts were last proposed, and public information meetings were held in 2012. She said these meetings were not held for these changes, as these are substantially similar to what was proposed in 2012.

Commissioner McKee said, since this was denied by the Board in 2013, it would have been good to go back to the community to get their response before moving forward with another proposal.

Perdita Holtz said the amendment outline form for this item specifically stated that there would not be another public outreach meeting and the reason why. She said this was because this has already undergone public comment in the past, but she understands the concern.

Commissioner Price asked for an explanation of the rationale behind the fencing.

Perdita Holtz said this does not apply to single family houses, but it has to do with the aesthetics of having chain link or other fencing in the front yard.

Commissioner Price asked why there is an aversion to chain link fences.

Perdita Holtz said the committee expressed concern about this if there was a lot of commercial development.

Commissioner Price asked if this would apply to a duplex.

Perdita Holtz said you would not be able to have a chain link fence in the front yard.

Commissioner McKee asked about the drive-throughs. He asked if drive-throughs along highway 70 on any commercial facility would be banned.

Perdita Holtz said that is correct. She said there was a point in the small area plan that these would not be permitted in the Efland Village, but it would be permitted in the interstate district. She said the concern was having a string of fast food restaurants cropping up on Highway 70.

Commissioner Price said she believes another concern about the drive-throughs was the concern of car stacking and all of the associated fumes.

Perdita Holtz said that was a concern in the County, but the concern specific to this plan was about the proliferation of fast food restaurants on Highway 70.

Commissioner Rich said she remembers this as one of the first things that came before the Board when she came on, and she didn't have a lot of information. She said her concern at that time was calling things urban when there are no sidewalks being put in. She said she still has concerns with calling things urban, when there is no way for people to use their feet to get there, because there are no sidewalks. She is unsure of why the word urban is used in these settings.

Perdita Holtz said the growth management systems map adopted in 2003 calls areas rural designated and urban designated, and this is in one of the urban designated areas.

Commissioner Rich questioned whether this is really urban. She said the County is just creating an area where people are being allowed to build density.

Perdita Holtz said it depends on your definition of urban, but this is creating areas where people can not only build density, but can put non- residential uses.

Commissioner Rich said you can't walk there; you have to drive your car there.

Perdita Holtz said it is true that you cannot walk there on a sidewalk.

Commissioner Pelissier said the difficulty is that this is just a small area compared to an urban area like Chapel Hill or Carrboro. She said, even in Chapel Hill, 15-501 by-pass is in an urban area, but there are no sidewalks. She said it is difficult because of the scope of what is being looked at.

Commissioner Rich said it might just be her getting stuck on the word urban; but when these overlays are done, there are all these districts of overlays that are supposed to be urban, but none of them connect.

Perdita Holtz said the small area plan is supportive of having a sidewalk network, but right now, counties in North Carolina have trouble providing, funding, and maintaining sidewalks. She questioned whether you hold this up just because sidewalks can't be provided right now. She asked if development regulation should be kept in place that sometimes requires a buffer of 100 feet, when lots are only 100 feet wide; or if the County should implement something that is good for development now, and the sidewalk issue will continue to be worked on.

Commissioner Rich said she understands that, and if the County will be forward thinking and work toward sidewalks, then she is fine with this. She just doesn't want to approve an urban overlay and then that's the end of it.

Perdita Holtz said this is just one aspect of implementing the small area plan, and there is still more to do. She said keeping sidewalks and bike lanes in mind is part of the plan, and it is something she thinks Orange County will do when the time is right.

Commissioner McKee referred to the statement on creating non-conforming uses. He asked how "operating in the manner in which they are currently operating" will be defined. He said he is aware of multiple parcels of property where new regulations prevent expansion of existing business. He is concerned that this is what will happen here.

Perdita Holtz said this would create non-conforming uses if someone wanted to expand their businesses.

Commissioner Price asked if there would be a time limit for a non-conforming business if there is a change in ownership and a gap in use.

Michael Harvey said there is a time limit of 6 months within any 180 day given period.

Greg Andrews said he lives in the Efland Community and he owns a business in the proposed overlay district. He said he is also here in part to represent the Efland Ruritan Club. He proposed a public hearing in the Efland community. He said there are a lot of elderly folks who cannot come sit at this meeting for 3 or 4 hours to get to this part. He said he would like to

see the people who sat on this committee and made these recommendations. He referenced the discussion about sidewalks and said he does not know how safe walkways would be on highway 70. He asked that this issue remain open. He said the Efland Ruritans would be happy to hold this event in Efland.

Doug Efland said he owns property in the Efland village area. He said he has a lot of questions, and he would like this to continue with some sort of public meeting in Efland. He said there are a lot of things that are alarming or hard to understand in the proposed text. He referenced shared right of ways and other parts of the text that he did not understand. He referenced the section on easement agreements between contiguous parcel owners and asked what incentive it is for an adjacent property owner to enter an agreement with you if there are no plans to develop their property. He said there are certainly questions. He questioned the stipulations on connecting roadways to the east and west side of Mount Willing. He asked that this discussion be continued.

Ben Lloyd said urban to him is Chapel Hill, Charlotte or New York City. He said Efland is a sleepy little community where most of the residents have been living there all of their lives. He said this small area study has been going on for 20 years and notice of this public hearing was given 15 days ago. He has taken a quick look at this plan, and it would take a lawyer to pick all this stuff out. He said the people in the Efland community need to have the opportunity to have some input into this plan. He asked for an open Efland community meeting, followed by a public hearing for general public input.

He said he has a letter from Joseph Forrest and he asked what to do with that. He read the letter and asked it to be entered into the record.

Bill Efland said he also agrees with having the hearing in Efland. He asked if the residents are privy to having the names of the people on the Mebane Efland small area plan committee. He asked if there were any Efland family members on that committee and he said he feels that they should have been involved in this process.

Commissioner McKee said there were Efland folks on this committee. He said he would share the list of names after the meeting.

Lindsey Efland said he has had 40 years of Orange County government saving us from ourselves. He said when all is said and done this language affects approximately ten parcels of land. He said there are only a few developable properties. He said it has also been noted that he community has not been part of the planning process of late. He said this is a significant change for the future of the community and there is not any understandable language as it relates to the re-development of buildings. He feels work needs to be done on this and local input should be involved. He respectfully requests that the public hearing be continued while planning staff works with land owners to help them, and the planning board, understand the full implications of what is going on.

Mike Efland questioned how many landowners of involved parcels were on the committee. He wants to know whose brainchild this is.

Brian Efland said there are a lot of Eflands from Efland, and he is not aware of any who were on the committee. He feels that stake holders should be involved in these decisions. He noted the large number of community members present, and he said no one who sees this likes it. He would like to see continued discussion in the community.

Commissioner McKee said this came before the Board a year ago, and he still does not like it. He feels this should be sent back to staff with instructions to work with the affected community to address their concerns. He said this is not a countywide zoning overlay; it affects a very small number of people in a very big way, and these people need to be involved upfront. He understands there was a public meeting two years ago, but there have been changes made. He does not think the public hearing needs to be held over, but this should be sent back to staff instead.

Commissioner Price said she voted against it last time, and her comments are the same. She questioned whether the public received notice of the meeting last year when this was on the agenda.

Perdita Holtz said the notice went out for the November 2012 quarterly public hearing, and the notice contained an update on the information meeting held in November, which was attended by only ten residents.

Commissioner Price said she would still like to see more discussion with the community.

Commissioner Pelissier said this reflects the comments of the small area plan. She said that was a big picture, and this is only a small section of the Efland area plan. She is fine with having community meetings. She said it is important to continue this to avoid waiting another year. She said things get more difficult the longer this goes on. She suggested continuing the public hearing with a set date.

Perdita Holtz suggested this be continued to the May Quarterly Public Hearing. She said a public hearing out in the community has never been done before, and it would require a quorum of both the Board and the planning board. She said a public meeting can be held with staff in attendance.

Commissioner Pelissier said she was not trying to imply having a public hearing in the community, as this will not allow for question and answers with staff, which is what the community wants. She said this is called a public information session.

Ben Lloyd said people really want a public information session.

Chair Jacobs noted, in fairness to staff, that meetings were held at the Efland Ruritan and there were repeated attempts to recruit people from Efland. He said there were people from Efland who served diligently. He said this was the Efland Mebane small area plan. He said the conversation included plans to get Mebane involved to insure that it would not annex into Efland. He said if this is not a concern now, it is because Mebane has agreed not to do this. He said there were signs up, and there were meetings at the Efland Community Center, the Efland Ruritan Club and Efland Cheeks Elementary school. He feels it is a good idea for the community to meet with staff to ask questions about this, and then this can come back to the Board. He said there have been no attempts to exclude anyone.

An unidentified resident asked when the meeting was held at the Ruritan Club. He asked if the details presented tonight were discussed at that meeting four years ago.

Perdita Holtz said the details were discussed at the open house community meeting held in November of 2012 from 4 - 6 pm at the Efland Community Center, and 10 people came.

Greg Andrews said if this was turned down last time, he would like to see what changes have been made since then.

Chair Jacobs said staff does that in the documents, and this is included.

Greg Andrews said it seems that at least two of the Board members recognize that there is not enough change to make a difference

A motion was made by Commissioner McKee, seconded by Commissioner Price to turn this proposal down and send it back to staff for further review and community input before bringing it back.

Commissioner Gordon said this cannot be turned down, as this is not voted on at this meeting. She asked if Commissioner McKee would like to turn it back to the staff.

Commissioner McKee said it was turned back to staff a year ago.

Commissioner Rich said she is fine with the description of the sidewalks because of the forward thinking that the sidewalk issue is not being dropped. She said she does not understand why this wouldn't just continue to be a public hearing to get more information.

Commissioner Price said staff and the Commissioners would be able to have dialogue with the community. She said it would give more time for community input.

Chair Jacobs said this may just be a difference of semantics. He said the motion is to defer further Board of Commissioner consideration until staff meets with the members of the

Efland Community to address their concerns, and then this comes back to the Board. He said this does not say that this won't come back to the Board, but it directs staff to meet with the community.

Commissioner Dorosin suggested holding an informational meeting with the public at the Whitted building to allow Commissioners and staff to attend, in an effort to bridge the gap. He asked if this could be added to the motion.

Commissioner McKee and Commissioner Price agreed to this.

Commissioner Pelissier also suggested an amendment to the motion, stating that this would come back in May.

Commissioner McKee said he could not accept this, as he is not sure that this allows adequate time for staff to address community concerns. He said this would set an artificial deadline.

Commissioner Pelissier said she would like to have a specific time frame.

Commissioner McKee and Commissioner Price agreed to September.

Chair Jacobs reviewed the amended motion to have a public information meeting to give the Efland community members an opportunity to: meet with staff and Commissioners to express concerns, and for staff to explain the proposals, to come back for the September Public Hearing.

Michael Talbert said there are two options: 1.To close the existing public hearing or 2. Continue this public hearing until the September 2014 Public Hearing.

Commissioner McKee said he will add this to the beginning of his motion.

Commissioner Gordon said she is not sure about having a public information meeting that requires the Commissioners to have a quorum.

Commissioner Price said this is just a public meeting and the Commissioners can attend, but quorum is not required.

A motion was made by Commissioner McKee, seconded by Commissioner Price to close the public hearing; hold a staff coordinated public information session; and to bring this item back to a meeting in September, 2014. (There was discussion of the possibility of no QPH in September and the public hearing would possibly be during a regular meeting.)

VOTE: UNANIMOUS

Commissioner Price suggested there be more than one meeting.

5. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments** - To review government-initiated amendments to the text of the UDO to establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE) outside of the Rural Buffer land use classification.

Perdita Holtz reviewed the following PowerPoint slides:

Agricultural Support Enterprises Outside of the Rural Buffer Land Use Classification
Quarterly Public Hearing
February 24, 2014
Item C.5

History & Purpose of Amendment

- A work-in-progress since 2001
    - Need for Conditional Zoning construct was one of the "sticking points"
        - We now have this type of zoning in the UDO

- Augment allowable uses famers can pursue in order to generate additional farm-related income and to potentially allow farming support/related uses in rural areas while minimizing any adverse impacts on adjoining property.
    - ➢ Balance between rights of property owner and rights of neighboring property owners

Two Proposed ASE Amendments

- Outside of Rural Buffer land use classification
- Within Rural Buffer land use classification
    - Requires amendments to Joint Planning Area documents
        - Orange County, Towns of Chapel Hill & Carrboro must approve JPA amendments
    - Will be on longer review/approval timeframe
    - The more intensive uses could not be considered in the Rural Buffer, under the current proposal

Comprehensive Land Use Map

Unified Development Ordinance & Comprehensive Plan Amendments

- Add provisions for ASE into the UDO.
    - "Agriculture", as defined in the State statues, remains exempt from zoning regulations.
- Comprehensive Plan amendment to allow new zoning district in certain land use categories

ASE Program (Zoning/Land Use)

- Create new conditional zoning district (ASE-CZ)
- Add additional permitted uses to some of the existing general use zoning districts
- Create standards for many of the new uses
- Update some existing development standards
- Add definitions
- Amend Land Use/Zoning Matrix in Comprehensive Plan

Project Review/Approval Process

- Depends on use being proposed and current zoning of property
- Three basic processes:
    - Staff review/approval
    - Special Use Permit
        - Class B is reviewed/approved by Board of Adjustment
        - Class A is reviewed/approved by Board of County Commissioners
    - Rezoning
        - General Use district
        - Conditional district

Use Specific Standards

- Help mitigate impacts
    - Balance between rights of neighboring/nearby property owners
- Standards address issues such as:
    - Location on major roads
    - Additional setback requirements
    - Noise

        - Hours of Operation
        - Groundwater usage
        - Building size
        - Minimum lot size
    - In addition to all requirements in the UDO

Permitted Outright vs. SUP or Conditional Zoning

- Less intensive uses added to the Table of Permitted Uses as permitted outright (example for AR zoning district; other zoning districts are also affected)
    - Subject to use-specific and general development standards
        - Community Agricultural Processing Facility
        - Community Farmers Market
        - Cooperative Farm Stand
        - Community Meat Processing Facility
        - Non-Farm Use of Farm Equipment
        - Rural Special Events
- Check “Definitions” to see how these uses are defined
- Staff approval
- More intensive uses must be permitted through either the Special Use Permit process or rezoned as an ASE-CZ
    - Class B Special Use Permit (in AR zoning district):
        - Microbrewery with Minor Events
        - Taxidermy
        - Winery with Minor Events
        - Microbrewery, Production Only
        - Winery, Production Only
        - Veterinary Clinic
        - Veterinary Clinic, mobile
        - Rural Heritage Museum
    - Class A Special Use Permit (in AR zoning district):
        - Equestrian Center
- Special Use Permits are “quasi-judicial” proceedings
    - Public Hearing
    - Decided on a case-by-case basis with public input (“evidence”)

Conditional Zoning District (ASE-CZ)

- Conditional zoning districts allow projects to be considered on a case-by-case, site-specific basis
    - Rezoning (legislative process) with public hearing
- Acknowledges that there are places where a specific type of use may be appropriate whereas it would not be in a different site-specific situation
    - BOCC has final decision on whether a proposed use(s) is compatible with surrounding uses
    - Mutually agreed upon conditions can be imposed as part of the approval process
        - Allows tailoring of project to a specific site
- Table of Permitted Uses lists the types of uses that can be applied for as an ASE-CZ

Change in groundwater usage standard language

Proposed language in amendment package:

- A comprehensive groundwater study, for facilities expected to use more than 240 gallons of groundwater per day per acre of lot area. Said study shall detail:

(i) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis;
(ii) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
(iii) An analysis of whether other wells in the vicinity of the proposed use will be affected by withdrawals made by the proposed use.

Change in groundwater usage standard language

Language Proposed as a result of comments

- A comprehensive groundwater study, for facilities expected to use more~~ than 240 gallons of~~ groundwater *on an annual basis* ~~per day per acre of lot area~~ *than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit per 2 acres and the proposed use is on a 6 acre lot (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required.* Said study shall detail:

(i) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis;
(ii) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
(iii) An analysis of whether other wells in the vicinity of the proposed use ~~will~~ *are expected to* be affected by withdrawals made by the proposed use.

Agricultural Preservation Board and Planning Board Review

- APB has reviewed 3 times
  - Consensus to move forward
  - Would like farmers to have the ability to apply for as many uses as possible
    - (Do not remove more intensive uses from consideration)
- Planning Board Ordinance Review Committee reviewed 2 times
  - Same conclusion as APB
- Both Boards had minor comments/questions that have been incorporated into draft materials

Public Notification

- Completed in accordance with Section 2.8.7 of the UDO
  - Newspaper legal ads for 2 successive weeks
- Held Public Information Meeting on February 17 (was postponed from advertised date of February 13)
  - Flyers posted
  - Press Release
- Has been a topic on a few agendas in the past year
  - BOCC (including Assembly of Governments)
  - Planning Board
  - Agricultural Preservation Board
- Planning website posting on January 24

County Attorney's Office Comments

Perdita Holtz reviewed the land use map and said this amendment applies to all of the areas outside of the rural buffer and outside of the municipalities, which includes: Bingham Township, Cheeks Township, Eno Township, Hillsborough Township, Cedar Grove Township and Little River Township.

Referring to the slide titled, “Permitted Outright vs. SUP or Conditional Zoning”, she said “permitted outright” means that approvals are done by staff.

Referring to the slide titled “Conditional Zoning District (ASE-CZ)”, Perdita Holtz said projects can be considered on a case by case site specific basis. She said this is still a legislative process, which includes a public hearing; however it does allow Commissioners to have more discretion on whether projects are approved or not.

Perdita Holtz said the proposed change in the groundwater usage standard language is a result of comments made at the public information meeting held last week. She said the new wording attempts to clarify that groundwater usage is being looked at on an annual basis, and to account for the fact that some areas of the County do not allow a density of one unit per acre. She said there is a “for example” included in the language in an attempt to be as clear as possible. She said the change from “will” to “are expected to” comes from conversations with the consultants who would be doing the groundwater studies.

She said, in response to input requested by the Board regarding possible removal of the more intensive uses, the agricultural preservation board felt that there are places in the County where the more intensive uses might be acceptable, and that the conditional zoning or special use process would allow for any issues to be addressed.

James Bryan, County Attorney, said he has advised staff, and he would like to advise the Board that the attorney’s office has found that this is legally insufficient, and parts of it would be unenforceable. He said if the Board adopts it and there is litigation, there is a high likelihood of an unfavorable outcome.

Chair Jacobs asked how this got all the way to a public hearing before this was discovered by the attorney’s office.

James Bryan said there was agreement to disagree.

Perdita Holtz said there was a meeting back in August regarding his concerns about some of the definitions of non- farm use of farm equipment. She said staff asked if James Bryan would provide some legally sufficient language, but the attorney’s office did not want to interject into policy. She said she and Michael Harvey have discussed this and both feel that proper discretion goes a long way in enforcing what is an obvious business use, versus a farmer who grades one road a year. She said this is where the County’s attorney had concerns. She said there is some discretion allowed in enforcing this.

Chair Jacobs said it is insufficient to have this come up at a public hearing, and this needs to be fixed.

Commissioner Gordon asked for the specific areas James Bryan is referring to.

James Bryan said it is not that he does not want to inject policy. He said this is purely a legal issue and his legal advice is to pull these definitions. He said there are three definitions related to permitted-by-right, and these are: non-farming use of farm equipment, meat processing and the farm stand. He said all of these definitions say it has to be on a bona-fide farm. He said the state statutes about bona fide farms are very lenient. He said there is no line at all in this, and it is not statutorily correct.

Commissioner Gordon asked about the PowerPoint and the use specific standards on the bottom of page 4. She asked if, in the ASE-CZ, there are any uses in which all of the standards are eliminated and it is entirely a case by case basis.

Perdita Holtz said no.

Commissioner Gordon asked if the standard for major roads is ever eliminated.

Perdita Holtz said yes, that is one that has been discussed. She said there are some uses where you have to be located on a major road, but that standard can be modified if you go through the re-zoning process for the conditional zoning district.

Commissioner Gordon asked for the reason why R1 does not have agricultural support enterprises.

Perdita Holtz said, in the permitted use table, there is a footnote under the R1 zoning that says no uses are being added here. She said the reason for this is because the R1 zoning district purpose statement says that this is a zoning district for rural residential non-farm uses. She said staff did not feel that farm uses should be added as permitted uses, as it would be contrary to this purpose statement. She said, if you are currently zoned rural residential and operating a farm, there are other avenues for approval, such as re-zoning to AR or applying to the ASE-CZ zoning district. She said the R1 purpose statement could be modified, but that was not the purpose of this effort.

Perdita Holtz presented the following final two slides:

Final Note

- Some uses the farming community might be interested in applying for may be permissible as a “Home Occupation”
    - Home Occupation standards are currently in the amendment approval process
        - Heard at November 2013 quarterly public hearing
- Planning staff can help people determine which review/approval process would be the most advantageous to apply for

Recommendation

- Receive the proposal to amend the Comprehensive Plan and Unified Development Ordinance.
- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
- Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board’s recommendation and any submitted written comments.

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Perdita Holtz noted an error in attachment 3, on page 206. She said the sawmill use category should be listed as being allowed in the ASE-CZ zoning district. She said this has been corrected on the internet materials.

Commissioner McKee said it seems there is a problem between legal and the planning staff. He asked how to proceed.

Michael Talbert said this is a large item with many moving parts, and the area in conflict is fairly small. He feels it would be appropriate to proceed with the staff recommendation, and this can come back on April 15th with revised definitions that meet the requirements of both departments.

Perdita Holtz said this was scheduled to go to the planning board next week. She suggested it would be good to have this language turned around in time to put together these agenda materials. She said if this is not possible, it should be continued to a later date.

Chair Jacobs suggested it be continued to a later date.

Commissioner Price asked if the attorney is comfortable with the rezoning districts on a case by case basis. She said it seems like it is getting close to spot zoning.

James Bryan said he has reviewed all of this and he only found the three definitions to be legally insufficient.

Commissioner Pelissier referred to the addition of the provisions for some of the enterprises that might use more water than an average household. She asked if this would be a problem if a neighborhood went in with pools and irrigation and did not have the same requirements for ground water studies.

James Bryan said this might be a policy issue, but he sees no legal issue with it.

Paul Guthrie referred to the process with micro breweries and some of the definitions. He said this needs to be dealt with.

Tony Blake said he has talked with farmers and all of the concerns were around the water usage. He said people are not clear on what the language means for them. He said there is concern about the available use of water for their livelihood through expansion of herds or crops.

Chair Jacobs said it is important to clarify this.

Commissioner Gordon asked if this would apply to a bona-fide farm.

Perdita Holtz said this would not affect any livestock or crop usage. She wonders if this is getting at the issue of having a bona-fide farm that raises cattle and then there is also an agricultural services use that is subject to the groundwater study.

Tony Blake said the issue seems to be a desire for flexibility.

Perdita Holtz said this does not restrict water usage for cows or crops in any way, even if the farmer also has an agricultural services use.

Marc Marcoplos said he is impressed with the handling of the Efland overlay issues. He said he has been hearing about the agricultural enterprise concept for years, and he thinks it is important to help farmers make a better living. He said the water issue is the one that people will seize on, and perhaps for good reason with the way it is written.

He said he went to the information session, which was re-scheduled due to weather. He said there are 600 farmers in the County and it is worth looking into that there were none of them there. He feels there must be a better mechanism to communicate with the farmers.

Megan Toben said she lives off Dairyland Road and has been farming for 12 years. She said she has sold at multiple farmers markets. She said for 9 of those 12 years, her husband subsidized the farm with his income. She said most of the farm's financial resources and lands were lost in 2010 as a result of the financial crisis. She said she and her husband made a shift with the remaining 38 acres toward agri-tourism and crop diversification. She has been running a non-profit called Pickards Mountain Eco-Institute, which offers environmental education to local schools, as well as weekend workshops on various topics. She said the farm is also in the final stages of opening a farm stand called the Honeysuckle Teahouse, which will open in April. She said it is hard to make ends meet as a farmer. She said farmers need all the help that the County can offer, and it is worth it to spend the time working out all of these details. She recommended that the Board and staff check in with the Carolina Farm Stewards program for input on the issues farmers face. She said she is here to thank for the Board for what they do and to ask them to stay with this agricultural support enterprises program until it is the best that it can be.

Perdita Holtz said she would like to clarify that if you use more water than the average single house, it does not mean you cannot exist; it means you will have to do a groundwater study.

Tony Blake said he has a neighbor who had a spring that dried up in the drought. He was forced to go to groundwater. He said it was not clear to his neighbor that he was not being restricted.

Commissioner McKee said there were not a lot of commercial farmers at the information meeting or at tonight's meeting because those are large businesses that fall outside of the permitting structure. He said this will be beneficial to smaller or beginning farmers who want to transition their operation. He said these large farms have computers and smart phones and

ability to communicate. He said he is sure there will be concern and pushback over the water issue in the future.

Commissioner Gordon said she does think the ground water is a key concern. She said the County does encourage businesses that have low water usage, as part of economic development. She said the consideration of water usage is a legitimate concern, and the County has to consider not exceeding the carrying capacity.

She thinks the Board needs time to consider the definitions.

Perdita Holtz said, per the prior discussion the plan is to adjourn until the May meeting.

Chair Jacobs said, after all the time the Board has spent on this, he hopes it does not get hung up on how many gallons of water are allowed. He said the water issue is important; but there are a lot of people who can benefit from this, and he feels it is possible to come up with reasonable standards. He hopes staff will work with the planning board to come up with something that is sensitive to the concerns of farmers as well as the concerns of people who worry about our ground water.

A motion was made by Commissioner Rich, seconded by Commissioner McKee to:
1. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the May 20, 2014 BOCC regular meeting.
2. Adjourn the public hearing until May 20, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

6. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments** - To review government-initiated amendments to the text of the UDO to establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE) within the Rural Buffer land use classification.

Perdita Holtz reviewed the following PowerPoint slides:

Agricultural Support Enterprises Within the Rural Buffer
Land Use Classification
Quarterly Public Hearing
February 24, 2014
Item C.6

Purpose of Amendment
- Allow appropriate agricultural support enterprises within the Rural Buffer land use classification
    - Will augment allowable uses famers can pursue in order to generate additional farm-related income while minimizing any adverse impacts on adjoining property
        - Intent is to better enable farmers to keep farming which will help preserve the rural heritage of Orange County, including the geographic area that comprises the Rural Buffer
    - Balance between rights of property owner and rights of neighboring property owners

Two Proposed ASE Amendments
- Outside of Rural Buffer land use classification
- Within Rural Buffer land use classification

- Requires amendments to Joint Planning Area documents
    - Orange County, Towns of Chapel Hill & Carrboro must approve JPA amendments
    - March 27, 2014 joint planning public hearing
    - JPA documents must be amended before these proposed UDO/Comprehensive Plan changes can be adopted by Orange County
- Will be on longer review/approval timeframe
- The more intensive uses could not be considered in the Rural Buffer, under the current proposal

Unified Development Ordinance & Comprehensive Plan Amendments

- Only a few changes/additions would be necessary to the ASE text applicable outside of the Rural Buffer to allow ASE uses within the Rural Buffer
    - District chart in Article 3
    - Additions to RB zoning district in Table of Permitted Uses for General Use Zoning Districts
    - Noting that some uses shall not be approved in the ASE-CZ if located in the Rural Buffer
    - Additions to some of the use-specific standards in Article 5
- Comprehensive Plan amendment to allow new ASE-CZ zoning district in the Rural Buffer land use category

Project Review/Approval Process

- Depends on use being proposed within the Rural Buffer
- Three basic processes:
    - Staff review/approval
    - Special Use Permit
        - Class B is reviewed/approved by Board of Adjustment
        - Class A is reviewed/approved by Board of County Commissioners (none in RB)
    - Rezoning
        - General Use district (not applicable in the Rural Buffer)
        - Conditional district (including proposed ASE-CZ)
- All projects within the Rural Buffer are sent to JPA partners for review and comment, in accordance with the JPA Agreement

Permitted Outright vs. SUP or Conditional Zoning

- Less intensive uses added to the Table of Permitted Uses as permitted outright
    - Subject to use-specific and general development standards
        - Community Agricultural Processing Facility
        - Community Farmers Market
        - Cooperative Farm Stand
        - Community Meat Processing Facility
        - Non-Farm Use of Farm Equipment
        - Rural Special Events
- Staff approval
- More intensive uses must be permitted through either the Special Use Permit process or rezoned as an ASE-CZ
    - Class B Special Use Permit
        - Microbrewery with Minor Events
        - Winery with Minor Events

        - Microbrewery, Production Only
        - Winery, Production Only
        - Rural Heritage Museum
- Special Use Permits are “quasi-judicial” proceedings
    - Public Hearing
    - Decided on a case-by-case basis with public input (“evidence”)

Conditional Zoning District (ASE-CZ)

Some of the more intensive uses that can be applied for as an ASE-CZ could not be applied for in the Rural Buffer

    - Composting Operation with grinding
    - Regional Meat Processing Facility
    - Stockyards/Livestock Markets
    - Sawmills
- Both Agricultural Preservation Board and Planning Board Ordinance Review Committee agree on removing these uses from consideration in the Rural Buffer

Conditional Zoning District (ASE-CZ)

- Conditional zoning districts allow projects to be considered on a case-by-case, site-specific basis
    - Rezoning (legislative process) with public hearing
- Acknowledges that there are places where a specific type of use may be appropriate whereas it would not be in a different site-specific situation
    - BOCC has final decision on whether a proposed use(s) is compatible with surrounding uses
    - Mutually agreed upon conditions can be imposed as part of the approval process
        - Allows tailoring of project to a specific site
- Table of Permitted Uses lists the types of uses that can be applied for as an ASE-CZ

JPA Review

November 21, 2013 Assembly of Governments meeting to discuss with elected officials

Amendment Package sent to JPA partners on January 17, 2014

    - To date, no comments have been received

Public Notification

- Completed in accordance with Section 2.8.7 of the UDO
    - ➢ Newspaper legal ads for 2 successive weeks
- Held Public Information Meeting on February 17 (was postponed from advertised date of February 13)
    - ➢ Flyers posted
    - ➢ Press Release
- Has been a topic on a few agendas in the past year
    - ➢ BOCC (including Assembly of Governments)
    - ➢ Planning Board
    - ➢ Agricultural Preservation Board
- Planning website posting on January 24

Recommendation

- Receive the proposal to amend the Comprehensive Plan and Unified Development Ordinance.

- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the September 4, 2014 BOCC regular meeting.
- Adjourn the public hearing until September 4, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

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Commissioner Gordon referred to the use specific standards chart and asked why this is not included in the rural buffer section.

Perdita Holtz said the standards are the same in the rural buffer as they are in the agricultural residential. She referred to the amendment package, in article 5 and said any amendments in red are just adding RB to a few sections. She said the standards are the same, and there has been no re-write of standards to make it pertain to the rural buffer.

Commissioner Gordon asked how the Planning Board consideration interfaces with the joint planning consideration.

Perdita Holtz said, within the rural buffer, the planning board will make a recommendation on the JPA amendments as well. She said the planning board will be briefed on this in April, and information will be shared from the public hearing, planned for March 27th. She said the UDO revisions being considered tonight will be on the April planning board agenda for them to make a recommendation as well.

Commissioner Gordon said the recommendation will be made with just the hearing comments, but not with the comments from the jurisdictions.

Perdita Holtz said the UDO amendments are not what are being heard at the March 27th joint public hearing; this is to hear amendments to the joint planning land use plan and agreement, and there are very few amendments that need to occur.

Commissioner Gordon asked for a memo listing those amendments.

Perdita Holtz said this can be done.

Commissioner Gordon asked when the input on the UDO from the Chapel Hill and Carrboro public officials will come.

Perdita Holtz said public officials don't comment on UDO amendments unless staff wants to bring something to their attention.

Commissioner Gordon asked when these comments are due.

Perdita Holtz said these were due by tonight, but these will still be accepted while the public hearing process is going on. She said written comments can be submitted as part of the JPA process.

Chair Jacobs asked if there are any items in this proposal that have the same issues that the attorney and staff had in the previous proposal.

Perdita Holtz said this is not due to come back until September, so this is not an issue.

A motion was made by Commissioner Price, seconded by Commissioner Pelissier to:

1. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the September 4, 2014 BOCC regular meeting.
2. Adjourn the public hearing until September 4, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

7. **Unified Development Ordinance (UDO) Text Amendment** - To review government-initiated amendments to the text of the UDO to change the existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related items/amendments.

A motion was made by Renee Price, seconded by Earl McKee to continue the public hearing until May 27, 2014 to consider the recommended changes in the Unified Development Ordinance text amendment to change the existing public hearing process.

VOTE: UNANIMOUS

D. ADJOURNMENT OF PUBLIC HEARING

A motion was made by Commissioner Price, seconded by Commissioner Rich to adjourn the meeting at 11:34 PM.

VOTE: UNANIMOUS

Barry Jacobs, Chair

David Hunt
Deputy Clerk

Attachment 2

DRAFT **MINUTES**
BOARD OF COMMISSIONERS
REGULAR MEETING
March 6, 2014
7:00 p.m.

The Orange County Board of Commissioners met in regular session on Thursday, March 6, 2014 at 7:00 p.m. at the DSS offices, in Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee, Bernadette Pelissier, Renee Price, Penny Rich
COUNTY COMMISSIONERS ABSENT:
COUNTY ATTORNEYS PRESENT: John Roberts
COUNTY STAFF PRESENT: Interim County Manager Michael Talbert, Assistant County Managers Clarence Grier, Cheryl Young and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)
NOTE: ALL DOCUMENTS REFERRED TO IN THESE MINUTES ARE IN THE PERMANENT AGENDA FILE IN THE CLERK'S OFFICE.

Chair Jacobs called the meeting to order at 7:01 p.m.

1. Additions or Changes to the Agenda

Chair Jacobs reviewed the following information at the Commissioner's places:
- White Sheet - Chair Jacobs' correction sheet - Item 6a- Minutes
- Yellow – Item 7a - CDBG grant application information - Item 7a -- Report and Recommendations from the County and Town Managers Regarding the Implementation of Improvements in the Historic Rogers Road Neighborhood

Chair Jacobs said that due to the pending inclement weather, the closed session is canceled.

PUBLIC CHARGE

The Chair dispensed with the reading of the public charge.

2. Public Comments

a. Matters not on the Printed Agenda

Andrew Dykers said he lives in Carrboro and wanted to share an idea to help citizens have greater access to information on candidates running for public office in Orange County. He said when candidates file to run for office, the County lists their name, email and residence on the website. He suggested the inclusion of a hyperlink to the candidate's on-line presence. He said citizens would benefit by having this information in a consolidated manner.

He suggested a new straightforward web address for accessing this information. He said he did talk to Michael Talbert regarding concerns about promoting one candidate over another. He said he is not here to suggest that the County advance the cause of any particular candidate.

b. Matters on the Printed Agenda

(These matters will be considered when the Board addresses that item on the agenda below.)

3. Petitions by Board Members

Commissioner Pelissier said, now that the Board has approval from the Federal Transit Administration for project development of the light rail project, she would like to re-petition for Chair Jacobs to write a letter to the town of Chapel Hill requesting information about plans for affordable housing. She said this is one of the criteria for moving forward, as it is important to see what the plans are near and around the light rail. She said Chair Jacobs has done this previously, but she would like to re-initiate the letter, because the Board did not get a response from the Town of Chapel Hill. She said that perhaps a presentation could be requested at the next meeting with the town.

Commissioner Rich said she wanted to recognize the fencing team at Chapel Hill High School for winning the state championships this year. She would like to have a resolution of recognition and have the team come to one of the proposed meeting dates on March 18th or April 15th.

Chair Jacobs noted that the Chapel Hill girls' basketball team is in the quarterfinals and is currently undefeated. He said there might be two teams to recognize.

Commissioner Price said she would like to add on to Commissioner Pelissier's petition. She said she attended a NACo workshop to consider high opportunity areas for the light rail. She asked that low and high opportunity areas for economic development and jobs be considered as related to the light rail.

Chair Jacobs suggested this be expanded to include bus service and light rail.

Commissioner Dorosin arrived at 7:08.

Commissioner Gordon read her petition as follows:

"On March 27, 2014 the Board of Commissioners (BOCC) will have a joint meeting with the Town of Carrboro and Town of Chapel Hill.
The first part of that meeting will be a public hearing on two different text amendments to the Joint Planning Land Use Plan and Agreement.

Following the hearing, there will be a non-public hearing agenda for the meeting.

My petition is that an agenda item for the non-public hearing part of the meeting should be the presentation of the proposed Agricultural Support Enterprises within the Rural Buffer. That would be good background for understanding why the Joint Planning Agreement and Land Use Plan are proposed to be changed. The agenda background material would be the 2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments proposed to establish a zoning program referred to as Agricultural Support Enterprises (ASE) with the Rural Buffer, along with any other material that would be necessary to understand the proposal."

Chair Jacobs said he would like to petition for a presentation on the Board's social justice goal since many of the Commissioners are new. He said it is not referenced often for policy decisions, and it is important.

4. Proclamations/ Resolutions/ Special Presentations

a. Address and Road Naming Ordinance Update

The Board received an update on the Road Naming and Addressing Ordinance.

This update was given by Dwane Brinson, the Tax Administrator. He introduced Tammy Walker, the Land Records/GIS Manager, who was there to answer questions.

Dwane Brinson gave brief background on this issue. He said the Board formally adopted a Road Naming and Addressing Ordinance in December, 2011, and a letter was mailed to all affected residents on August 29, 2012. He said this letter explained the ordinance requirements and it did not cite non-compliance.

He said a presentation was given to the Board on March 7, 2013 after the addressing responsibilities were moved to the tax office.

Dwane Brinson said the issues identified last March are coming to fruition in greater numbers than expected. He reviewed the following issues as outlined in the abstract:

Pervasive Issues Encountered in 2013

After adoption of the Ordinance, a letter was sent to Orange County residents in August, 2012 notifying them of the Ordinance requirements, and it provided information regarding signage and posting of addresses. This caused residents to go out and purchase house number signs, often from their local fire departments, prior to them being reviewed for compliance. Once reviewed, the residents were notified of new house numbers to be in compliance with the Ordinance. As a result, residents had to purchase a second sign with the correct house numbers, except in the Orange Grove Fire Department. Orange Grove was able to locate a chemical that would allow the removal of the numbers.

A second issue pertains to mobile home parks, a top priority identified in our implementation plan. A mobile home park is defined by the tax office as at least three mobile homes on one parcel, generally. It was quickly discovered that most mobile homes within mobile home parks were addressed at the main road instead of the mobile home park road. Hypothetically, an emergency responder would receive an emergency call for 102 Wide Branch Lane, unit 3, a mobile home park. The only reference of said address was at the mobile home park entrance on Wide Branch Lane. Once the emergency responder arrived at the mobile home park, no identification could be located on any mobile home within the mobile home park.
The Ordinance does not permit such an addressing system as each mobile home within the park must have identification on the lot itself, and the addresses must reference the road within the mobile home park if the road is at least 75 feet in length rather than, for example only, Wide Branch Lane. A collaborative approach was taken to remedy these issues once discovered. Tax office staff, the Orange Grove fire chief and the mobile home park owner walked the entire park on foot to identify issues. Subsequently, the parties involved developed an addressing system that complied with the Ordinance. After a collaborative plan was agreed upon, the tax office mailed formal notification letters to the owner(s) and the addressing system was established.

As a final example of large-scale issues encountered in 2013, it was discovered that, after GIS was moved under the tax office, a great number of residents were essentially queued as a result of the letter mailed in August, 2012. Residents had received a letter explaining the Ordinance and its requirements, which prompted thousands of calls into county offices for further clarification. The message to residents who reached out to the tax office was to wait as the GIS Department had just been reorganized to the tax office. This period of abeyance would allow tax office staff to become acclimated to the Ordinance and prepare a revised implementation plan for review of the BOCC

Dwane Brinson said once work is completed in the Orange Grove fire district, the plan is to move onto Cedar Grove. He referenced the following timeline:
2013 – Orange Grove
2014 – Cedar Grove, Caldwell, Efland
2015 – New Hope, Orange Rural, White Cross
2016 – Greater Chapel Hill, Southern Triangle, Damascus

He said, with regard to public information for 2014, staff has opted for a direct approach with residents. He said there is a methodical approach to work through the fire districts and work directly with each resident affected by the ordinance. He said there have been a few directed public information efforts, which included the following:
• Spoke at a community watch meeting with the Sheriff's Department in November, 2013
• Participated in three (3) fire chief meetings in 2013
• Prepared handouts and discussion materials for four tax office presentations

Dwane Brinson referenced the color maps provided for the district. He said 20 percent of Orange Grove's total addresses were affected, and this was greater than was expected.

He said, while working with Orange Grove, work was being done with the residents in que from the letter of August 2012. He said staff also responded to other requests from emergency responders who encountered situations during an emergency response call.

Dwane Brinson said exhibit C shows the model that Orange Grove used to submit information, and the hope is that other fire districts will do the same.

Dwane Brinson said he was asked to submit a letter from a resident of Orange Grove regarding his experience and the good that this addressing has done for his district; and this is in the packet.

Commissioner Gordon thanked Dwane Brinson for this update. She said she would like to emphasize that citizens in the County don't have to do anything to be in compliance until contact is made with them. She said the previous information stated that there would be education in 2013, followed by compliance letters in 2014.

She said it is important to let people know that this going to take longer than expected to implement. She suggested that staff develop a list of frequently asked questions to put on their website.

Commissioner Gordon said it is important that the Commissioners know that compliance letters are going to be sent out in 2014, as staff will be working systematically with residents during that time. She said she has gotten some questions about this.

Commissioner Price said she is impressed with what has been done, and she feels that putting the fire district in the bigger picture helps to lessen the fear. She said it is easier for residents to swallow this when they realize that it is for their own safety. She asked what residents can do to get ahead of the game.

Dwane Brinson said exhibit b gives a list of other areas outside of Orange Grove where emergency responders and residents have brought critical issues to their attention. He said these are being worked on in the same process and in the timeliest manner possible.

Tammy Walker said Teer Road is a state road that has been severed by water. She said the state addressed this by giving it two different state road numbers but still called both ends of it Teer Road. She said this has caused a lot of problems with 911. She said she has met with the County attorney and the state to get approval to call this East and West Teer Road. She said this process just takes time to implement, and residents will have to be notified that an address change is necessary. She said this same situation happened on Apple Mill Road, and this will now be North and South Apple Mill Road.

Commissioner Price asked how residents can get ahead of this process, and if they should call staff first.

Tammy Walker said staff is trying to work the most critical areas first, but residents can call the Land Records/GIS office at 245-2505 to start the process.

Commissioner McKee said he appreciates staff taking this approach. He said he did not expect this project to be so large and time consuming. He appreciates the work that is being done. He still thinks this is a critical issue to be addressed.

Commissioner Dorosin asked if the ordinance gives a specific sign or numbering requirement, or if residents can paint or place their own numbers on their property.

Tammy Walker said the number has to be visible from both directions on a contrasting background.

Dwane Brinson said the number height must be three inches.

Commissioner Dorosin clarified that the numbers do not have to be purchased, but can be painted on, as long as it meets the requirements.

Tammy Walker said yes, as long as it is contrasting.

Commissioner Dorosin asked about the process when residents close off a road.

Tammy Walker said staff is working on the closed roads by going through legal.

Commissioner Dorosin asked for an explanation of the justification for blocking off roads.

Dwane Brinson said this is not known, but efforts are being made to resolve this amicably.

Chair Jacobs cited an instance of a resident using gravel to block access to a road. He said this is now a public road, and it will be open and used.

Commissioner Dorosin said, if these are public right of ways, it should not take long to open them back up.

Chair Jacobs, responding to what Commissioner Gordon suggested, said Carla Banks could possibly help put up an FAQ on the tax website to provide basic information.

Commissioner Price asked if the numbers have to be reflective.

Tammy Walker said the ordinance specifies that the numbers have to be contrasting.

Dwane Brinson said the signs from the fire department are reflective, and this is helpful.

Commissioner Rich asked if everyone on the map has been notified of a problem with their numbering.

Dwane Brinson said yes.

5. Public Hearings

6. Consent Agenda

- Removal of Any Items from Consent Agenda

Chair Jacobs asked for removal of item 6a to incorporate changes in the minutes.

- Approval of Remaining Consent Agenda

A motion was made by Commissioner Pelissier, seconded by Commissioner Price to approve the remaining items on the consent agenda.

VOTE: UNANIMOUS

- Discussion and Approval of the Items Removed from the Consent Agenda

a. Minutes

The Board considered correcting and/or approving the minutes from November 12 and 14, 2013 and January 31, 2014 as submitted by the Clerk to the Board.

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A motion was made by Commissioner Price, seconded by Commissioner Rich to approve the corrections to the minutes as submitted by Chair Jacobs for the minutes from November 12, 2013.

VOTE: UNANIMOUS

b. Motor Vehicle Property Tax Releases/Refunds

The Board adopted a resolution, which is incorporated by reference, to release motor vehicle property tax values for thirty-eight (38) taxpayers with a total of seventy-seven (77) bills that will result in a reduction of revenue in accordance with the NCGS.

c. Property Tax Releases/Refunds

The Board adopted a resolution, which is incorporated by reference, to release property tax values for nine (9) taxpayers with a total of fourteen (14) bills that will result in a reduction of revenue in accordance with North Carolina General Statute 105-381.

d. Applications for Property Tax Exemption/Exclusion

The Board approved four (4) untimely applications for exemption/exclusion from ad valorem taxation for four (4) bills for the 2013 tax year.

e. Appointment of County Review Officers

The Board appointed one additional County Review Officer, to remove from appointment four (4) Review Officers that are no longer employed by the County, and to re-appoint one Review Officer due to a name change.

f. Correction to Ordinance 2014-001 – Board of Adjustment Operations and Procedures

The Board adopted a revised Ordinance, amending the Unified Development Ordinance (UDO) to correct a staff error.

g. Legal Advertisement for Joint Planning Public Hearing – March 27, 2014

The Board approved the legal advertisement for items to be presented at the Joint Planning Area Public Hearing scheduled for March 27, 2014.

h. Power Lift Stretchers for Emergency Services

The Board approved the purchase of eight (8) automatic lift hydraulic stretchers that are grant funded, requiring a 20% local match.

i. Boards and Commissions – Commissioner Assignments

The Board approved the list of boards and commissions on which members of the Board of County Commissioners have chosen to serve.

j. Approval of Financing Arrangement for New Hope Volunteer Fire Department of Orange County, Inc. to Purchase a Replacement Tanker Truck

The Board approved a request from New Hope Volunteer Fire Department of Orange County, Inc. to enter into a financing arrangement to purchase a Tanker truck, and authorize the Board of Commissioners' Chair to sign the appropriate documents related to the financing arrangement.

k. Approval of Financing Arrangement for Eno Fire & Emergency Services, Inc. to Purchase a Replacement Tanker Truck

The Board approved a request from Eno Fire & Emergency Services, Inc. to enter into a financing arrangement to purchase a Tanker truck, and authorize the Board of Commissioners' Chair to sign the appropriate documents related to the financing arrangement.

7. Regular Agenda

a. Report and Recommendations from the County and Town Managers Regarding the Implementation of Improvements in the Historic Rogers Road Neighborhood

The Board considered recommendations from the County and Town Managers regarding Rogers Road Sewer and Community Outreach to implement improvements in the Historic Rogers Road Neighborhood.

Michael Talbert said it is a nice step to finally be moving forward with this item. He went through the various attachments included in the abstract.

He said there was a report given to the board on November 21st that included the recommendations from the task force, and these are included in the packet. He said one of these recommendations was for the town and County managers to explore a collaborative approach to making this work. He said the managers have met and are moving forward with this, with the Board's approval, and the Town of Chapel Hill met on February 10th and approved this in a resolution. He said the managers, including the Town of Carrboro, have approved going forward with funding the engineering study for the Rogers Road sewer; and there is agreement on the proportionate funding of 43 percent for the County, 43 percent for the town of Chapel Hill, and 14 percent for Carrboro. He noted that this involves the 86 parcels that did not have sewer when this process was started.

Michael Talbert reviewed the managers' recommendations as outlined below:

1. That the Cost associated with preliminary engineering for OWASA sewer infrastructure and community outreach is shared 14% Carrboro, 43% Chapel Hill and 43% Orange County.

2. That the County contract with OWASA for a preliminary engineering estimate to provide sewer to the 86 parcels identified by the Task Force not to exceed $130,000. The cost of the preliminary engineering will be shared with the Town of Chapel Hill and the Town of Carrboro.

3. That the County participates in community outreach partnering with organizations such as the Jackson Center and/or the Rogers Eubanks Neighborhood Association (RENA) to identify action steps needed to provide sewer service to the Rogers Road Neighborhood and lay the groundwork for a master plan for the development of the Rogers Road area (including the Greene Tract), not to exceed $50,000. Carrboro, Chapel Hill and the County will share in the cost of this outreach.

4. Consider a budget amendment of $77,400 (43% of $180,000) for the initial engineering and community outreach expected to take 8-10 months to complete.

Michael Talbert said the preliminary report that OWASA will provide does not commit the Board to future actions, nor does it jeopardize the EPA investigation. He said the estimates of these costs do not put the Board in any type of commitment for future action. He said this will move toward a firm number of engineering costs and a clear picture of where the project could go.

He said there are a lot of changes going on with community development block grant funds in North Carolina. He noted that Commissioner Dorosin alerted staff to the issue that the state was holding a meeting regarding possible allocation of $25 million. He said the information he described for the engineering study is part of the first steps in getting to the point of applying for this grant.

He said two staff members attended the meeting on the 28th and he referenced the steps outlined in the memo below:

“

Date: March 3, 2014

To: Michael S. Talbert, Interim County Manager
Commissioner Mark Dorosin

From: Tara L. Fikes, Director

Subject: CDBG Infrastructure Application

cc: Orange County Board of Commissioners

As you will recall, last Thursday Commissioner Dorosin shared with us information regarding an upcoming application workshop for the new CDBG Infrastructure Grant workshop sponsored by the NC Department of Environment and Natural Resources, the new administrators of this program. He noted that this could be a funding opportunity for the Rogers Road community. Thus, on last Friday, February 28th, James Davis and I attended this workshop in Raleigh to gather information about the program. The room was full at this first of three workshops to be held in the state so it is probably safe to surmise that there is lots of interest in this program around the state.

The following is a summary of the information gleaned from this workshop and the critical decision points to be considered should the County wish to apply for these funds for the Rogers Road community.

According to their program statement, “the purpose of the Infrastructure Program is to construct public water and sewer infrastructure to mitigate public and environmental health problems in areas where the percentage of low to moderate income persons is at least 51 percent.” There is a total of $10 million available for applications submitted by April 1 and another $15 million available for applications submitted by May 1. The maximum award is $3 million dollars over a three year period. The type of wastewater projects allowable that matches most closely the needs in the Rogers Road community is a project that extends public sewer to areas with failed septic systems. With this in mind, below are the critical information needs that must be addressed when considering whether to prepare an application at this time.

Budget

I. The applicant (local government) must provide “match” funds that will be used for the house connections to the sewer lines and abandoning septic systems. (All houses in the area must be connected to a new system.) Connection funds can come from the applicant’s enterprise fund. *(Evidence of the commitment of funds must be included in the application.)*

II. The project budget must be sealed by a professional engineer. Documentation of cost effectiveness of the project is also required. Further, if the grant will not cover the complete project costs, the applicant must provide evidence of commitment of additional funding to meet the budget. *(A project budget would need to be developed with funding sources identified and confirmed.)*

Priority Criteria

I. **Economic Need** (75 points) – This criterion requires that the residential area served by the grant contain at least 51% low and moderate income households, consideration of the poverty rate of the County and the amount of the water/sewer bill relative to the median household income. *(Census data, perhaps door-to-door surveys and the OWASA rate schedule will need to be reviewed to confirm compliance with this requirement.)*

II. **Severity of Need** (50 points) – For areas where there are failing septic systems, a map delineating the location of failed septic systems must be submitted. Also, there must be a letter from a registered soil scientist or a registered sanitarian verifying the failed septic systems. *(To receive the maximum points in this category more than 20% of the systems must be failing. Less than 10% of the systems failing yield 30 points.)*

III. **System Management** (17 points) – The system serving the project area must have a Capital Improvements Plan (updated in the last two years) and and/or an Asset Management Plan that includes the proposed sewer project. The operating ratio should be greater than one. *(Uncertain of the existence of these plans and the system's operating ratio.)*

Additionally, in my professional opinion all other requirements of the grant application can be met with the assistance of OWASA and perhaps GIS for mapping in time for the May 1 application deadline. This allows the opportunity for a public hearing on April 15 after the application is developed no later than April 5th.

Nevertheless, the timeframe for application development is very short (one month), thus, direction is needed as soon as possible regarding the County's interest in pursuing this application. Should you wish to proceed, I am willing to work to develop this application for a May 1 submission.

Michael Talbert said this is on a very fast track, and he noted the application due dates of April 1 and May 1. He said there are several things outlined in the memo, including the engineering study and confirmation of area demographics, which must be done in order to apply. He said the demographic study could be done through the Jackson Center and/or RENA. He noted the need for certification and mapping of failed septic systems.

He said this must be planned for in the capital investment plan, and it must be in OWASA's plan. He hopes these steps can be completed this year in order to be in a good position to apply for this next year.

He reviewed some of the manager recommendations. He said one of the concerns of the Carrboro Board was that everyone gets a chance to review the documentation, especially for the Jackson Group and RENA, to make sure that the scope of services is what everyone

wanted. He noted that the CIP, which comes out in March, will include, in year 2, the potential to fund the sewer if everything is approved and the EPA concludes their investigation.

Chair Jacobs said the joint agreement to operate the community center was recently approved, and he thanked Michael Talbert for helping to make this happen.

Michael Talbert said the community center is currently out to bid, and staff hopes to bring the bid award back in April.

Commissioner Rich asked for an explanation of the ETJ process.

Michael Talbert said Rogers Road splits the unincorporated part of Orange County and the part that is in Carrboro in half. He said the Orange County unincorporated section could potentially be in a future Town of Chapel Hill ETJ. He said an initial public hearing has been held and continued. He said his feeling is that the town is waiting to get buy-in that everyone wants to move forward with this. He said the Chapel Hill town attorney has advised that the only way the town can participate is if this is part of the ETJ. He said town is pursuing this and will have to come back to the County for permission.

Commissioner Rich thanked Commissioner Dorosin for bringing this information forward. She asked for clarification that it is too soon to do this now, but it will be done for next year's budget.

Michael Talbert said yes. He said the sealed project budget estimate, which is pending approval tonight, will take up to 6 months to complete.

Commissioner McKee asked the County attorney if there is any way to finesse the timing issue and apply for a hold on some of these funds.

John Roberts said for some grants this is possible, but he does not know if that is the case for this particular grant. He can look into this.

Michael Talbert said this is a small amount of money for a statewide grant. He said you really need shovel ready projects to complete this application.

Commissioner Dorosin referred to the sheet and asked if it is not possible to do a May 1st submission.

Michael Talbert said it is possible to do this, but there is a very slim chance of getting it. He said there are no plans in the CIP and no sealed engineering report.

Commissioner Dorosin said he would argue for trying to apply. He said all of this funding is for water and sewer infrastructure. He said the County is going to need to do this anyway, and he thinks it is worthwhile since there is a contract with OWASA, and an engineering contract is expected. He said the website has an income eligibility map and the Orange County section shows Rogers Road as 71 percent to 80 percent low and moderate income, which meets the threshold. He thinks it is critical to apply, and then next year the County would have a shovel ready project. He said this would demonstrate to the community that the County is taking their sewer commitment seriously. He said there may be other grant projects that come up, and this will make the County more prepared and competitive. He thinks this may be another representation to the EPA that Orange County is committed to moving this project forward. He believes the engineering cost should be approved, and staff should be encouraged to move forward with this.

Commissioner McKee agreed with Commissioner Dorosin about pushing for this May 1st deadline. He would also like to see if it is possible to place a hold on some of these funds. He would like to move forward as expeditiously as possible.

Commissioner Gordon questioned how much work it would be for staff to move forward on this.

Michael Talbert said he has not seen the documentation process, but he assumed that it would be fairly detailed and would require a public hearing to move forward.

Commissioner Rich referred to the budget section on page 1. She asked about the statement that all houses in the area must be connected to the system. She asked if this meant people would be forced to connect to sewer.

Michael Talbert said the Board will have the opportunity to draw the map that meets the criteria. He said the grant area may be smaller than 86 homes, depending on income levels. He said everyone within the area drawn will have to be connected.

Commissioner Rich said at their last task force meeting only about 34 of the 86 homes wanted sewer. She said there is an assumption that everyone wants sewer, and she has concerns about this. She is not saying this shouldn't move forward, but she wants to keep the conversation open and allow residents to have a say on this.

She asked if the wording means that this item must be in the CIP for 2013/14.

Michael Talbert said this is the implication. He said it has to be in the existing CIP, and it must be funded, and neither of these things has been done.

Commissioner Pelissier asked if the application with all of the details would be presented at the public hearing.

Michael Talbert said staff would have to define the areas to be served; draw this on the map; do outreach; and provide cost estimates for infrastructure and connection. He said the outreach process would provide much of the information Commissioner Rich was asking about.

Commissioner Pelissier asked if every household would need to be notified.

Michael Talbert said he does not know at this point.

Commissioner Pelissier said it would need to be made clear that this proposal would be a change to what was in the task force report regarding residents being required to be hooked up.

Commissioner Price agreed with Commissioner Dorosin and Commissioner McKee and said she would like to apply for the funds. She said information can be pulled from other grants that have been done previously. She said the residents are just anxious to get the sewage out of their front yards. She said, as long as the hookups are being provided, it is more palatable.

Michael Talbert said there was a similar application in 2011, and 9 homes were hooked up to sewer and water. He said some of the same documentation could be used to recycle a similar application.

Commissioner Price said she was referring to the census information and other descriptive information. She said Tara Fikes' office may have some of this information.

Commissioner Gordon said it seems more prudent to give staff time to review the application to see what can be done. She said if staff starts the process of looking into it, no time will be lost. She said the only honest thing to do is to admit that this is not in the CIP, and this will lose 17 points. She said it seems that staff should be asked to look at this and come back in 5 days at the March 11th meeting with a recommendation of what can be realistically done.

Chair Jacobs said Tara Fikes is retiring at the end of March, in the middle of this process. He said there needs to be assurance from the manager that there are sufficient staff members who are knowledgeable enough to execute this.

Michael Talbert said, given that there are 20 days to work on this prior to Tara Fikes' retirement, he feels relatively confident that most of the application could be completed before she leaves.

Chair Jacobs agreed that this should move forward. He also agrees that every single person who might be affected should be notified and given an opportunity to speak at the public hearing on April 15th, before there are irrevocable decisions made on their behalf. .

Chair Jacobs referred to page 4 and the reference to Rogers Road neighborhood. He asked if it should be implied in every situation that references to Rogers Road refers to the historic area.

Michael Talbert said yes.

Chair Jacobs noted that the final report talks about a broader service area, and he wants it made clear that this is not what is being discussed. He mentioned the 60 acres that the County owns, and he suggested that the Jackson Group look at this area as a low impact recreation amenity for the Rogers Road and surrounding communities. He said there are trails through it anyway, but it could be made to be a more visible, valuable and developed recreational amenity.

Chair Jacobs asked how this application process and the CIP and funding commitment will affect the EPA investigation.

John Roberts said that the County is not committed until the grants funds are actually expended. He is confident that Orange County is going to emerge from the EPA situation in a positive light and he has received word that the investigation has been concluded. He feels it is safe for the County to proceed with this application.

Commissioner Gordon moved the manager's recommendation and suggested the following addition:

5. They direct the manager to investigate the feasibility of this application and to report back to them at a work session on March 11th

There was no second.

Commissioner Dorosin noted that the CDBG funds are not scheduled to be awarded until July. He said he thinks it is possible to include this in the plan.

A motion was made by Commissioner Dorosin, seconded by Commissioner McKee to**:**

1. Negotiate a cost sharing agreement with the Town of Chapel Hill and Town of Carrboro for a preliminary engineering estimate to provide sewer to the 86 parcels identified by the Task Force not to exceed $130,000 based on the Task Force recommendation;
2. Negotiate a contract with OWASA for a preliminary engineering estimate to provide sewer to the 86 parcels identified by the Task Force not to exceed $130,000;
3. Negotiate a contract and/or participation in a Historic Rogers Road community outreach with RENA and other partners they identify -~~partnering with organizations such as the Jackson Center and RENA~~ to identify action steps to provide sewer service to the Historic Rogers Road Neighborhood and lay the groundwork for a master plan; and
4. Approve Budget Amendment #5-B appropriating $77,400 (43% of $180,000) from General
5. To instruct the manager to prepare CDBG application for submission by the May 1st deadline.

This motion changed bullet number 3 of the Manager's recommendation, as shown above, and added bullet #5.

Commissioner Rich asked why the Board would eliminate the Jackson Center from the motion if the task force has identified and voted for them.

Commissioner Dorosin said he is not eliminating them, but he thinks RENA should be the party to select the organizations. He said the Jackson Center could be one of those.

Commissioner Rich asked how this affects the $50,000 that was already approved by Chapel Hill for the Jackson Center participation.

Commissioner Dorosin said Carrboro did not approve that $50,000.

Michael Talbert said if the motion is approved as stated, it would have to go back to Chapel Hill and Carrboro before it proceeds.

Commissioner Gordon said she would like to amend item #3 in the motion to read as it was stated in the original recommendation.

Commissioner Dorosin said he does not accept this.

Michael Talbert said the resolution from the town is on page 25, and it does not specify the Jackson Center.

Commissioner Gordon said she would like to restore the language in bullet #3, and she proposed a substitute motion to include this language. She noted that this will prevent the other jurisdictions from having to revisit it.

Commissioner McKee seconded.

Commissioner Rich questioned whether this would have to go back to Chapel Hill if Commissioner Dorosin's motion is approved.

Michael Talbert said it would still have to go back to Carrboro, because they have not given approval yet. He said Carrboro wants to make sure RENA is involved in the decisions, and he said the resolution from Chapel Hill does not exclude RENA.

Commissioner Rich reviewed the verbiage regarding partnerships and said Orange County would be negotiating with RENA or the Jackson Center.

Michael Talbert said yes and other parties also.

VOTE to include Commissioner Gordon's amendment.

Ayes, 3 (Commissioner McKee, Commissioner Gordon, Commissioner Rich); Nays, 4 (Chair Jacobs, Commissioner Pelissier, Commissioner Price, Commissioner Dorosin).

Motion fails

Commissioner Gordon asked for a review of the motion.

Chair Jacobs reviewed the following motion:

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1. Negotiate a cost sharing agreement with the Town of Chapel Hill and Town of Carrboro for a preliminary engineering estimate to provide sewer to the 86 parcels identified by the Task Force not to exceed $130,000 based on the Task Force recommendation;
2. Negotiate a contract with OWASA for a preliminary engineering estimate to provide sewer to the 86 parcels identified by the Task Force not to exceed $130,000;
3. Negotiate a contract and/or participation in a Historic Rogers Road community outreach with RENA and other partners they identify -~~partnering with organizations such as the Jackson Center and RENA~~ to identify action steps to provide sewer service to the Historic Rogers Road Neighborhood and lay the groundwork for a master plan; and
4. Approve Budget Amendment #5-B appropriating $77,400 (43% of $180,000) from General Fund Unassigned Fund Balance for the initial engineering and community outreach expected to take 8-10 months to complete.
5. Direct Michael Talbert to prepare CDBG application by May 1st deadline

VOTE: UNANIMOUS

Commissioner Gordon said she voted for this motion because she wanted to show her support for this agenda item. She thinks it is a mistake to remove the Jackson Center.

Chair Jacobs said the Board has found in the past, with trying to get grants for parks and open space, that there are almost no other applicants; so he is hopeful this will be successful and can be used for other neighborhoods, as well as for Rogers Road.

b. Authorization for Triangle Transit Authority to Levy an Additional Three Dollar ($3) Vehicle Registration Tax in Orange County

The Board considered a resolution authorizing Triangle Transit Authority ("TTA") to levy an additional $3 vehicle registration tax in Orange County and authorize the Chair to sign.

John Roberts said this is something that the Board has already visited. He said the Board approved the Orange County Bus and Rail Investment Plan in 2012, and in December of 2012 the Board approved by resolution an increase in Triangle Transit Authority's (TTA) vehicle registration tax on vehicles in Orange County.

He said TTA currently levies a $5 registration tax. He said TTA wants to increase this to $8, which is the full amount that is statutorily authorized. He said the Board authorized this, but when TTA tried to levy tax, the statute would not allow them to levy it unless all the entities approved it. He said Durham County and Orange County approved it, but Wake County would not. He said TTA went back to the legislature to amend the statute to allow individual Counties to give authorization for increases within that County. He said the previous Board approved it, and TTA is asking for approval again.

Commissioner Pelissier noted that the change in the legislation was a technical correction.

Commissioner McKee said, in order to be consistent with his prior votes, he would vote against this.

RES-2014-015

ORANGE COUNTY BOARD OF COMMISSIONERS
RESOLUTION AUTHORIZING THE RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY TO LEVY THE FULL EIGHT DOLLAR ($8.00) VEHICLE REGISTRATION TAX ON MOTOR VEHICLES REGISTERED IN ORANGE COUNTY

WHEREAS, the Orange County Board of Commissioners has adopted the Orange County Bus and Rail Investment Plan; and
WHEREAS, the Orange County Bus and Rail Investment Plan provides for the levy and disbursement of the full amount of the eight dollar ($8.00) motor vehicle registration tax authorized by North Carolina General Statute (NCGS) §105-561(a); and
WHEREAS, pursuant to NCGS §105-561(a) the Research Triangle Regional Public Transportation Authority currently levies a motor vehicle registration tax of five dollars ($5.00) on motor vehicles registered in Orange County and desires to levy the full amount; and
WHEREAS, the Research Triangle Public Transportation Authority has created a special tax district consisting of Orange and Durham counties for the purpose of increasing the motor vehicle registration tax in those counties by three dollars ($3.00) as provided in NCGS §105-561(d); and
WHEREAS, the Research Triangle Public Transportation Authority Board of Trustees conducted a public hearing on the proposed increase in the tax rate in accordance with NCGS §105-561(b)(1); and
WHEREAS, the Research Triangle Public Transportation Authority's Special Tax Board, pursuant to NCGS §105-561(b)(2), adopted a resolution approving the three dollar ($3.00) increase in the tax rate in the special tax district to the full amount of eight dollars ($8.00).
NOW, THEREFORE, BE IT RESOLVED, that it being in the best interest of the citizens and residents of Orange County, the Orange County Board of Commissioners hereby authorizes and approves the levy of an additional three dollars ($3.00) of the motor vehicle license tax as authorized by North Carolina General Statute §105-561.

This, the 6th day of March 2014.

A motion was made by Commissioner Gordon, seconded by Commissioner Pelissier for the Board to approve and authorize the Chair to sign the resolution.

VOTE: Ayes, 5 (Chair Jacobs, Commissioner Gordon, Commissioner Rich, Commissioner Pelissier, Commissioner Dorosin); Nays, 2 (Commissioner McKee and Commissioner Price)

8. Reports NONE

9. County Manager's Report NONE

10. County Attorney's Report

John Roberts said there was another tax that DMV failed to collect from July 1 to late September, 2013. He said he received communication from DMV that this shorted Orange County $90,000 in collections. He said he will be discussing this with the Board in the near future.

11. Appointments NONE

12. Board Comments

Commissioner Dorosin – none
Commissioner Gordon – none
Commissioner McKee – none

Commissioner Rich said she and Commissioner Price were at the NACo conference in D.C., and she spent a lot of time in the technology areas. She will be sending a memo about this. She said there was a lot of good technology work in some of the counties, and she feels Orange County is a little bit behind and should be more engaged in this.

Chair Jacobs encouraged the practice of sending memos with information when a Board member attends a conference like this.

Commissioner Rich said she will do this, and it will include links to some of the things she participated in.

Commissioner Pelissier said she attended a private/public partnership conference through the Triangle Transit Board. She said Triangle Transit requires board members to submit a written report and to give a verbal report at meetings. She said there was some discussion about the fact that many public officials in N.C. don't understand public/private partnerships. She said it may be a consideration in the future to get familiar with this topic.

Commissioner Price said she attended a workshop where there were complaints that the community colleges do not offer everything that is needed. She said the two attendees from North Carolina spoke up on behalf of the state's dynamic community colleges.

Commissioner Price said she has a county tracker for economic development that she will give to the clerk.

Chair Jacobs said the agricultural summit was held last week. He said it was a full house and the responses were positive.

13. Information Items

- February 18, 2014 BOCC Meeting Follow-up Actions List
- Tax Collector's Report – Numerical Analysis
- Tax Collector's Report – Monthly Enforced Collections

- BOCC Chair Letter Regarding Petitions from February 18, 2014 Regular Board Meeting

14. Closed Session

DEFERRED

"Pursuant to G.S. § 143-318.11(a)(3) "to consult with an attorney retained by the Board in order to preserve the attorney-client privilege between the attorney and the Board."

15. Adjournment

A motion was made by Commissioner Gordon, seconded by Commissioner Price to adjourn the meeting at 8:23 p.m.

VOTE: UNANIMOUS

Barry Jacobs, Chair

Donna Baker
Clerk to the Board

ORD-2014-018

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-b

SUBJECT: Fiscal Year 2013-14 Budget Amendment #7

DEPARTMENT: Finance and Administrative Services

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
Attachment 1. Budget as Amended Spreadsheet
Attachment 2. Year-To-Date Budget Summary

INFORMATION CONTACT:
Clarence Grier, (919) 245-2453

PURPOSE: To approve budget and grant project ordinance amendments for fiscal year 2013-14.

BACKGROUND:

Department of Social Services

1. The Department of Social Services has received additional revenues for the following programs:
   - **Child Day Care –** receipt of a fourth quarter payment of $324,639 to provide childcare services and subsidies to low-income families.
   - **Smart Start Enhancement Program –** receipt of a fourth quarter payment of $185,000 for Smart Start Subsidized Child Care program administration. The department will pay program funds directly to childcare providers.
   - **Low Income Energy Administration:** Receipt of additional State funds, totaling $3,435, which will replace broken chairs, throughout the agency.
   - **Crisis Intervention –** receipt of $17,217 in State Allocations to pay for crisis-related heating needs for Orange County residents.

   This budget amendment provides for the receipt of these additional funds. *(See Attachment 1, column 1)*

Animal Services Department

2. Donated funds of $1,200 have been earmarked for Animal Services' use through the Community Giving Fund. Animal Services will use these funds for advertising. This

budget amendment provides for the receipt of these Community Giving funds. *(See Attachment 1, column 2)*

Department on Aging

3. The Orange County Adult Care Home Community Advisory Committee is donating $3,000 to bring music to low-income persons with dementia living, in Orange County. Donations will purchase music players for residents and facility staff to use the music resources. This budget amendment provides for the receipt of these additional funds. *(See Attachment 1, column 3)*

Sheriff Department

4. The Sheriff Department has requested to purchase two (2) patrol vehicles $58,130 out of received drug funds, which currently resides in a balance sheet account within the general ledger system. This budget amendment provides for a fund balance appropriation of $58,130 from the General Fund for the transfer of these funds from the drug fund account to the Sheriff's departmental recurring capital account for the purchase of these vehicles. *(See Attachment 1, column 4)*

Emergency Services

5. The Orange County Emergency Services Department has received grant funds of $35,000 from the N.C. Department of Crime Control and Public Safety related to the 2013 Emergency Management Performance Grant award. The department plans to use these funds to assist in maintaining the comprehensive Emergency Management Program. This budget amendment provides for the receipt of these grant funds, and amends the following grant project ordinance: *(See Attachment 1, column 5)*

Emergency Management Performance Grant ($35,000) - Project # 71049

Revenues for this project:

	Current FY 2013-14	FY 2013-14 Amendment	FY 2013-14 Revised
EM Performance Grant funds	$64,636	$35,000	$99,636
Total Project Funding	**$64,636**	**$35,000**	**$99,636**

Appropriated for this project:

	Current FY 2013-14	FY 2013-14 Amendment	FY 2013-14 Revised
EM Performance Grant	$64,636	$35,000	$99,636
Total Costs	**$64,636**	**$35,000**	**$99,636**

Library

6. The Orange County Library has received donations totaling $1,250. A $500 donation from The Triangle Community Foundation will fund literacy supplies; a $750 donation from the Carrboro Friends of the Library will purchase support supplies for the Southern Branch Library development. This budget amendment provides for the receipt of these additional funds. *(See Attachment 1, column 6)*

FINANCIAL IMPACT: Financial impacts are included in the background information above.

RECOMMENDATION(S): The Manager recommends the Board approve budget and grant project ordinance amendments for fiscal year 2013-14.

Attachment 1. Orange County Proposed 2013-14 Budget Amendment

The 2013-14 Orange County Budget Ordinance is amended as follows:

	Original Budget	Encumbrance Carry Forwards	Budget as Amended	Budget as Amended Through BOA #6	1. Social Services revenue for Day Care ($324,639), Smart Subsidies ($185,000), LIEAP Administration ($3,436) and Crisis Intervention assistance ($17,217).	#2 Animal Services receipt of Community Giving funds of $1,200 to be used for advertising	#3 Department on Aging donations ($3,000) to provide music players to low-income persons living with dementia.	#4 Fund Balance Appropriation of $58,130 from the General Fund to the Sheriff's Office for the purchase of two (2) patrol vehicles	#5 Receipt of 2013 Emergency Management Performance Grant funds of $35,000 by Emergency Services Department	#6 Donations totalling $1,250 from the Triangle Community Fourndation and Carrboro Friends of the Library for departmental supplies.	Budget as Amended Through BOA #7
General Fund											
Revenue											
Property Taxes	$ 139,733,522	$ -	$ 139,733,522	$ 139,733,522	$ -	$ -	$ -	$ -	$ -	$ -	$ 139,733,522
Sales Taxes	$ 17,190,148	$ -	$ 17,190,148	$ 17,190,148	$ -	$ -	$ -	$ -	$ -	$ -	$ 17,190,148
License and Permits	$ 313,000	$ -	$ 313,000	$ 313,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 313,000
Intergovernmental	$ 13,703,850	$ -	$ 13,703,850	$ 18,668,644	$ 530,292	$ -	$ -	$ -	$ -	$ -	$ 19,198,936
Charges for Service	$ 9,654,843	$ -	$ 9,654,843	$ 9,715,484	$ -	$ -	$ -	$ -	$ -	$ -	$ 9,715,484
Investment Earnings	$ 105,000		$ 105,000	$ 105,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 105,000
Miscellaneous	$ 796,718		$ 796,718	$ 841,601		$ 1,200	$ 3,000	$ -	$ -	$ 1,250	$ 847,051
Transfers from Other Funds	$ 1,046,300		$ 1,046,300	$ 1,058,800	$ -	$ -	$ -	$ -	$ -	$ -	$ 1,058,800
Fund Balance	$ 5,190,118	$ 645,323	$ 5,835,441	$ 9,520,380	$ -	$ -	$ -	$ 58,130			$ 9,578,510
Total General Fund Revenues	$ 187,733,499	$ 645,323	$ 188,378,822	$ 197,146,579	$ 530,292	$ 1,200	$ 3,000	$ 58,130	$ -	$ 1,250	$ 197,740,451
Expenditures											
Governing & Management	$ 15,981,211	$ 263,506	$ 16,244,717	$ 16,247,627	$ -	$ 1,200	$ -	$ -	$ -	$ -	$ 16,248,827
General Services	$ 17,646,776	$ 71,471	$ 17,718,247	$ 17,718,247	$ -	$ -	$ -	$ -	$ -	$ -	$ 17,718,247
Community & Environment	$ 7,103,245	$ 65,048	$ 7,168,293	$ 7,259,661	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,259,661
Human Services	$ 31,459,113	$ 87,451	$ 31,546,564	$ 36,120,405	$ 530,292	$ -	$ 3,000	$ -	$ -	$ -	$ 36,653,697
Public Safety	$ 21,445,378	$ 157,847	$ 21,603,225	$ 21,697,733	$ -	$ -	$ -	$ 58,130	$ -	$ -	$ 21,755,863
Culture & Recreation	$ 2,495,908	$ -	$ 2,495,908	$ 2,507,410	$ -	$ -	$ -	$ -	$ -	$ 1,250	$ 2,508,660
Education	$ 86,289,802		$ 86,289,802	$ 86,289,802	$ -	$ -	$ -	$ -	$ -	$ -	$ 86,289,802
Transfers Out	$ 5,312,066		$ 5,312,066	$ 9,305,694							$ 9,305,694
Total General Fund Appropriation	$ 187,733,499	$ 645,323	$ 188,378,822	$ 197,146,579	$ 530,292	$ 1,200	$ 3,000	$ 58,130	$ -	$ 1,250	$ 197,740,451
	$ -	$ (0)	$ (0)	$ (0)	$ -	$ -	$ -	$ -	$ -	$ -	$ (0)

Attachment 1. Orange County Proposed 2013-14 Budget Amendment
The 2013-14 Orange County Budget Ordinance is amended as follows:

	Original Budget	Encumbrance Carry Forwards	Budget as Amended	Budget as Amended Through BOA #6	1. Social Services revenue for Day Care ($324,639), Smart Subsidies ($185,000), LIEAP Administration ($3,436) and Crisis Intervention assistance ($17,217).	#2 Animal Services receipt of Community Giving funds of $1,200 to be used for advertising	#3 Department on Aging donations ($3,000) to provide music players to low-income persons living with dementia.	#4 Fund Balance Appropriation of $58,130 from the General Fund to the Sheriff's Office for the purchase of two (2) patrol vehicles	#5 Receipt of 2013 Emergency Management Performance Grant funds of $35,000 by Emergency Services Department	#6 Donations totalling $1,250 from the Triangle Community Foundation and Carrboro Friends of the Library for departmental supplies.	Budget as Amended Through BOA #7
Grant Project Fund											
Revenues											
Intergovernmental	**$ 799,882**		**$ 799,882**	**$ 980,959**					**$ 35,000**		**$ 1,015,959**
Charges for Services	**$ 49,914**		**$ 49,914**	**$ 95,320**							**$ 95,320**
Transfer from General Fund	**$ 37,863**		**$ 37,863**	**$ 37,863**							**$ 37,863**
Miscellaneous	**$ -**		**$ -**	**$ -**							**$ -**
Transfer from Other Funds	**$ -**		**$ -**	**$ -**							**$ -**
Appropriated Fund Balance	**$ -**	$ 10,924	**$ 10,924**	**$ 10,924**							**$ 10,924**
Total Revenues	**$ 887,659**	**$ 10,924**	**$ 898,583**	**$ 1,125,066**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 35,000**	**$ -**	**$ 1,160,066**
Expenditures											
NCACC Employee Wellness Grant			**$ -**	**$ -**							**$ -**
Electric Vehicle Charging Stations			**$ -**	**$ -**							**$ -**
Governing and Management	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
NPDES Grant (Multi-year)		**$ -**	**$ -**	**$ -**							**$ -**
NC Tomorrow CDBG (Multi-year)		**$ -**	**$ -**	**$ -**							**$ -**
Jordan Lake Watershed Nutrient Grant		**$ -**		**$ -**							**$ -**
Growing New Farmers Grant			**$ -**	**$ -**							**$ -**
Community and Environment	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
Child Care Health - Smart Start	$ 65,574		**$ 65,574**	**$ 65,574**							**$ 65,574**
Scattered Site Housing Grant			**$ -**	**$ -**							**$ -**
Carrboro Growing Healthy Kids Grant			**$ -**	**$ -**							**$ -**
Healthy Carolinians			**$ -**	**$ -**							**$ -**
Health & Wellness Trust Grant			**$ -**	**$ -**							**$ -**
Senior Citizen Health Promotion(Welln	$ 96,863	$ 6,207	**$ 103,070**	**$ 103,070**							**$ 103,070**
Dental Health - Smart Start			**$ -**	**$ -**							**$ -**
Intensive Home Visiting			**$ -**	**$ -**							**$ -**
Human Rights & Relations HUD Grant	$ 272,063		**$ 272,063**	**$ 453,140**							**$ 453,140**
Senior Citizen Health Promotion (Multi-Yr)			**$ -**	**$ 45,406**							**$ 45,406**
SeniorNet Program (Multi-Year)			**$ -**	**$ -**							**$ -**
Enhanced Child Services Coord -SS			**$ -**	**$ -**							**$ -**
Diabetes Education Program (Multi-Year)			**$ -**	**$ -**							**$ -**
Specialty Crops Grant			**$ -**	**$ -**							**$ -**
Local Food Initiatives Grant			**$ -**	**$ -**							**$ -**
Reducing Health Disparities Grant (Mu	$ 83,574		**$ 83,574**	**$ 83,574**							**$ 83,574**
Emergency Solutions Grant - DSS (Multi-Yr)		$ 4,716	**$ 4,716**	**$ 4,716**							**$ 4,716**
FY 2009 Recovery Act HPRP			**$ -**	**$ -**							**$ -**
Community Response Program - DSS	$ 67,774		**$ 67,774**	**$ 67,774**							**$ 67,774**
Building Futures Program - DSS (Multi-	$ 301,811		**$ 301,811**	**$ 301,811**							**$ 301,811**
Human Services	**$ 887,659**	**$ 10,924**	**$ 898,583**	**$ 1,125,066**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 1,125,066**
Hazard Mitigation Generator Project			$ -	**$ -**							**$ -**
Buffer Zone Protection Program			$ -	**$ -**							**$ -**
800 MHz Communications Transition			$ -	**$ -**							**$ -**
Secure Our Schools - OCS Grant			$ -	**$ -**							**$ -**
Citizen Corps Council Grant			$ -	**$ -**							**$ -**
COPS 2008 Technology Program			$ -	**$ -**							**$ -**
COPS 2009 Technology Program			$ -	**$ -**							**$ -**
EM Performance Grant			$ -	**$ -**					**$ 35,000**		**$ 35,000**
2010 Homeland Security Grant - ES			$ -	**$ -**							**$ -**
2011 Homeland Security Grant - ES			$ -	**$ -**							**$ -**
Justice Assistance Act (JAG) Program			$ -	**$ -**							**$ -**
FEMA Assistance to Firefighters Grant			$ -	**$ -**							**$ -**
Public Safety	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 35,000**	**$ -**	**$ 35,000**
Total Expenditures	**$ 887,659**	**$ 10,924**	**$ 898,583**	**$ 1,125,066**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 35,000**	**$ -**	**$ 1,160,066**

Year-To-Date Budget Summary

Fiscal Year 2013-14

General Fund Budget Summary

Original General Fund Budget	$187,733,499
Additional Revenue Received Through Budget Amendment #7 (April 15, 2014)	
Grant Funds	$189,157
Non Grant Funds	$5,429,403
General Fund - Fund Balance for Anticipated Appropriations (i.e. Encumbrances)	$645,323
General Fund - Fund Balance Appropriated to Cover Anticipated and Unanticipated Expenditures	$3,743,069
Total Amended General Fund Budget	**$197,740,451**
Dollar Change in 2013-14 Approved General Fund Budget	$10,006,952
% Change in 2013-14 Approved General Fund Budget	5.33%

$42,000 to cover co-location costs with 5 Fire Departments; $25,100 to cover .50 FTE position costs in Emergency Services; $148,439 to cover loss of Federal Sequestration funds in the Section 8 Housing and HOME Programs (BOA #2); $10,000 to provide UNRBA funds for Best Management Practices project (BOA #2-A);$382,000 to purchase 3 properties adjacent to Sportsplex (BOA #2-C); $3,000,000 to fund current fiscal year's contribution to the OPEB Trust Fund (BOA #4); $77,400 related to OWASA's Concept Plan for 86 parcels in the Historic Rogers Road Neighborhood (BOA #5-B); $58,130 to purchase 2 Sheriff patrol vehicles (BOA #7)

Authorized Full Time Equivalent Positions

Original Approved General Fund Full Time Equivalent Positions	826.550
Original Approved Other Funds Full Time Equivalent Positions	82.700
Position Reductions during Mid-Year	
Additional Positions Approved Mid-Year	6.300
Total Approved Full-Time-Equivalent Positions for Fiscal Year 2013-14	**915.550**

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-c

SUBJECT: Use Agreement between Orange County and the New Hope Fire Department

DEPARTMENT: Emergency Services

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
1. EMS Substation Use Agreement
2. EMS-911 Study Pages 20 & 46

INFORMATION CONTACT:
James E. Groves, 245-6140
Chief Mike Tapp; 919 493-1001

PURPOSE: To approve the recommendation from the Emergency Services Director to enter into an agreement with the New Hope Fire Department (NHFD) in order to place one (1) EMS ambulance at Station #2 located at 4700 NC Highway 86, Chapel Hill, North Carolina.

BACKGROUND: On August 30, 2012 the Board was presented the findings of the Comprehensive Assessment of Emergency Medical Services & 911/Communications Center Operations Study performed by Solutions for Local Government. This study identified extended EMS response times as a primary issue, and recommended adding peak emergency medical services (EMS units) to reduce response times.

Orange County Emergency Services has worked with the New Hope Fire Department to develop a co-location solution to help reduce EMS response times in the eastern section of the County. NHFD Station #2 is located Hwy 86 and provides good access to the community in the eastern portion of the County, as well as providing a sheltered and environmentally controlled atmosphere for an ambulance. In addition, the station will provide a location for staff to work on plans and paperwork.

FINANCIAL IMPACT: The financial impact for initial infrastructure set up (information technology, cabinets, supplies, etc.) will not exceed a one-time expense of $4,000. The agreement includes a $500 per month payment ($6,000/yr.) to NHFD. This expense is already covered under FY 2013-2014 Budget Amendment #2 approved by the BOCC on October 15, 2013.

RECOMMENDATION(S): The Manager recommends that the Board approve the recommendation from the Emergency Services Director to approve and authorize the Manager to sign the Use Agreement.

ORANGE COUNTY-NEW HOPE FIRE DEPARTMENT
USE AGREEMENT FOR EMERGENCY MEDICAL SERVICES SUBSTATION

This Use Agreement for Emergency Medical Services (EMS) Substation (this "Agreement"), made and entered into the _1st_ day of _April_, 2014 (the "Effective Date"), by and between the County of Orange, a political subdivision of the State of North Carolina, located at 200 South Cameron Street, Hillsborough, North Carolina, 27278, ("County") through the Orange County Emergency Services Department ("OCES") and the New Hope Volunteer Fire Department of Orange County, Inc., a not for profit corporation ("Fire Department"), located at 4012 Whitfield Road, Chapel Hill, NC 27514 and both collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, Orange County through its Emergency Services Department currently operates an Advanced Life Support EMS System; and

WHEREAS, the geographical service area covered by the Orange County Emergency Services System includes all of Orange County, consisting of 384 square miles of land area, and encompassing all or portions of the municipalities of Chapel Hill, Carrboro, Hillsborough, and Mebane; and

WHEREAS, the estimated county population is 135,776, lending to a total system call volume, emergency and non-emergency, of 13,445; and

WHEREAS, the County desires to locate an Emergency Services substation at the New Hope Fire Department's Station #2 located at 4700 NC Highway 86, Chapel Hill, North Carolina to better serve the residents in eastern Orange County; and

NOW, THEREFORE, in consideration of the above and the mutual covenants and conditions hereafter set forth, the County and Fire Department agree as follows:

1. Term of the Agreement. The term of this Agreement shall begin on the Effective Date and expiring on April 1, 2015, and shall be automatically extended for three additional successive one-year terms, unless either Party provides written notice to the other ninety (90) days prior to the end of the term.

2. Scope of Agreement.

    a. The Fire Department shall provide rent free space within the New Hope Fire Station #2 to be used as an Emergency Medical Service Substation ("Substation"). The Fire Department shall provide:

        i. Storage space for emergency medical services supplies.

        ii. Space within the bay area for one (1) ambulance.

iii. Shared working quarters for up to three (3) OCES ambulance crew personnel who will staff the ambulance.

iv. Access to parking for the ambulance crews personal vehicles.

v. Access to electrical power for ambulance shorelines. Material and labor costs will be provided and funded by the County.

1. Installation will be performed by a licensed electrical contractor.

vi. Access to the Fire Station by OCES ambulance crews.

vii. Use of the landline telephone.

b. The County shall provide the following for the Substation:

i. One ambulance and a crew to staff the ambulance (up to three members) to provide pre-hospital, emergency medical services to the surrounding community.

ii. Building up-fits for ambulance shorelines at the New Hope Fire Station #2;

1. Up-fits will be performed by a licensed electrical contractor.

iii. Communications equipment as needed.

1. Any modifications to the station will be permanent, and will be left in place if this contract expires (i.e., external antenna, paging/notification system).

iv. Medical Supplies to support and maintain the substation.

v. Logistical Supplies. Small *refrigerator,* storage cabinet, and a lock box for narcotics or other paramedic legitimate drugs.

vi. Payment. $500 per month, not to exceed $6,000 per year. Payment is inclusive of all utilities and normal and typical maintenance.

3. Repairs. The Fire Department shall provide for their normal and typical maintenance to the premises (i.e., lighting, filters, other). Any damages caused by the Fire Department shall be repaired and paid by the Fire Department, and any damages caused by the County shall be repaired and paid by the County.

a. If a determination on who caused the damage cannot be readily identified by the station crew, the Fire Department Chief and Emergency Services Director will meet to reach an amicable decision.

4. Improvements. No substantial alteration, addition or improvement to the premises shall be made by the County without the written consent of the Fire Department.

5. County's Obligation to Comply with Applicable Laws and Requirements of Insurance Policies. The County shall throughout the term of this Agreement, at its sole expense, promptly comply with all laws and regulations of all federal, state and municipal which may be applicable to the property. The County shall comply with the requirements of Fire Department policies of public liability, fire and all other types of insurance at any time in force with respect to the building and other improvements on the property.

6. Fire Department Policies. The OCES crew will maintain a clean and sanitary work and meal area environment. County agrees to that Emergency Services personnel shall comply with all applicable Fire Department policies and facility rules while at the New Hope Fire Station #2. Emergency Service personnel shall comply with any County facility use policy when it is stricter than the Fire Department rules.

7. Condition of Premises. The County shall, during the term of this Agreement and any renewal or extension hereof, shall keep the part of the facility they are allocated clean and shall surrender the premises in the good order and repair in which such property now is, ordinary wear and excepted, and shall remove all its property therefrom so that Fire Department can repossess the property no later than Noon on the day upon which this Agreement ends.

8. Right of Entry. The County use of the premises is not exclusive, the Fire Department or its agent shall have the right to enter any part of the facility the County is allocated at reasonable times in order to examine it, or to make such decorations, repairs, alterations, improvements or additions as Fire Department deems necessary or desirable. If the County or its employees shall not be personally present to permit entry at any time when an entry therein shall be immediately necessary, as herein provided, Fire Department may enter the premises by such means as may be appropriate, including forcible entry, without rendering Fire Department or such agents liable therefore (if during such entry the Fire Department or his agents shall accord reasonable care to the County's property), and without in any manner affecting the obligations and covenants of this Agreement.

9. Hold Harmless from Liability. Neither Fire Department nor the County shall be liable to the other for any property damage sustained by the other, personal injury to the other or to its officers, agents and employees, or to any other occupant of any part of the property, irrespective of how such injury or damage may be caused, whether from action of the elements or acts of negligence of the occupants of adjacent properties, or any other persons; provided that nothing contained herein shall relieve the either Fire Department or the County of the consequences of its own negligence to the extent provided by law.

10. Amendments. Any amendments or revisions to this Agreement must be approved in writing by the Parties and attached to this Agreement.

11. Insurance. Fire Department shall maintain fire insurance on the building in which the premises is located. The County shall maintain fire and casualty insurance covering the County's equipment and other property located in the premises.

12. Relationship of the Parties. The County is an independent contractor of Fire Department. The County represents that they have or will secure, at their own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with Fire Department. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized and permitted under federal, state and local law to perform such services.

13. Compliance with all Laws. The Parties, shall comply with all laws, ordinances, orders and regulations of the federal, state or local governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following execution of this agreement.

14. Subcontract. The Parties deem the services provided under this Agreement to be personal in nature and they may not subcontract any rights or duties under this Agreement to any third party without prior written consent.

15. Assignment. The Parties agree not to assign this Agreement, to any other party without the prior written consent of the other Party.

16. Non-Appropriation. This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable.

17. Non-Discrimination. The parties hereto agree for themselves, their agents, officials, employees and servants not to discriminate in any manner on the basis of race, color, gender, national origin, age, disability, religion, creed, ethnicity, sexual orientation, gender identity, gender expression, familial status or veterans status with reference to any activities carried out by this Agreement.

18. Notice. The Parties hereto agree and understand that written notice, as identified in section #1 of this agreement, mailed or delivered to the last known address, shall constitute sufficient notice to the County and Fire Department. All notices required and/or made pursuant to this Agreement to be given to the County and the Provides shall be in writing and mailed to the party addressed as follows:

County:
Director
Emergency Services Department
Orange County
Post Office Box 8181
510 Meadowlands Drive
Hillsborough, NC 27278

Fire Department:
Fire Chief
New Hope Fire Department
4012 Whitfield Road
Chapel Hill, North Carolina 27514

19. Entire Agreement. This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties and shall supersede, replace or nullify any and all prior Agreements of understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement. The County and Fire Department have read this Agreement and agree to be bound by all of its terms, and further agree that this Agreement constitutes the complete and exclusive statement of the Agreement between the County and Fire Department.

20. Severability. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on the other provisions of this Agreement. It is understood by the parties hereto that if any part, term or provision of this Agreement is by the Courts held to be illegal or in conflict with any laws of the State of North Carolina or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

21. Governing Law. The laws of the State of North Carolina shall govern all aspects of this Agreement. In the event that it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Orange County, North Carolina. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties.

IN WITNESS WHEREOF, the Orange County and New Hope Fire Department have signed this Agreement, effective on the last date this Agreement is signed by both parties as indicated by the dates set forth under signatures below.

For and on behalf of New Hope Fire Department

_____ _____
Name Date

_____
Title

_____ _____
Name Date

_____
Title – Fire Chief

Attest:

_____ _____
Name Date

_____
Title

For and on behalf of Orange County Government

_____ _____
Michael Talbert, Interim County Manager Date

Approved as to technical content

_____ _____
James E. Groves, Director Date
Emergency Services

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

_____ _____
Clarence Grier, Asst. County Manager/CFO ***Date***

Approved as to form and legal sufficiency

_____ _____
Annette M. Moore, Staff Attorney Date

Attachment 2

Comprehensive Assessment of Emergency Medical Services
&
911/Communications Center Operations Study

Presentation of Study Findings & Recommendations

To the
Orange County Board of Commissioners

31 August 2012

Presented by:
Solutions for Local Government, Inc.

EMERGENCY MEDICAL SERVICES (EMS)

ISSUES OF CONCERN

Response Time

OCEMS Agency Standards per System Plan:

For Emergency Responses;

. . . . . a Paramedic on scene within 12 minutes 90% of the time

For Non-Emergency Responses;

. . . . . A Paramedic on scene within 15 minutes 90% of the time
Although not acceptable to the referenced standards setting and professional organizations cited, concern can be off-set *somewhat* by effective and timely response from certified BLS personnel; i.e. certified Medical Responders (MR) and Basic level Emergency Medical Technicians (EMT's).

In Orange County, these .....are comprised of members of the 12 municipal and community Fire Departments

EMERGENCY MEDICAL SERVICES (EMS)

RECOMMENDATIONS

Issue: Response Time

R-4. Assess Fire Department capabilities necessary to meet MFR Response Time objectives; via independent assessment of call volume, roster, paid vs. volunteer personnel, vehicles, base location(s) past call locations, included map grids, existing funding, and anticipated performance requirements.

R-5a. Schedule and implement Fire Department MFR initiative with included performance requirements.

R-5b. Staff & equip four (4) EMS/QRV's for assignment 12 hours/7 days; with shift start/end times to be determined by EMS.

R-6. Staff & equip three (3) 12 hour/7 day ALS ambulances at appropriate staging/base facility locations proximate to (1) Zones 1 & 2, (2) Zones 7 & 5, and Zones 6 & 8.

R-7. Hire Paramedic Level Shift Supervisor @ 24/7.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda
Item No. 6-d

SUBJECT: Use Agreement between Orange County and Orange Rural Fire Department

DEPARTMENT: Emergency Services **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):
1. EMS Substation Use Agreement
2. EMS-911 Study Pages 20 & 46

INFORMATION CONTACT:
James E. Groves, 245-6140
Chief Jeff Cabe; 919 732-7911

PURPOSE: To approve the recommendation from the Emergency Services Director to revise the agreement with the Orange Rural Fire Department (ORFD) that provides for the location of one (1) emergency medical services (EMS) ambulance at the 835 Phelps Road station since March 2013.

BACKGROUND: On March 19, 2013 the BOCC approved the original agreement between Orange County and the Orange Rural Fire Department. The original agreement did not provide for payment - only for increased utility and maintenance costs. Subsequently, agreements were developed and implemented with other departments that provided for a monthly payment of $500 in lieu of utilities and maintenance.

This modified version of the agreement makes it similar to other co-location agreements that have been implemented with other departments. As amended, it also allows for a $500 payment to Orange Rural. This agreement as proposed would be retroactive back to November 2013 and will allow for back payment to that date.

FINANCIAL IMPACT: The financial impact is $500 per month payment ($6,000/yr.) to ORFD. This expense is already covered under FY 2013-2014 Budget Amendment #2 approved by the BOCC on October 15, 2013.

RECOMMENDATION(S): The Manager recommends that the Board approve the recommendation from the Emergency Services Director to approve and authorize the Manager to sign the revised Use Agreement.

ORANGE COUNTY-ORANGE RURAL FIRE DEPARTMENT
USE AGREEMENT FOR EMERGENCY MEDICAL SERVICES SUBSTATION

This Use Agreement for Emergency Medical Services (EMS) Substation (this "Agreement"), made and entered into the _1st_ day of _November_, 2013 (the "Effective Date"), by and between the County of Orange, a political subdivision of the State of North Carolina, located at 200 South Cameron Street, Hillsborough, North Carolina, 27278, ("County") through the Orange County Emergency Services Department ("OCES") and the Orange Rural Fire Department, a not for profit corporation ("Fire Department"), located at 206 South Churton Street, Hillsborough and both collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, Orange County through its Emergency Services Department currently operates an Advanced Life Support EMS System; and

WHEREAS, the geographical service area covered by the Orange County Emergency Services System includes all of Orange County, consisting of 384 square miles of land area, and encompassing all or portions of the municipalities of Chapel Hill, Carrboro, Hillsborough, and Mebane; and

WHEREAS, the estimated county population is 135,776, lending to a total system call volume, emergency and non-emergency, of 13,445; and

WHEREAS, the County desires to locate an Emergency Services substation at the Orange Rural Fire Department's Fire Station #2 located at 835 Phelps Road, Hillsborough, North Carolina to better serve the residents in Northern Orange County; and

NOW, THEREFORE, in consideration of the above and the mutual covenants and conditions hereafter set forth, the County and Fire Department agree as follows:

1. Term of the Agreement. The term of this Agreement shall begin on the Effective Date and expiring on November 1, 2014, and shall be automatically extended for three additional successive one-year terms, unless either Party provides written notice to the other ninety (90) days prior to the end of the term.

2. Scope of Agreement.

    a. The Fire Department shall provide space within the Orange Rural Station #2 to be used as an Emergency Medical Service Substation ("Substation"). The Fire Department shall provide:

        i. Storage space for emergency medical services supplies.

        ii. Space within the bay area for one (1) ambulance.

iii. Shared working quarters for up to three (3) OCES ambulance crew personnel who will staff the ambulance.

iv. Access to parking for the ambulance crews personal vehicles.

v. Access to electrical power for ambulance shorelines. Material and labor costs will be provided and funded by the County.

1. Installation will be performed by a licensed electrical contractor.

vi. Access to the Fire Station by OCES ambulance crews.

vii. Use of the landline telephone.

b. The County shall provide the following for the Substation:

i. One ambulance and a crew to staff the ambulance (up to three members) to provide pre-hospital, emergency medical services to the surrounding community.

ii. Building up-fits for ambulance shorelines at the Phelps Road fire station;

1. Up-fits will be performed by a licensed electrical contractor.

iii. Communications equipment as needed.

1. Any modifications to the station will be permanent, and will be left in place if this contract expires (i.e., external antenna, paging/notification system).

iv. Medical Supplies to support and maintain the substation.

v. Logistical Supplies. Small refrigerator, storage Cabinet, and lock box for narcotics or other paramedic legitimate drugs.

vi. Payment. $500 per month, not to exceed $6,000 per year. Payment is inclusive of all utilities and normal and typical maintenance.

3. Repairs. The Fire Department shall provide for their normal and typical maintenance to the premises (i.e., lighting, filters, other). Any damages caused by the Fire Department shall be repaired and paid by the Fire Department, and any damages caused by the County shall be repaired and paid by the County.

a. If a determination on who caused the damage cannot be readily identified by the station crew, the Fire Department Chief and Emergency Services Director will meet to reach an amicable decision.

b. The Fire Department Chief and Emergency Services Director will meet to reach an amicable decision on cost sharing for repairs to major appliances (bay doors, toilets, washer/dryer, etc.).

4. Improvements. No substantial alteration, addition or improvement to the premises shall be made by the County without the written consent of the Fire Department.

5. County's Obligation to Comply with Applicable Laws and Requirements of Insurance Policies. The County shall throughout the term of this Agreement, at its sole expense, promptly comply with all laws and regulations of all federal, state and municipal which may be applicable to the property. The County shall comply with the requirements of Fire Department policies of public liability, fire and all other types of insurance at any time in force with respect to the building and other improvements on the property.

6. Fire Department Policies. The OCES crew will maintain a clean and sanitary work and meal area environment. County agrees to that Emergency Services personnel shall comply with all applicable Fire Department policies and facility rules while at the Phelps Road Station. Emergency Service personnel shall comply with any County facility use policy when it is stricter than the Fire Department rules.

7. Condition of Premises. The County shall, during the term of this Agreement and any renewal or extension hereof, shall keep the part of the facility they are allocated clean and shall surrender the premises in the good order and repair in which such property now is, ordinary wear and excepted, and shall remove all its property therefrom so that Fire Department can repossess the property no later than Noon on the day upon which this Agreement ends.

8. Right of Entry. The County use of the premises is not exclusive, the Fire Department or its agent shall have the right to enter any part of the facility the County is allocated at reasonable times in order to examine it, or to make such decorations, repairs, alterations, improvements or additions as Fire Department deems necessary or desirable. If the County or its employees shall not be personally present to permit entry at any time when an entry therein shall be immediately necessary, as herein provided, Fire Department may enter the premises by such means as may be appropriate, including forcible entry, without rendering Fire Department or such agents liable therefore (if during such entry the Fire Department or his agents shall accord reasonable care to the County's property), and without in any manner affecting the obligations and covenants of this Agreement.

9. Hold Harmless from Liability. Neither Fire Department nor the County shall be liable to the other for any property damage sustained by the other, personal injury to the other or to its officers, agents and employees, or to any other occupant of any part of the property, irrespective of how such injury or damage may be caused, whether from action of the elements or acts of negligence of the occupants of adjacent properties, or any other persons; provided that nothing contained herein shall relieve the either Fire Department or the County of the consequences of its own negligence to the extent provided by law.

10. Amendments. Any amendments or revisions to this Agreement must be approved in writing by the Parties and attached to this Agreement.

11. Insurance. Fire Department shall maintain fire insurance on the building in which the premises is located. The County shall maintain fire and casualty insurance covering the County's equipment and other property located in the premises.

12. Relationship of the Parties. The County is an independent contractor of Fire Department. The County represents that they have or will secure, at their own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with Fire Department. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized and permitted under federal, state and local law to perform such services.

13. Compliance with all Laws. The Parties, shall comply with all laws, ordinances, orders and regulations of the federal, state or local governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following execution of this agreement.

14. Subcontract. The Parties deem the services provided under this Agreement to be personal in nature and they may not subcontract any rights or duties under this Agreement to any third party without prior written consent.

15. Assignment. The Parties agree not to assign this Agreement, to any other party without the prior written consent of the other Party.

16. Non-Appropriation. This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable.

17. Non-Discrimination. The parties hereto agree for themselves, their agents, officials, employees and servants not to discriminate in any manner on the basis of race, color, gender, national origin, age, disability, religion, creed, ethnicity, sexual orientation, gender identity, gender expression, familial status or veterans status with reference to any activities carried out by this Agreement.

18. Notice. The Parties hereto agree and understand that written notice, as identified in section #1 of this agreement, mailed or delivered to the last known address, shall constitute sufficient notice to the County and Fire Department. All notices required and/or made pursuant to this Agreement to be given to the County and the Provides shall be in writing and mailed to the party addressed as follows:

County:
Director
Emergency Services Department
Orange County
Post Office Box 8181
510 Meadowlands Drive
Hillsborough, NC 27278

Fire Department:
Fire Chief
Orange Rural Fire Department
Post Office Box 1511
206 South Churton Street
Hillsborough, North Carolina 27278

19. Entire Agreement. This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties and shall supersede, replace or nullify any and all prior Agreements of understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement. The County and Fire Department have read this Agreement and agree to be bound by all of its terms, and further agree that this Agreement constitutes the complete and exclusive statement of the Agreement between the County and Fire Department.

20. Severability. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on the other provisions of this Agreement. It is understood by the parties hereto that if any part, term or provision of this Agreement is by the Courts held to be illegal or in conflict with any laws of the State of North Carolina or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

21. Governing Law. The laws of the State of North Carolina shall govern all aspects of this Agreement. In the event that it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Orange County, North Carolina. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties.

IN WITNESS WHEREOF, the Orange County and Orange Rural Fire Department have signed this Agreement, effective on the last date this Agreement is signed by both parties as indicated by the dates set forth under signatures below.

For and on behalf of Orange Rural Fire Department

_____ _____
Name Date

_____
Title

Attest:

_____ _____
Name Date

_____
Title

For and on behalf of Orange County Government

_____ _____
Michael Talbert, Interim County Manager Date

Approved as to technical content

_____ _____
James E. Groves, Director Date
Emergency Services

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

_____ _____
Clarence Grier, Asst. County Manager/CFO ***Date***

Approved as to form and legal sufficiency

_____ _____
Annette M. Moore, Staff Attorney Date

Attachment 2

Comprehensive Assessment of Emergency Medical Services
&
911/Communications Center Operations Study

Presentation of Study Findings & Recommendations

To the
Orange County Board of Commissioners

31 August 2012

Presented by:
Solutions for Local Government, Inc.

EMERGENCY MEDICAL SERVICES (EMS)

ISSUES OF CONCERN

Response Time

OCEMS Agency Standards per System Plan:

For Emergency Responses;

. . . . . a Paramedic on scene within 12 minutes 90% of the time

For Non-Emergency Responses;

. . . . . A Paramedic on scene within 15 minutes 90% of the time
Although not acceptable to the referenced standards setting and professional organizations cited, concern can be off-set *somewhat* by effective and timely response from certified BLS personnel; i.e. certified Medical Responders (MR) and Basic level Emergency Medical Technicians (EMT's).

In Orange County, these .....are comprised of members of the 12 municipal and community Fire Departments

EMERGENCY MEDICAL SERVICES (EMS)

RECOMMENDATIONS

Issue: Response Time

R-4. Assess Fire Department capabilities necessary to meet MFR Response Time objectives; via independent assessment of call volume, roster, paid vs. volunteer personnel, vehicles, base location(s) past call locations, included map grids, existing funding, and anticipated performance requirements.

R-5a. Schedule and implement Fire Department MFR initiative with included performance requirements.

R-5b. Staff & equip four (4) EMS/QRV's for assignment 12 hours/7 days; with shift start/end times to be determined by EMS.

R-6. Staff & equip three (3) 12 hour/7 day ALS ambulances at appropriate staging/base facility locations proximate to (1) Zones 1 & 2, (2) Zones 7 & 5, and Zones 6 & 8.

R-7. Hire Paramedic Level Shift Supervisor @ 24/7.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-e

SUBJECT: Use Agreement between Orange County and Carrboro Fire & Rescue

DEPARTMENT: Emergency Services **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):
1. EMS Substation Use Agreement
2. EMS-911 Study Pages 20 & 46

INFORMATION CONTACT:
James E. Groves, 245-6140
Chief Travis Crabtree; 919 918-7349

PURPOSE: To approve the recommendation from the Emergency Services Director to enter into an agreement with the Town of Carrboro Fire & Rescue Department (CFRD) in order to locate one (1) emergency medical services (EMS) ambulance at Station #1 located at 301 W. Main Street, and one at Station #2 located at 1411 Homestead Road.

BACKGROUND: On August 30, 2012 the Board was presented the findings of the Comprehensive Assessment of Emergency Medical Services & 911/Communications Center Operations Study performed by Solutions for Local Government. This study identified extended EMS response times as a primary issue, and recommended adding peak EMS units to reduce response times.

Orange County Emergency Services has worked with the CFRD to develop a co-location solution to help reduce EMS response times in the southern section of the County. CFRD Station #1 and Station #2 both provide good access to the community in the southern portion of the County, as well as providing a sheltered and environmentally controlled atmosphere for the ambulances. In addition, the stations will provide a location for staff to work on plans and paperwork.

The ambulances have been co-located with CFRD since January 6, 2014, and, pending Board approval, payments will be made to the Town of Carrboro retroactive to that date.

FINANCIAL IMPACT: The financial impact for initial infrastructure set up (information technology, cabinets, supplies, etc.) will not exceed a one-time expense of $4,000. The agreement includes a $500 per month payment ($6,000/yr.) per station to CFRD. This expense is already covered under FY 2013-2014 Budget Amendment #2 approved by the BOCC on October 15, 2013.

RECOMMENDATION(S): The Manager recommends that the Board approve the recommendation from the Emergency Services Director to approve and authorize the Manager to sign the Use Agreement.

Attachment 1

TOWN OF CARRBORO FIRE-RESCUE DEPARTMENT
USE AGREEMENT FOR EMERGENCY MEDICAL SERVICES SUBSTATION

This Use Agreement for Emergency Medical Services (EMS) Substation (this "Agreement"), made and entered into the 1st day of January, 2014 (the "Effective Date"), by and between the County of Orange, a political subdivision of the State of North Carolina, located at 200 South Cameron Street, Hillsborough, North Carolina, 27278, ("County") through the Orange County Emergency Services Department ("OCES") and the Town of Carrboro Fire-Rescue Department (CFRD) located at 301 W. Main St., Carrboro, NC 27510 and both collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, Orange County through its Emergency Services Department currently operates an Advanced Life Support EMS System; and

WHEREAS, the geographical service area covered by the Orange County Emergency Services System includes all of Orange County, consisting of 384 square miles of land area, and encompassing all or portions of the municipalities of Chapel Hill, Carrboro, Hillsborough, and Mebane; and

WHEREAS, the estimated county population is 135,776, lending to a total system call volume, emergency and non-emergency, of 13,445; and

WHEREAS, the County desires to locate an Emergency Services substation at the CFRD Station #1 at 301 W. Main St., Carrboro, NC 27510 and CFRD Station #2 at 1411 Homestead Rd., Chapel Hill, NC 27516 to better serve the residents in southern Orange County; and

NOW, THEREFORE, in consideration of the above and the mutual covenants and conditions hereafter set forth, the Parties agree as follows:

1. Term of the Agreement. The term of this Agreement shall begin on the Effective Date and expiring on January 1, 2015, and shall be automatically extended for three additional successive one-year terms, unless either Party provides written notice to the other ninety (90) days prior to the end of the term.

2. Scope of Agreement.

    a. The Fire Department shall provide space within Station #1 and Station #2 to be used as an Emergency Medical Service Substation ("Substation"). The Fire Department shall provide at each location:

        i. Storage space for emergency medical services supplies.

        ii. Space within the bay area for one (1) ambulance.

iii. Shared working quarters for up to three (3) OCES ambulance crew personnel who will staff the ambulance.

iv. Access to parking for the ambulance crews personal vehicles.

v. Access to electrical power for ambulance shorelines. Material and labor costs will be provided and funded by the County.

1. Installation will be performed by a licensed electrical contractor.

vi. Access to the Fire Station by OCES ambulance crews.

vii. Use of the landline telephone.

b. The County shall provide the following for the Substation:

i. One ambulance and a crew to staff the ambulance (up to three members) to provide pre-hospital, emergency medical services to the surrounding community.

ii. Building up-fits for ambulance shorelines at Station #1;

1. Up-fits will be performed by a licensed electrical contractor.

iii. Communications equipment as needed.

1. Any modifications to the station will be permanent, and will be left in place if this contract expires (i.e., external antenna, paging/notification system).

iv. Medical Supplies to support and maintain the substation.

v. Logistical Supplies. Small *refrigerator (as needed),* storage cabinet, and a lock box for narcotics or other paramedic legitimate drugs.

vi. Payment. $500 per month per station, not to exceed $6,000 per year per station. Payment is inclusive of all utilities and normal and typical maintenance.

3. Repairs. The Fire Department shall provide for their normal and typical maintenance to the premises (i.e., lighting, filters, other). Any damages caused by the Fire Department shall be repaired and paid by the Fire Department, and any damages caused by the County shall be repaired and paid by the County.

a. If a determination on who caused the damage cannot be readily identified by the station crew, the Fire Department Chief and Emergency Services Director will meet to reach an amicable decision.

4. Improvements. No substantial alteration, addition or improvement to the premises shall be made by the County without the written consent of the Fire Department.

5. County's Obligation to Comply with Applicable Laws and Requirements of Insurance Policies. The County shall throughout the term of this Agreement, at its sole expense, promptly comply with all laws and regulations of all federal, state and municipal which may be applicable to the property. The County shall comply with the requirements of Fire Department policies of public liability, fire and all other types of insurance at any time in force with respect to the building and other improvements on the property.

6. Fire Department Policies. The OCES crew will maintain a clean and sanitary work and meal area environment. County agrees to that Emergency Services personnel shall comply with all applicable Fire Department policies and facility rules while at Station #1. Emergency Service personnel shall comply with any County facility use policy when it is stricter than the Fire Department rules.

7. Condition of Premises. The County shall, during the term of this Agreement and any renewal or extension hereof, shall keep the part of the facility they are allocated clean and shall surrender the premises in the good order and repair in which such property now is, ordinary wear and excepted, and shall remove all its property therefrom so that Fire Department can repossess the property no later than Noon on the day upon which this Agreement ends.

8. Right of Entry. The County use of the premises is not exclusive, the Fire Department or its agent shall have the right to enter any part of the facility the County is allocated at reasonable times in order to examine it, or to make such decorations, repairs, alterations, improvements or additions as Fire Department deems necessary or desirable. If the County or its employees shall not be personally present to permit entry at any time when an entry therein shall be immediately necessary, as herein provided, Fire Department may enter the premises by such means as may be appropriate, including forcible entry, without rendering Fire Department or such agents liable therefore (if during such entry the Fire Department or his agents shall accord reasonable care to the County's property), and without in any manner affecting the obligations and covenants of this Agreement.

9. Hold Harmless from Liability. Neither Fire Department nor the County shall be liable to the other for any property damage sustained by the other, personal injury to the other or to its officers, agents and employees, or to any other occupant of any part of the property, irrespective of how such injury or damage may be caused, whether from action of the elements or acts of negligence of the occupants of adjacent properties, or any other persons; provided that nothing contained herein shall relieve the either Fire Department or the County of the consequences of its own negligence to the extent provided by law.

10. Amendments. Any amendments or revisions to this Agreement must be approved in writing by the Parties and attached to this Agreement.

11. Insurance. Fire Department shall maintain fire insurance on the building in which the premises is located. The County shall maintain fire and casualty insurance covering the County's equipment and other property located in the premises.

12. Relationship of the Parties. The County is an independent contractor of Fire Department. The County represents that they have or will secure, at their own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with Fire Department. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized and permitted under federal, state and local law to perform such services.

13. Compliance with all Laws. The Parties, shall comply with all laws, ordinances, orders and regulations of the federal, state or local governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following execution of this agreement.

14. Subcontract. The Parties deem the services provided under this Agreement to be personal in nature and they may not subcontract any rights or duties under this Agreement to any third party without prior written consent.

15. Assignment. The Parties agree not to assign this Agreement, to any other party without the prior written consent of the other Party.

16. Non-Appropriation. This Agreement is subject to the availability of funds to purchase the specified services and may be terminated at any time if such funds become unavailable.

17. Non-Discrimination. The parties hereto agree for themselves, their agents, officials, employees and servants not to discriminate in any manner on the basis of race, color, gender, national origin, age, disability, religion, creed, ethnicity, sexual orientation, gender identity, gender expression, familial status or veterans status with reference to any activities carried out by this Agreement.

18. Notice. The Parties hereto agree and understand that written notice, as identified in Section #1 of this agreement, mailed or delivered to the last known address, shall constitute sufficient notice to the County and Fire Department. All notices required and/or made pursuant to this Agreement to be given to the County and the Provides shall be in writing and mailed to the party addressed as follows:

19. County:
    Director
    Emergency Services Department
    Orange County
    Post Office Box 8181
    510 Meadowlands Drive
    Hillsborough, NC 27278

    Fire Department:
    Fire Chief
    Carrboro Fire-Rescue Department
    301 W. Main Street
    Carrboro, North Carolina 27510

20. Entire Agreement. This Agreement, including any referenced attachments, constitutes the entire Agreement between the parties and shall supersede, replace or nullify any and all prior Agreements of understandings; written or oral, relating to the matters set forth herein, and any such prior Agreements or understandings shall have no force or affect whatsoever on this Agreement. The County and Fire Department have read this Agreement and agree to be bound by all of its terms, and further agree that this Agreement constitutes the complete and exclusive statement of the Agreement between the County and Fire Department.

21. Severability. All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on the other provisions of this Agreement. It is understood by the parties hereto that if any part, term or provision of this Agreement is by the Courts held to be illegal or in conflict with any laws of the State of North Carolina or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

22. Governing Law. The laws of the State of North Carolina shall govern all aspects of this Agreement. In the event that it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Orange County, North Carolina. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Orange County and Carrboro Fire-Rescue Department have signed this Agreement, effective on the last date this Agreement is signed by both parties as indicated by the dates set forth under signatures below.

For and on behalf of Carrboro Fire-Rescue Department

_____ _____
Name Date

_____
Title

Attest:

_____ _____
Name Date

_____
Title

For and on behalf of Orange County Government

_____ _____
Michael Talbert, Interim County Manager Date

Approved as to technical content

_____ _____
James E. Groves, Director Date
Emergency Services

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

_____ _____
Clarence Grier, Asst. County Manager/CFO ***Date***

Approved as to form and legal sufficiency

_____ _____
Annette M. Moore, Staff Attorney Date

Attachment 2

Comprehensive Assessment of Emergency Medical Services
&
911/Communications Center Operations Study

Presentation of Study Findings & Recommendations

To the
Orange County Board of Commissioners

31 August 2012

Presented by:
Solutions for Local Government, Inc.

EMERGENCY MEDICAL SERVICES (EMS)

ISSUES OF CONCERN

Response Time

OCEMS Agency Standards per System Plan:

For Emergency Responses;

. . . . . a Paramedic on scene within 12 minutes 90% of the time

For Non-Emergency Responses;

. . . . . A Paramedic on scene within 15 minutes 90% of the time
Although not acceptable to the referenced standards setting and professional organizations cited, concern can be off-set *somewhat* by effective and timely response from certified BLS personnel; i.e. certified Medical Responders (MR) and Basic level Emergency Medical Technicians (EMT's).

In Orange County, these .....are comprised of members of the 12 municipal and community Fire Departments

EMERGENCY MEDICAL SERVICES (EMS)

RECOMMENDATIONS

Issue: Response Time

R-4. Assess Fire Department capabilities necessary to meet MFR Response Time objectives; via independent assessment of call volume, roster, paid vs. volunteer personnel, vehicles, base location(s) past call locations, included map grids, existing funding, and anticipated performance requirements.

R-5a. Schedule and implement Fire Department MFR initiative with included performance requirements.

R-5b. Staff & equip four (4) EMS/QRV's for assignment 12 hours/7 days; with shift start/end times to be determined by EMS.

R-6. Staff & equip three (3) 12 hour/7 day ALS ambulances at appropriate staging/base facility locations proximate to (1) Zones 1 & 2, (2) Zones 7 & 5, and Zones 6 & 8.

R-7. Hire Paramedic Level Shift Supervisor @ 24/7.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda
Item No. 6-f

SUBJECT: Terra Dotta, LLC Lease – 501 W. Franklin Street, Suites 105, 106 & 200

DEPARTMENT: Asset Management Services, County Attorney

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
1) Site Locator
2) Lease

INFORMATION CONTACT:
Jeff Thompson, 919-245-2658
John Roberts, 919-245-2318

PURPOSE: To consider:

1) Approving a Lease with Terra Dotta, LLC for Suites 105,106, and 200 at 501 West Franklin Street for a two year term through April 30, 2016; and

2) Authorizing the Chair to sign all necessary documents upon final review of the County Attorney.

BACKGROUND: A software consulting firm, Terra Dotta, LLC, ("Terra Dotta") has leased Suite 105 at 501 W. Franklin Street since December 2, 2002 and Suite 106 since January, 2010. Terra Dotta wishes continue leasing these spaces from the County as well as space in Suite 200, which has been unoccupied since 2009.

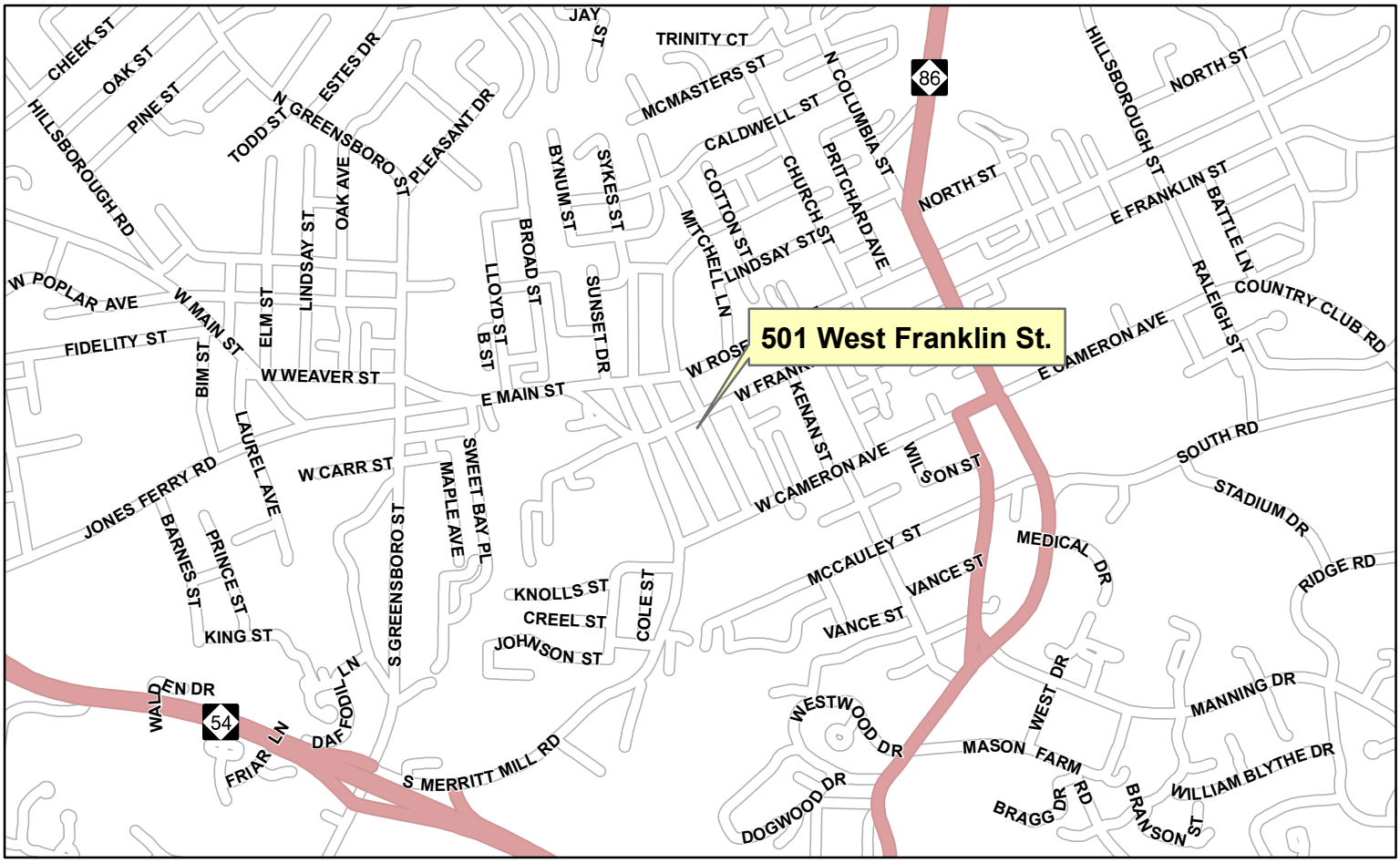
Attachment 1, "Site Locator" illustrates the building and the specific areas. The total leased area of the three suites is 2,439 square feet. The negotiated lease rate is $11.75 per square foot. The proposed Lease Agreement is located in Attachment 2.

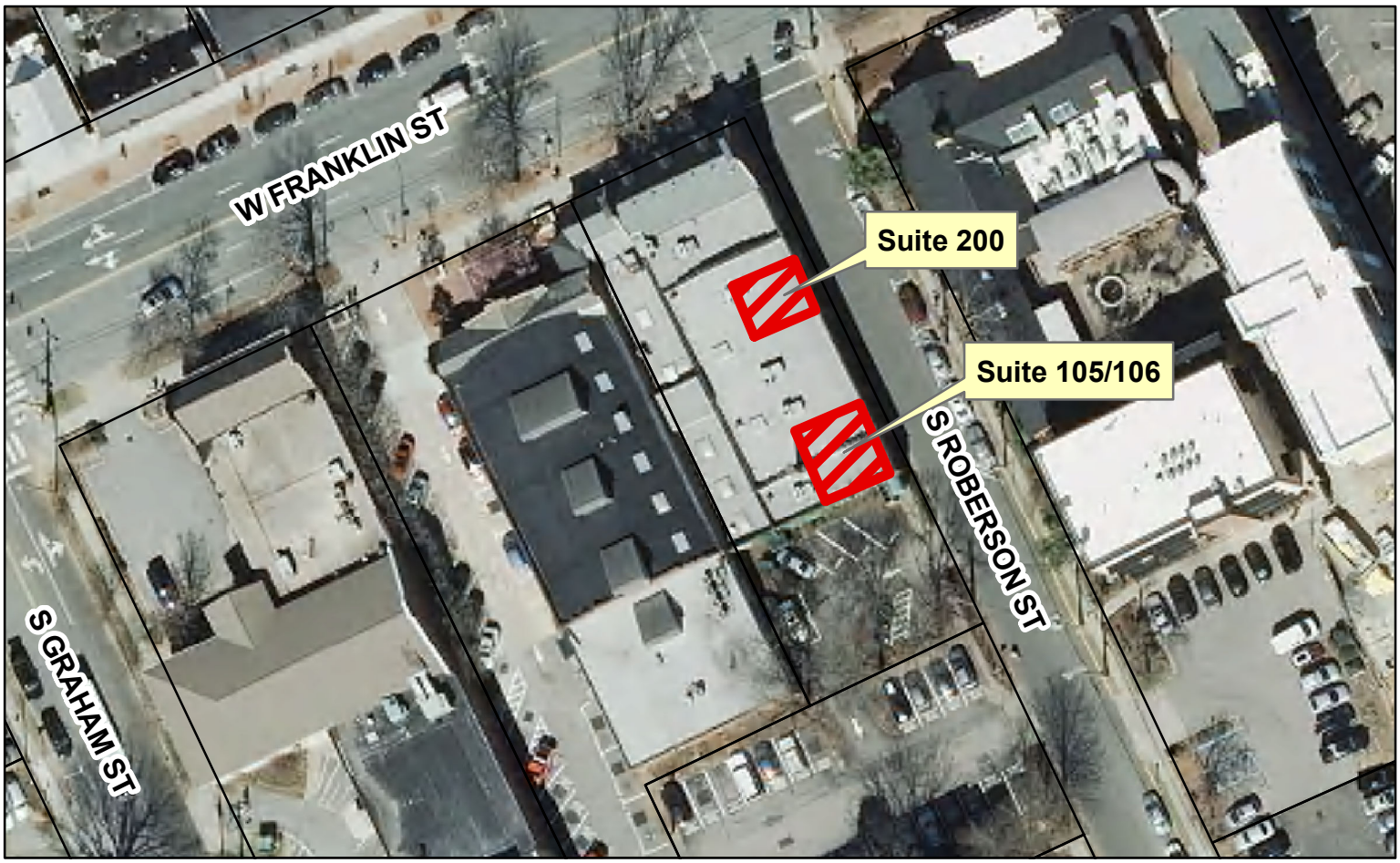
FINANCIAL IMPACT: The County would receive a total of $57,316.32 for the term of the lease.

RECOMMENDATION(S): The Manager recommends that the Board:

1) Approve a Lease with Terra Dotta, LLC for Suites 105,106, and 200 at 501 West Franklin Street for a two year term through April 30, 2016; and

2) Authorize the Chair to sign all necessary documents upon final review of the County Attorney.


501 West Franklin St.
CHEEK ST
OAK ST
PINE ST
HILLSBOROUGH RD
ESTES DR
TODD ST
N GREENSBORO ST
PLEASANT DR
JAY ST
TRINITY CT
MCMASTERS ST
CALDWELL ST
N COLUMBIA ST
86
HILLSBOROUGH ST
NORTH ST
BYNUM ST
SYKES ST
COTTON ST
CHURCH ST
PRITCHARD AVE
NORTH ST
E FRANKLIN ST
BATTLE LN
OAK AVE
LINDSAY ST
MITCHELL LN
LINDSAY ST
BROAD ST
LLOYD ST
SUNSET DR
RALEIGH ST
COUNTRY CLUB RD
W POPLAR AVE
W MAIN ST
ELM ST
FIDELITY ST
BIM ST
W WEAVER ST
B ST
E MAIN ST
W ROSE
W FRANK
KENAN ST
E CAMERON AVE
LAUREL AVE
W CARR ST
SWEET BAY PL
MAPLE AVE
W CAMERON AVE
WILSON ST
SOUTH RD
JONES FERRY RD
STADIUM DR
BARNES ST
PRINCE ST
S GREENSBORO ST
MCCAULEY ST
MEDICAL DR
VANCE ST
RIDGE RD
KNOLLS ST
CREEL ST
COLE ST
VANCE ST
KING ST
JOHNSON ST
WALDEN DR
54
DAFFODIL LN
WEST DR
MANNING DR
FRIAR LN
WESTWOOD DR
MASON FARM RD
S MERRITT MILL RD
WILLIAM BLYTHE DR
DOGWOOD DR
BRAGG DR
BRANSON ST


W FRANKLIN ST
Suite 200
Suite 105/106
S ROBERSON ST
S GRAHAM ST

STATE OF NORTH CAROLINA
COUNTY OF ORANGE **LEASE**

THIS LEASE, made and entered into as of the 1st day of May 2014, by and between Orange County, hereinafter referred to as "County," and Terra Dotta LLC., hereinafter referred to as "Tenant;"

WITNESSETH:

THAT FOR and in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Premises. County does hereby lease and let unto Tenant and Tenant does hereby accept as Tenant those certain premises designated as Suites #105, #106, and #200 of the Bentley Building, 501 West Franklin Street, Chapel Hill, Orange County, North Carolina, as more particularly shown on EXHIBIT A appended hereto.

2. Acceptance of Premises. The Tenant represents that the lease property, the sidewalks and structures adjoining the same, any subsurface conditions thereof, and the present uses and non-uses thereof have been examined by the Tenant. The Tenant accepts the same in the condition in which they now are without representation or warranty, express or implied, in fact or by law, by the County, the nature, condition or usability thereof, or the uses to which the leased property may be put. Provided, County shall be responsible for ensuring that the heating/air-conditioning system is in good operating condition; the exterior walls and roof, the lighting system (excluding such additions as may be required for Tenant's particular business operation) and the parking area and sidewalks are in good repair on the date of commencement of the lease term. County represents and warrants to Tenant that it holds unencumbered fee title to the lease premises. The County shall not be responsible for any latent defect or change of condition in such building, improvements and personalty, and the rent hereunder shall in no case be withheld or diminished on account of any defect in such property, any change in the condition thereof, any damage occurring thereto or the existence with respect thereof of any violations of the laws or regulations of any governmental authority, except as hereinafter provided. In addition, Tenant acknowledges that the Bentley Building is a smoke free building and does not permit tobacco use inside of the building.

3. Term and Rental.

(a) This Lease shall commence on May 1, 2014, and shall continue for a term of twenty-four (24) months, ending on April 30, 2014, both dates inclusive, unless sooner terminated as herein provided. Upon mutual written agreement this Lease may be renewed for up to four twenty-four month terms. Any renewal may be for the entire leased premises or for one or more of the designated suites. Any such renewal shall be subject to a mutually agreed upon increase in rent.

(b) Tenant shall deliver to County a deposit in the amount of two thousand three hundred eighty eight dollars ($2,388.00), which is the equivalent to the rent for one (1) month. Deposit shall be held as a security deposit against claims for damages. This money may be deposited for the exclusive use of Orange County and will be returned to Tenant at the end of the lease within 30 days provided there has been no damage to the leased premises.

(c) The Tenant agrees to pay the County without demand at its office, or at such other place or places as County may from time to time designate in writing, the sum of two thousand three hundred eighty eight dollars and 18 cents ($2,388.18) per month ($57,316.32 for the 24 month lease term), on or before the fifth day of each month of the term.

(d) The extension of time for the payment of any installment of rent, or the acceptance by the County of any money other than of the kind herein specified, shall not be a waiver of the right of the County to insist on having all other payments of rent made in the manner and at the time herein specified.

(e) If any installment of rent is not received by the fifth (5th) day of any month it is due, Tenant shall pay as additional rent a late payment fee of Fifty Dollars ($50.00). This additional rent shall be due immediately without demand therefore and shall be added to and paid as a part of the installment payment of rent with respect to which it is incurred.

4. Holdover. If the Tenant shall remain in possession of the leased property after the expiration of the original or renewal period as set out above, such possession shall be as a month-to-month tenant. During such month-to-month tenancy, rent shall be the rent in effect during the last month of the term immediately preceding plus an additional 50%.

5. Insurance. The County shall keep in force insurance to provide for property damage to the building for replacement cost purposes. Provided, however, Tenant shall be responsible for and pay to County any increase in County's insurance premium occasioned by the nature of the Tenant's business.

The Tenant shall maintain fire and casualty insurance covering the Tenant's fixtures, equipment, and other property located in the demised premises.

Tenant shall keep the leased property insured, at its sole cost and expense, against claims for personal injury or property damage under a policy of general public liability insurance, with limits of at least $1,000,000 for bodily injury and $100,000 for property damage. Such policies shall name the County as additional named insured under the policy.

The Tenant shall provide the County certificates of such insurance at or prior to the commencement of the term of this lease, and thereafter within ten (10) days prior to the expiration of such policies. Such policies shall provide that the same may not be canceled without at least ten (10) days prior written notice to County.

6. Rental Adjustment. In addition to the base rental, the Tenant shall assume and pay any additional fire insurance premium, hazard insurance premium, or other extended coverage insurance premium required as a result of any particular operation or use of said premises over and above the insurance premium required to be paid by County in the absence of said operation or use.

7. Signs. The County will place and maintain in and about the leased property at appropriately designated places, such neat and appropriate signs advertising the Tenant as such. Any special Tenant sign will be at the sole cost of the tenant but in the same styling, provided, however, that County shall not unreasonably withhold approval of such signs as Tenant may desire. Upon the termination of this lease the Tenant shall remove all special signs and repair any damage to the leased property caused by the erection, maintenance or removal of such special signs.

8. Repairs. The County shall maintain the roof and exterior walls of the demised property including exterior paint, provided that in the event Tenant desires to alter the interior color scheme, said alteration must be approved by County and shall be at the Tenant's expense. In addition, County shall maintain the paved parking area and front entry to the building. The Tenant shall not cause or permit any waste, damage or injury to the leased property. The Tenant, at its sole expense, shall keep the leased property as clean and in good condition (reasonable wear and tear excepted), and shall make all repairs, replacements and renewals, whether ordinary or extraordinary, seen or unforeseen, including all structural repairs, necessary to maintain the interior of the leased property. All repairs, replacements and renewals shall be at least equal in quality of materials and workmanship to that originally existing in the leased property. The County shall be responsible for repairs and maintenance of the roof and outside walls and other external structural members, including the foundation of the leased premises. The County shall be responsible for maintenance of the heating plant and air-conditioning systems in such condition as existed at the commencement of this lease, which County warrants to be in good working condition as of the date of this lease. The County shall be responsible for the removal of snow (in a timely manner) from the parking lot and the walkways. The County shall in no event be required to make any repair, alteration or improvement to the interior of the leased property. Any equipment replaced by the Tenant shall belong to the Tenant, save equipment replaced in connection with Tenant's obligation to maintain the premises in the same condition as exists at the commencement of this lease, and all proceeds from the disposition thereof may be retained by the Tenant. The Tenant shall indemnify the County against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands including responsible counsel fees, because of Tenant's failure to comply with the foregoing. Maintenance of the paved parking area shall be defined as and limited to maintaining and keeping the parking area in good condition with a hardtop surface pavement and proper striping.

9. Improvements. No substantial alteration, addition or improvement to the leased property shall be made by the Tenant without the written consent of the County. Any alteration, addition or improvement made by the Tenant after such consent shall have been given and any fixtures permanently installed as part thereof, shall, at the County's option, become the property of the County upon expiration of or other sooner termination of this lease; provided however, that the County shall have the right to require the Tenant to remove such fixtures at the Tenant's cost upon such termination. This clause shall not preclude Tenant from decorating the interior of the leased premises from time to time in Tenant's discretion.

10. Liens for Improvements by Tenant. The Tenant shall not permit any mechanic's lien to be filed against the fee of the property by reason of work, labor, services or materials supplied or claimed to have been supplied, whether prior or subsequent to the commencement of the term hereof, to the Tenant or anyone holding the leased property, through or under the Tenant. If any such mechanic's lien shall at any time be filed against the leased property, the Tenant shall, within 30 days after notice of the filing thereof, cause such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If the Tenant shall fail to cause such lien to be discharged within such 30 day period, then, in addition to any other right or remedy of the County, the County may, but shall not be obligated to, discharge such lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event the County shall be entitled, if the County so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of the judgment for and in favor of the lienor, with interest, costs and all other allowances. Any

amount paid by the County for any such purposes, shall be repaid by the Tenant to the County on demand, with interest thereon at the rate of 6% per annum from the date of payment, and if unpaid may be treated as additional rent as provided for elsewhere in this lease. Nothing in this lease shall be construed in any way as constituting the consent or request of the County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialmen for the performance of any labor or the furnishing of any materials for any property or as giving the Tenant the right, power of authority to contract for or permit the rendering of any service or the furnishing of any material that would give rise to the filing of any mechanic's lien against the fee of the leased property.

11. Tenant's Warranty of Non-Disturbance. Tenant hereby expressly covenants and agrees that the Tenant shall be responsible for controlling the noise level emanating from the Tenant's use of the demised premises in such a way that other occupants of the building of which the demised premises are a part shall not be disturbed. Tenant shall be responsible for and pay for the installation of any special padding for other noise suppression devices that may be required for control of the level of sound emanating from the demised premises.

12. Tenant’s Obligation to Comply with Applicable Laws and Compliance with Requirements of Insurance Policies. The Tenant shall, throughout the term of this lease at its sole expense, promptly comply with all laws and regulations of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and the orders and regulations of the National Board of Fire Underwriters, or any other body now or hereafter exercising similar function, which may be applicable to the leased property, the fixtures, and equipment therein, and the sidewalks and curbs adjoining the leased property. The Tenant shall comply with the requirements of all policies of public liability, fire and all other types of insurance at any time in force with respect to the building and other improvements on the leased property.

13. Utilities. The Tenant shall pay charges for gas, electricity, light, and power used, rendered or supplied upon or in connection with the leased property. The County shall be responsible for the payment of all charges related to the supply of water to the leased property.

14. Condition of Premises. The Tenant shall, during the term of this lease and any renewal or extension hereof, at its sole expense, cause the leased property to be kept clean and in a manner satisfactory to the County.

15. Surrender in Same Good Order and Condition. The Tenant shall vacate the leased property in the good order and repair in which such property now is, ordinary wear and excepted, and shall remove all its property therefrom so that the County can repossess the leased property no later than Noon on the day upon which this lease ends, whether upon notice or by holdover or otherwise. The County shall have the same rights to enforce this covenant by ejectment and for damages or otherwise as for the breach of any other condition or covenant of this lease. Tenant may at any time prior to or upon the termination of this lease or any renewal or extension thereof remove from the leased property all materials, equipment, and property of every other sort or nature installed by the Tenant thereon, provided that such property is removed without substantial injury to the leased property. No injury shall be considered substantial if it is promptly corrected by restoration to the condition prior to the installation of such property, if so requested by the County. Any such property not removed shall become the property of the County.

16. Prohibition Against Unlawful or Extra-hazardous Use and Enforcement Against Subtenants. The Tenant may use and occupy the leased property for general office uses and for no other purpose without the prior written consent of County. Tenant shall not use or occupy nor permit the leased property or any part thereof to be used or occupied for any unlawful business, use or purpose, nor for any business, use , or purpose deemed extra-hazardous, nor for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. The Tenant shall promptly, after the discovery of any such unlawful or extra-hazardous use, take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants, or other persons guilty of such unlawful or extra-hazardous use. The Tenant shall indemnify the County against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims, and demands, including reasonable counsel fees, arising out of any violation of or default in these covenants.

17. County's Right to Cause Expiration or Termination upon Listed Defaults

(a) The occurrence of any of the following shall constitute an event of default:

1. Delinquency in the punctual payment of any rent or additional rent payable under this lease when such rent shall becomes payable. Should such rent payment not be made when due then upon the expiration of five days after the due date, such rent payment shall be delinquent.

2. Delinquency by the Tenant in the performance of or compliance with any of the conditions contained in this lease other than those referred to in the foregoing subparagraph 1, for a period of 30 days after written notice thereof from the County to the Tenant. In the event, Tenant is incapable of curing the default within such thirty (30) day period, the County may in its discretion extend the time for as long as the County deems necessary to cure such default. Provided, however, the Tenant shall promptly and diligently commence action to cure such default and provide County with evidence of Tenant’s intent to cure the default. Any additional period of time beyond thirty (30) days granted to Tenant to cure any default shall not be extended so as to jeopardize the interest of the County in this lease or so as to subject the County to any civil or criminal liabilities.

3. Filing by the Tenant in any court pursuant to any statute, either of the United States or any state, or a petition in bankruptcy or insolvency or for reorganization, or for the appointment of a receiver or trustee of all or a portion of the Tenant's property, or an assignment by the Tenant for the benefit of creditors.

4. Filing against the Tenant in any court pursuant to any statute, either of the United States or of any state, of a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or trustee of all or a portion of the Tenant's property, if within 180 days after the commencement of any such proceeding against the Tenant such petition shall not have been dismissed.

(b) Upon the expiration or termination of this lease, the Tenant shall peacefully surrender the leased property to the County, and the County, upon or at any time after such expiration or termination, County may, without further notice, reenter the leased property and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess the Tenant and remove the Tenant and all other persons and property from the leased property and the right to receive all rental income therefrom.

(c) At any time after such expiration, the County may relet the leased property or any part thereof, in the name of the County or otherwise, for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this lease) and on such conditions (which may include concessions or free rent) as the County, in its uncontrolled discretion, may determine, and may collect and receive the rent thereof.

(d) No such expiration or termination of this lease shall relieve the Tenant of its liability or obligations under this lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the leased property or any part any part thereof shall have been relet, the Tenant shall pay to the County the rent and additional rent required to be paid by the Tenant up to the time of such expiration, and thereafter the Tenant, until the end of what would have been the term of this lease in the absence of such expiration, shall be liable to the County for, and shall pay to the County, as and for liquidated and agreed current damages for the Tenant's default:

1. The equivalent of the amount of the rent and additional rent which would be payable under this lease by the Tenant if this lease were still in effect, less

2. The greater of:

(a) The fair rental value of the leased property for the remaining term of the lease, after deducting all the County's reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage Commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(b) The net proceeds of any reletting effected pursuant to the provisions of paragraph d. of this article, after deducting the County's reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(e) The Tenant shall pay such current damages (herein called "deficiency") to the County monthly on the days on which the rent and additional rent would have been payable under this lease if this lease were still in effect, and the County shall be entitled to recover from the Tenant each monthly deficiency as such deficiency shall arise. At any time after any such expiration, whether or not the County shall have collected any monthly deficiency, the County shall be entitled to recover from the Tenant, and the Tenant shall pay to the County, on demand, as and for liquidated and agreed final damages for the Tenant's default, an amount equal to the difference between the rent and additional rent reserved hereunder for the expired portion of the lease of the leased property for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the leased property for the period for which such installment was payable shall be discontinued to the date of termination at the rate of four percent per annum.

(f) The terms "enter", "reenter", "entry", or "reentry" as used in this lease are not restricted to their technical meaning.

18. Lien on Tenant's Improvements and Personal Property. The County shall have first lien paramount to all others on every right and interest of the Tenant in and to this

lease, and on any building or improvement on or hereafter placed on the leased property, and on any furnishings, equipment, fixtures, or other personal property of any kind belonging to the Tenant, or the equity of the Tenant therein, on the leased property. Such lien is granted for the purpose of covenanted to be paid by the Tenant, and for the purpose of securing the performance of all of the Tenant's obligations under this lease. Such liens shall be in addition to all rights of the County given under statutes of this state, which are now or shall hereinafter be in effect. The provisions of this paragraph shall not be applicable to liens existing at the commencement of this lease.

Provided, that County may, at his option, agree to subordinate this lien to liens arising in connection with purchased of equipment or leasehold improvement financing by Tenant, which agreement County covenants not to unreasonably withhold.

19. County's Right to Receiver upon Tenant's Default. In addition to any other security for the performance of this lease, the Tenant hereby assigns to the County all of the rents and profits which might otherwise accrue to the Tenant from the use, enjoyment, and operation of the leased property, such assignment to become effective, however, only after default by the Tenant in the performance of its obligations under this lease. If the County, upon default of the Tenant, elects to file a suit in equity to enforce the lease and protect the County's right hereunder, the County may upon notice to the Tenant, as ancillary to such suit, apply to any court having jurisdiction for the appointment of a receiver of the leased property, the improvements and buildings located thereon, the personal property located therein, and thereupon the court may forthwith appoint a receiver with the usual powers and duties of receivers in like cases. Such appointment shall be made by such court as a matter of strict right to the County and without consideration of the adequacy of the value of the Tenant's interest in the lease, or of the value of the property, or the commission of waste thereon, or the deterioration thereof. Nothing herein shall prevent the enforcement of the County's lien for rent in any court or by proceeding authorized to the laws of this state, or the institution by the County of a separate proceeding in equity for the appointment of a receiver as an ancillary remedy to protect the rights and interest of the County. Any and all remedies or proceedings are considered cumulative and not exclusive.

20. Waiver of County's Rights Only by Written Instrument. No failure by the County to insist upon the strict performance of any item or condition of this lease or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach shall constitute a waiver of any breach or of any such term or condition. No term or condition of this lease required to be performed by the Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the County. No waiver of any breach shall affect or alter any term or condition in this lease, and each such term or condition shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

21. Performance of Tenant's Obligations - Unpaid Insurance Premiums

(a) If the Tenant shall at any time fail to pay any amount in accordance with the provisions of this lease, or shall fail to take out, keep in force, or shall fail to perform any of its other obligations under this lease, then the County may after notice and opportunity to cure in accordance with the provisions of Section 17(a)2, or without notice if any emergency exists, and without releasing the Tenant from any obligation of the Tenant contained in this lease, may (but shall be under no obligation to) pay any amount payable by the Tenant hereunder, and perform any other act required to be performed by the Tenant hereunder. The County may enter upon the leased property for such purposes and take any action necessary therefore.

(b) All sums so paid by the County and all costs and expenses incurred by the County in connection with the performance of any such act, together with interest thereon at the rate of 6% per annum from the respective dates of each such payment and such costs and expenses, shall constitute additional rent payable by the Tenant under this lease and shall be paid by the Tenant to the County on demand.

(c) Notwithstanding anything in this lease to the contrary, the County shall not be limited, in the proof any damages which the County may claim against the Tenant by reason of the Tenant's failure to provide and keep insurance in force, to the amount of the insurance premiums not paid or incurred by the Tenant. The County shall also be entitled to recover as damages for such breach the uninsured amount of any loss, together with damages, costs, and expenses of any suit offered or incurred by reason of damage to the leased property occurring during any period when the Tenant shall have failed to provide and keep such insurance in force.

22. Performance of Tenant's Obligations-Taxes. If the Tenant shall default in the performance of any obligation under this lease, the County may, after notice and opportunity to cure in accordance with Section 17(a)2 or without notice if any emergency exists, perform such obligation for the account and at the expense (including reasonable counsel fees) of the Tenant. The amount of any payment made or expense incurred by the County for such purpose, with interest thereon at the rate of 6% per annum, shall be deemed additional rent and forthwith shall be repaid by the Tenant to the County, or, at the County's election, may be added to any subsequent installment of rent due and payable under this lease. Nothing herein contained shall be deemed to waive any right of the County to sue for and recover by action at law any sums of which the County may have incurred under the provisions of this subparagraph. The provisions of this paragraph shall survive the termination of this lease.

23. Right of Entry. The County or its agent shall within twenty-four (24) hours notice have the right to enter the leased property at reasonable times in order to examine it, to show it to prospective purchasers or lessees, or to make such decorations, repairs, alterations, improvements or additions as the County may deem necessary or desirable. The County shall be allowed to take all material into and upon the leased property that may be required therefore without the same constituting an eviction of the Tenant in whole or in part. The rent reserved shall not abate while decorations, repairs, alterations, improvements, or additions are being made, whether by reason of loss or interruption of the business of the Tenant or otherwise. During the last month prior to the expiration of the term of this lease, the County may place upon the leased property the usual notices "To Let" or "For Sale", which notices the Tenant shall permit to remain thereon without molestation. If during the last month of the term the Tenant shall have removed all or substantially all of the Tenant's property therefrom, the County may, with the Tenant's permission, immediately enter and later, renovate and redecorate the leased property without elimination of abatement of rent and without liability to the Tenant for any compensation, and such acts shall have no effect upon this lease. If the Tenant or its employees shall not be personally present to permit entry at any time when an entry therein shall be immediately necessary, as herein provided, the County may enter the premises by such means as may be appropriate, including forcible entry, without rendering the County or such agents liable therefore (if during such entry the County or his agents shall accord reasonable care to the Tenant's property), and without in any manner affecting the obligations and covenants of this lease. The County's right of reentry shall not be deemed to impose upon the County any obligation, responsibility or liability for the care, supervision or repair of the leased property other than as herein provided. In the event that it becomes necessary for County to replace or repair any major component or any structural or other system in the leased

premises, the County shall have full and unrestricted access to the building and the leased property. The County reserves the right temporarily to interrupt, curtail, stop or suspend air-conditioning and heating service, and all other utility or other services, because of accident or emergency or for repairs, alterations, additions, or improvements, or because of the County's inability to obtain, or difficulty or delay in obtaining, labor or materials necessary therefore or compliance with governmental restrictions in connection therewith, or because of any other cause beyond the County's reasonable control, provided that, except in cases of emergency, the County will use its best efforts to limit such stoppage to after-business hours, will notify the Tenant in advance, if possible, of any such stoppage, and, if ascertainable, its estimated duration, and will proceed diligently with the work necessary to resume such service as promptly as possible and in a manner and at times as will not materially interfere with or impair the Tenant's use of the leased property. No diminution or abatement of fixed rent or other compensation shall be claimed by the Tenant, nor shall this lease or any of the obligations of the Tenant hereunder be affected or reduced by reason of such interruption, stoppage, or curtailment, nor shall the same give rise to a claim in the Tenant's favor that such failure constitutes total or partial eviction from the leased property, provided that if the leased property shall be unreasonably untenantable for a continuous period of more than four business days by reason of any such stoppage, the fixed rent payable by the Tenant shall abate until the Tenant shall be again able to use the leased property.

24. Destruction by Fire or Other Casualty. In the event the premises or any substantial portion thereof are destroyed by fire or other casualty during the term of this lease, it is understood and agreed that County shall have no obligation to rebuild, and, at the election of County or Tenant the lease may be terminated

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25. Condemnation. If the whole of the leased property, or such portion thereof as will make the leased property unsuitable for the purposes herein leased, is condemned for any public use or purpose by any legally constituted authority, then in either of such events this lease shall cease from the time when possession is taken by such public authority and rental shall be accounted for between the County and the Tenant as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either the County or the Tenant to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the County nor the Tenant shall have any rights in or to any award made to the other by the condemning authority.

26. Assignment of Lease. The Tenant shall not assign, mortgage, or encumber this lease, nor sublet or permit the leased property or any part thereof to be used by others, without the prior written consent of the County in each instance. If this lease is assigned, or if the leased property or any part thereof, is sublet, or occupied by anybody other than the Tenant, the County may, after an event of default, as hereinabove defined, by the Tenant, collect rent for the assignee, subtenant, or occupant and apply the net amount collected to the rent herein reserved. No such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of this assignee, subtenant, or occupant as tenant, or a release of covenants in this lease. The consent by the County to an assignment or subletting shall not be construed to relieve the Tenant from obtaining the consent in writing of the County to any further assignment or subletting. Provided, further, County shall not unreasonably withhold consent to assignment.

27. Assignment of Interest in Rents. The County shall have the right, without selling its fee interest in the leased property or assigning its interest in this lease, to assign from time to time the whole of the net rent at any time payable hereunder to persons,

firms, corporations, trusts or other entities designated by the County in a written notice to the Tenant, and in any such case the Tenant shall pay the net rent, subject to the terms of this lease, to the County's designee at the address mentioned in any such notice for the period covered by such assignment.

28. Exoneration from Liability. The County shall not be liable for any personal injury to the Tenant or to its officers, agents and employees, or to any other occupant of any part of the leased property, irrespective of how such injury or damage may be caused, whether from action of the elements or acts of negligence of the occupants of adjacent properties, or any other persons; provided that nothing contained herein shall relieve the County of the consequences of his own negligence.

29. Reimbursement of Expenses. The Tenant shall pay and indemnify the County against all legal costs and charges, including counsel fees lawfully and reasonably incurred, in obtaining possession of the leased premises after default of the Tenant or after the Tenant's default in surrendering possession upon the expiration or earlier termination of the term of the lease or enforcing any covenant of the Tenant herein contained. The Tenant further covenants that in case the County shall be made party to any litigation commenced against the Tenant, due to act or omission on the part of the Tenant alone, then the Tenant shall pay all expenses, costs, and reasonable attorney's fees incurred by or imposed on the County in connection with such litigation, and such expenses, costs, and attorney's fees shall be additional rent due on the last day after services of notice of such payment or payments, together with interest at a rate of 9% per annum from the date of payment, and shall be collected as any other rent specifically reserved herein. Provided that this claim shall not be applicable where the County shall be made a party by reason of any independent liability of the County caused by some act or omission on the part of the County or resulting from any act or omission on the part of both Tenant and County.

30. Smoke Free Facility. Tenant acknowledges that County buildings are smoke-free. Tenant shall ensure that employees, customers or invitees of the Tenant abide by the County's ordinances and Board of Health Rules which prohibit smoking.

31. Weapons Prohibited. Tenant acknowledges that a County ordinance has been approved by the Board of Commissioners that prohibits weapons in County facilities. Tenant will ensure that employees, customers or invitees of the Tenant abide by the County's ordinance that prohibits weapons in the facility.

32 Notice by Registered or Certified Mail. Any notice under this lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. The County hereby designates its address as:

Orange County
Attn: Director of Asset Management
131 West Margaret Lane; Suite 301
PO Box 8181
Hillsborough, NC 27278

The Tenant hereby designates his address as:

Mr. Brandon S. Lee
d/b/a Terra Dotta, LLC
105 Bentley Building
501 West Franklin Street
Chapel Hill, NC 27514

33. Grammatical Usage. In construing this lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

34. Entire Agreement. This lease contains the entire agreement between the parties, and any executory agreement hereafter made shall be ineffective to change, modify, or discharge it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

[Signature Page to Follow]

IN TESTIMONY WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

COUNTY: ATTEST:

BY:_____ _____
Barry Jacobs, Chair Donna S. Baker, Clerk to the Board

TENANT: WITNESS:

_____ _____
Brandon S. Lee

STATE OF NORTH CAROLINA
ORANGE COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that Donna S. Baker personally appeared before me this date and acknowledged that she is the Clerk to the Board of Commissioners of Orange County, and that by authority duly given and as the act of Orange County, the foregoing instrument was signed in its name by Barry Jacobs, Chair, sealed with its official seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the _____ day of _____, 2014

_____
Notary Public

My Commission expires:_____

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

I, _____, a Notary Public, do hereby certify that _____, personally appeared before me this day and acknowledged the due execution of the foregoing Lease Agreement.

WITNESS my hand and official seal this the _____day of _____, 2014.

_____
Notary Public

My commission expires: _____

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-g

SUBJECT: Mount Willing Road Bridge Drainage Easement and Right of Entry Agreement to North Carolina Department of Transportation

DEPARTMENT: Asset Management Services, County Attorney

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
1) Site Locator
2) Deed of Easement, Stormwater Drainage; Right of Entry Agreement

INFORMATION CONTACT:
Jeff Thompson, 919-245-2658
John Roberts, 919-245-2318

PURPOSE: To consider approving a dedication of drainage easement and right of entry to the North Carolina Department of Transportation ("NCDOT") for bridge improvements along Mount Willing Road, upon final review of the County Attorney, and to authorize the Chair to sign on behalf of the Board.

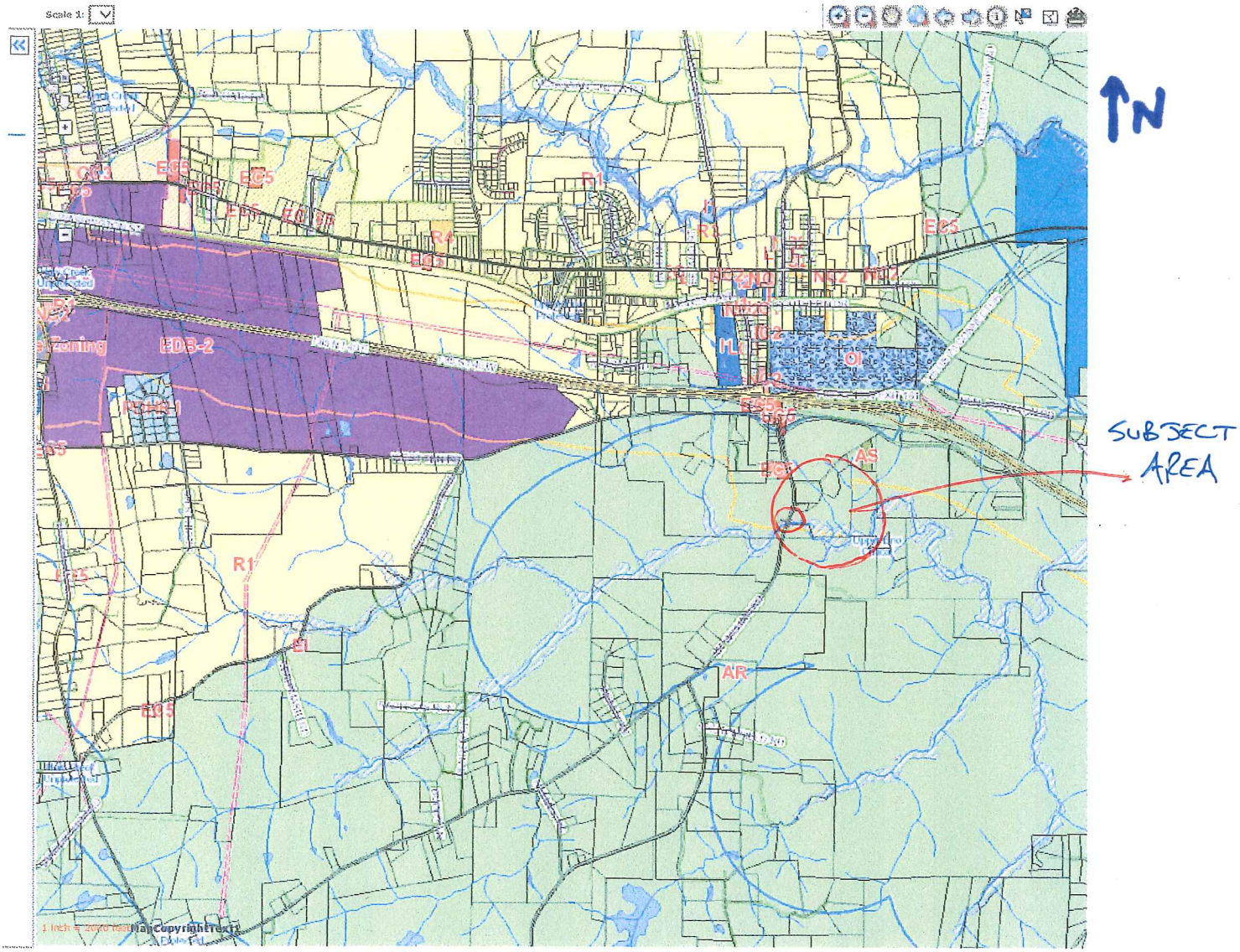
BACKGROUND: NCDOT is requesting this dedication and right of entry in order to properly repair and improve the roadway bridge over Seven Mile Creek along Mount Willing Road. Attachment 1, "Site Locator", depicts the area.

Bridge #670043 over Seven Mile Creek on Mount Willing Road (State Road 1120) is an NCDOT Transportation Improvement Project. The replacement bridge will be wider, higher (reducing the "dip"), and will provide extended guard railing and improved shoulders for increased travel and passage safety. The additional permanent drainage easement requested for Orange County's parcel will allow for necessary grading and drainage as well as the required support and maintenance of riprap along and around the headwall of the bridge and the bank of Seven Mile Creek. It may also be used as a construction easement during the construction of the replacement bridge.

FINANCIAL IMPACT: None.

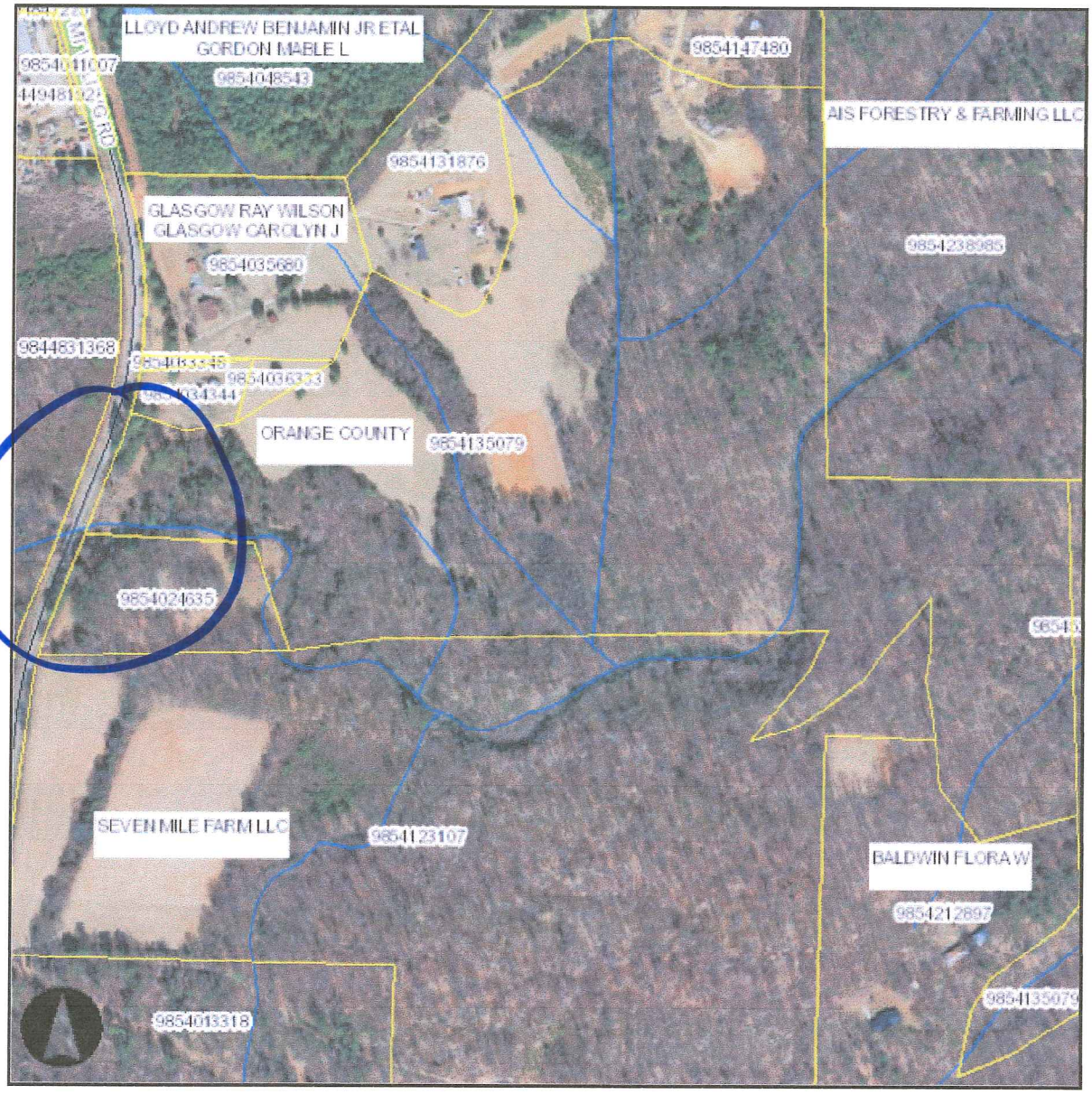
RECOMMENDATION(S): The Manager recommends the Board approve a dedication of drainage easement and right of entry to North Carolina Department of Transportation ("NCDOT") for bridge improvements along Mount Willing Road, upon final review of the County Attorney, and to authorize the Chair to sign the necessary documents on behalf of the Board.

Attachment 1 - Site Locator



Orange County, NC GIS

Orange County Mt. Willing Rd.



SUBJECT AREA

1 inch = 400 feet

Search Results (2)

shape	ESRI.ArcGIS.ADF.Web.Geometry.Polygon	shape	ESRI.ArcGIS.ADF.Web.Geometry.Polygon

Orange County, NC GIS

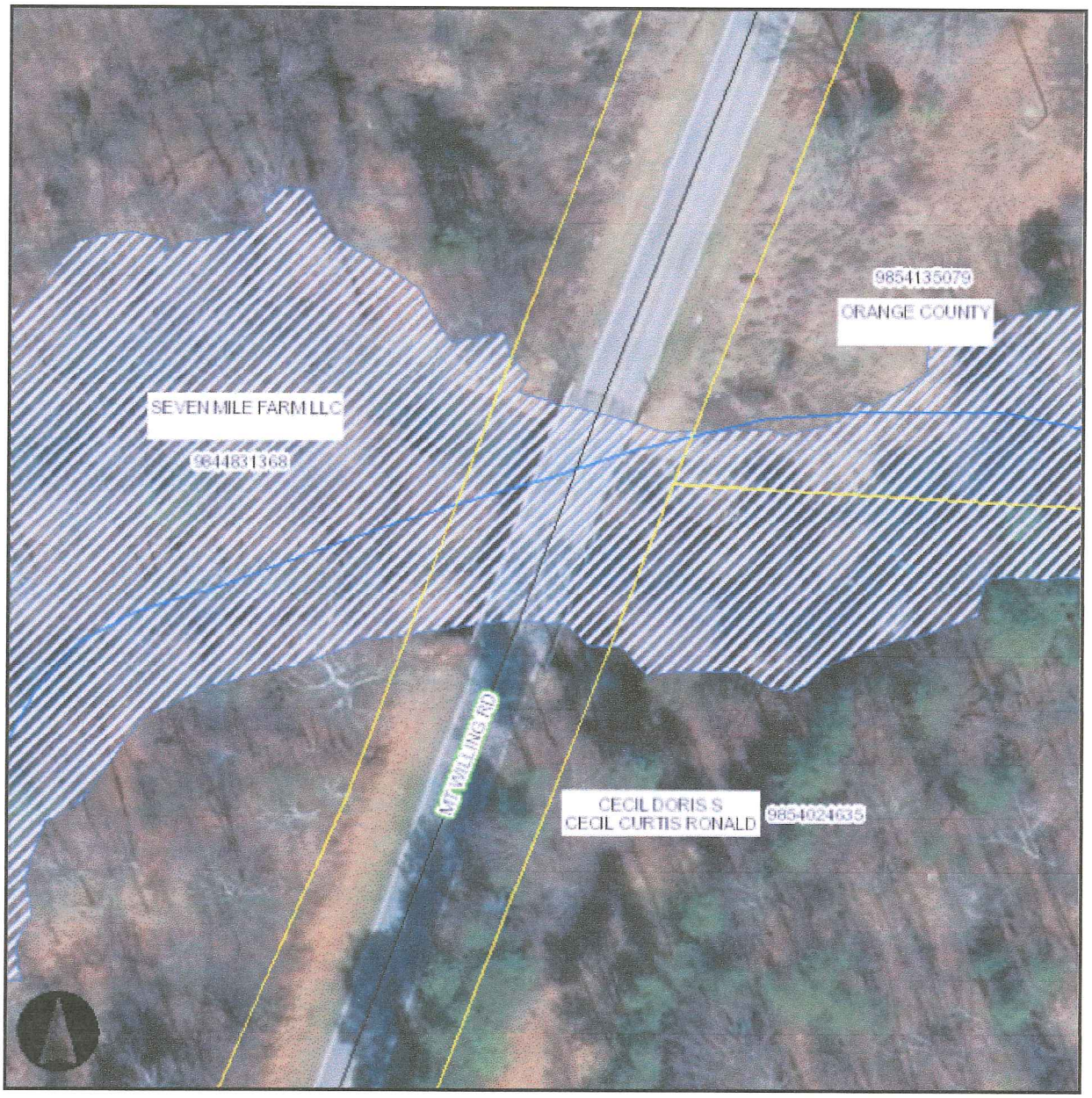
Aerial Bridge 670043 SR1120 Mt. Willing Rd. Orange County

1 inch = 100 feet

Created on 2/16/2014. Orange County, North Carolina.

Orange County, NC GIS

Flood Plain Bridge 670043 SR1120 Mt. Willing Rd. Orange County



1 inch = 50 feet
Created on 2/16/2014. Orange County, North Carolina.

Attachment 2

Revenue Stamps $ _____

DRAINAGE EASEMENT

THIS INSTRUMENT DRAWN BY Heather Fulghum CHECKED BY David Moon

Return to: Division R/W Agent, NCDOT
Right of Way Branch, Division 7
1101 E. Wendover Ave., Suite 200
Greensboro, NC 27405

NORTH CAROLINA
COUNTY OF Orange
TAX PARCEL 9854135079

TIP/PARCEL NUMBER: 068SR1120 003
WBS ELEMENT: 17BP.7.R.62
ROUTE: SR 1120 (Mt. Willing Rd.)

THIS EASEMENT, made and entered into this the _____ day of _____ 20 14
by and between Orange County, a political subdivision of the State of North Carolina
P.O. Box 8181
Hillsborough, NC 27278

hereinafter referred to as GRANTORS, and the Department of Transportation, an agency of the State of North Carolina, 1546 Mail Service Center, Raleigh, NC 27611, hereinafter referred to as the Department;

WITNESSETH

THAT WHEREAS, the DEPARTMENT desires to construct and maintain a drainage facility through and across the property of GRANTORS,

AND WHEREAS, GRANTORS, recognizing the benefits accruing to their said property through the construction and maintenance by the DEPARTMENT of roads and highways upon or in the vicinity of said property of GRANTORS,

NOW, THEREFORE, in consideration of said benefits, and further consideration of $ _____ and other valuable considerations, GRANTORS hereby release the DEPARTMENT, its successors and assigns, from any and all claims for damages by reason of the construction and maintenance of said drainage facility across and through the lands of GRANTORS, and GRANTORS hereby give, grant, bargain, sell and convey unto the DEPARTMENT, its successors, and assigns, an easement for the construction and maintenance of a drainage facility across and through the property of GRANTORS located in Cheeks Township, Orange County, and being more fully described in a deed recorded in Book 243, Page 827, Orange County Registry, said easement being described as follows:

Permanent Drainage Easement described as follows:

Point of beginning being N 56°49'48" E, 51.61 feet from -L- STA. 13+00; thence to a point on a bearing of N 21°17'32" E, a distance of 48.0 feet; thence to a point on a bearing of S 68°42'28" E, a distance of 10.0 feet; thence to a point on a bearing of S 21°17'32" W, a distance of 40.0 feet; thence to a point on a bearing of S 72°37'57" W, a distance of 12.8 feet; returning to the point and place of beginning.

(the rest of this page intentionally left blank)

COUNTY: ORANGE **WBS ELEMENT:** 17BP.7.R.62 **TIP/PARCEL NO.:** 068SR1120 003

The final right of way plans showing the above described area are to be certified and recorded in the Office of the Register of Deeds for said county pursuant to N.C.G.S. 136-19.4, reference to which plans is hereby made for purposes of further description and for greater certainty.

Said Permanent Drainage easement in perpetuity is for the installation and maintenance of drainage facilities, and for all purposes for which the DEPARTMENT is authorized by law to subject same. The Department and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said premises a drainage facility with all necessary pipes, poles and appurtenances, together with the right at all times to enter said premises for the purpose of inspecting said drainage facility and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said drainage facility all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress.

It is understood and agreed that the Department shall have the right to construct and maintain the cut and/or fill slopes in the above-described permanent drainage easement area(s). It is further understood and agreed that Permanent Drainage shall be used by the Department for additional working area during the above described project.

IN ADDITION, and for the aforestated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests:

Temporary Construction Easement described as follows:

Point of beginning being N 73°46'17" E, 37.82 feet from -L- STA. 13+00; thence to a point on a bearing of N 21°17'32" E, a distance of 19.0 feet; thence to a point on a bearing of N 72°37'57" E, a distance of 12.8 feet; thence to a point on a bearing of S 21°17'51" W, a distance of 22.4 feet; thence to a point on a bearing of S 86°48'27" W, a distance of 8.2 feet; thence to a point on a bearing of S 86°48'27" W, a distance of 2.8 feet; returning to the point and place of beginning.

This construction easement shall expire upon completion and acceptance of the aforementioned project.

This EASEMENT is subject to the following provisions only:

NONE

There are no conditions to this EASEMENT not expressed herein.

To HAVE AND TO HOLD said perpetual easement for highway purposes unto the DEPARTMENT, its successors and assigns, and the GRANTORS, for themselves, their heirs, successors, executors and assigns, hereby warrant and covenant that they are the sole owners of the property; that they solely have the right to grant the easement; and that they will forever warrant and defend title to the same against the lawful claims of all persons whomsoever;

The Grantors acknowledge that the project plans for Project # 17BP.7.R.62 have been made available to them. The Grantors further acknowledge that the consideration stated herein is full and just compensation pursuant to Article 9, Chapter 136 of the North Carolina General Statutes for the acquisition of the said interests and areas by the Department of Transportation and for any and all damages to the value of their remaining property; for any and all claims for interest and costs; for any and all damages caused by the acquisition for the construction of Department of Transportation Project # 17BP.7.R.62, Orange County, and for the past and future use of said areas by the Department of Transportation, its successors and assigns for all purposes for which the said Department is authorized by law to subject the same.

(the rest of this page intentionally left blank)

COUNTY: ORANGE **WBS ELEMENT:** 17BP.7.R.62 **TIP/PARCEL NO.:** 068SR1120 003

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals (or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors) the day and year first above written.

Orange County, a political subdivision of the State of North Carolina

BY: _____ (SEAL)

Title: _____

ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY: _____

(Official Seal)	North Carolina, _____ County I, _____, a Notary Public for _____ County, North Carolina, certify that _____ personally came before me this day and acknowledged that he/she is the CLERK of _____, and that by authority duly given, the the foregoing instrument was signed in its name by _____ its CHAIRMAN, sealed with its corporate seal, and attested by _____ as its CLERK. Witness my hand and official seal this the _____ day of _____, 20 _____. _____ Notary Public My commission expires: _____

No Revenue Stamps

AGREEMENT FOR ENTRY

RETURN TO: Division Right of Way Agent
NCDOT Right of Way Branch, Division 7
1101 E. Wendover Ave., Suite 200
Greensboro, NC 27405

STATE OF NORTH CAROLINA
Orange COUNTY

TIP NO.: 068SR1120
WBS ELEMENT 17BP.7.R.62
PARCEL NO: 068SR1120 003

THIS AGREEMENT made this the _____ day of _____, 20 14, by and between the North Carolina Department of Transportation (hereinafter called the Department) and Orange County, a political subdivision of the State of North Carolina P.O. Box 8181 Hillsborough, NC 27278 (hereinafter called the owners);

WITNESSETH

THAT WHEREAS, the Department desires to enter certain lands of the owners located in Cheeks Township, Orange County, described as follows:

Permanent Drainage Easement described as follows:

Point of beginning being N 56°49'48" E, 51.61 feet from -L- STA. 13+00; thence to a point on a bearing of N 21°17'32" E, a distance of 48.0 feet; thence to a point on a bearing of S 68°42'28" E, a distance of 10.0 feet; thence to a point on a bearing of S 21°17'32" W, a distance of 40.0 feet; thence to a point on a bearing of S 72°37'57" W, a distance of 12.8 feet; returning to the point and place of beginning.

Temporary Construction Easement described as follows:

Point of beginning being N 73°46'17" E, 37.82 feet from -L- STA. 13+00; thence to a point on a bearing of N 21°17'32" E, a distance of 19.0 feet; thence to a point on a bearing of N 72°37'57" E, a distance of 12.8 feet; thence to a point on a bearing of S 21°17'51" W, a distance of 22.4 feet; thence to a point on a bearing of S 86°48'27" W, a distance of 8.2 feet; thence to a point on a bearing of S 86°48'27" W, a distance of 2.8 feet; returning to the point and place of beginning.

(the rest of this page intentionally left blank)

County: Orange **TIP No: 068SR1120** **Parcel No: 068SR1120 003**

for the construction of State Highway Project 17BP.7.R.62 .

WHEREAS, the Department is authorized by G.S. 136-118 to enter into this agreement without filing the pleadings as set forth in G.S. 136-103.

NOW THEREFORE, in consideration of the mutual benefits inuring to all parties to this agreement and in further consideration of the mutual covenants contained herein, the parties to this agreement do hereby agree and consent that the Department , its contractors or agents may enter upon the above described lands for carrying on the work and construction of Project 17BP.7.R.62 in accordance with the plans and specifications on file in its office in Raleigh, North Carolina, and that the Department shall have the same rights for carrying on the work and construction of the project as it would have by filing the pleadings required in North Carolina General Statute 136-103. The Department's right of entry shall be presumed to begin as of the day and year of the entry of this agreement as first above written.

The parties hereto agree that the right of entry granted shall not be deemed a trespass on the owners' property and that the OWNERS DO HEREBY EXPRESSLY WAIVE any claims in the nature of an inverse condemnation against the Department, its contractors or agents resulting from its entry pursuant to this agreement.

IT IS FURTHER AGREED THAT, the Department shall have this right of entry for the purposes herein stated for the PERIOD COMMENCING WITH THE DATE OF THIS AGREEMENT AND CONTINUING THEREAFTER UNTIL THE DEPARTMENT'S ACCEPTANCE OF THE COMPLETED HIGHWAY PROJECT.

IN WITNESS WHEREOF, the parties hereto have set their hands and adopted seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Directors, the day and year first above written.

During the aforesaid period, the parties hereto shall continue to negotiate a resolution of the owners' claim for compensation for the property to be acquired for this highway project. In the event the Department determines that such negotiations have reached an impasse, the Department shall give written notice thereof to the Owners and may file appropriate proceedings in the Superior Court to determine just compensation as provided in Article 9, Chapter 136 of the General Statutes of North Carolina. Likewise, the Owners may give written notice to the Department that such negotiations have reached an impasse and request the Department to file appropriate proceedings in the Superior Court to determine just compensation as provided in Article 9, Chapter 136 of the General Statutes of North Carolina.

In the event that, as of the date of the acceptance by the Department of the completed highway project, the Department has not filed proceedings pursuant to Article 9, Chapter 136 of the General Statutes or the Owners' claim for just compensation for the property acquired for the highway project has not been otherwise resolved a settlement agreement, the Owners shall have two (2) years following the completion of the highway project in which to proceed to a determination of just compensation in the Superior Court pursuant to Article 9, Chapter 136 of the North Carolina General Statutes.

The Owners do hereby agree and consent that no interest shall accrue against the Department during the period of entry set forth herein and do hereby waive any claims for interest except as may be allowed upon any award of just compensation as set forth in Section 136-113 of the North Carolina General Statutes, and in such case, such interest shall accrue only from the date of the filing of proceedings in the Superior Court pursuant to Article 9, Chapter 136 of the North Carolina General Statutes.

IN WITNESS WEREOF, the parties hereto have set their hands and adopted seals, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Orange County, a political subdivision of the State of North Carolina

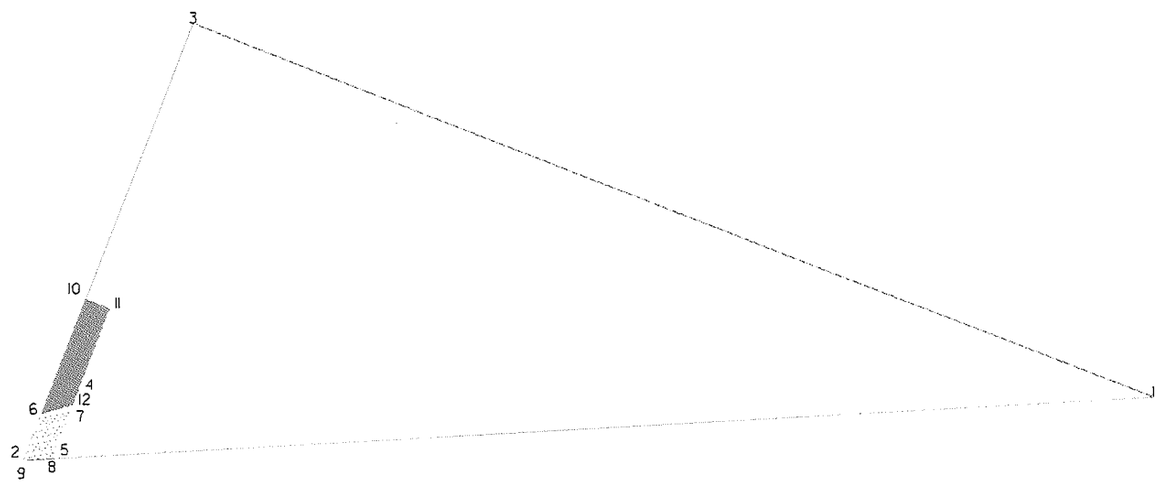
BY: _____ (SEAL)
Title:

ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION:

BY: _____

County: Orange **TIP No: 068SR1120** **Parcel:No 068SR1120 003**

(Official Seal)	North Carolina, _____ County I, _____, a Notary Public for _____ County, North Carolina, certify that _____ personally came before me this day and acknowledged that he/she is the CLERK of _____, and that by authority duly given, the the foregoing instrument was signed in its name by _____ its CHAIRMAN, sealed with its corporate seal, and attested by _____ as its CLERK. Witness my hand and official seal this the _____ day of _____, 20 14 . _____ Notary Public My commission expires: _____



THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS. THE PROPERTY SHOWN ON THIS MAP WAS LOCATED FOR THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR HIGHWAY DESIGN PURPOSES. SOME ERROR MAY EXIST BETWEEN THE GRAPHICAL AND ACTUAL GROUND LOCATIONS OF PROPERTY LINES. THIS MAP IS TO BE USED AS A GRAPHICAL REPRESENTATION OF THE NCDOT'S INTENT TO ACQUIRE PROPERTY FOR RIGHT OF WAY PURPOSES, AND IN NO WAY REPRESENTS AN ACTUAL BOUNDARY SURVEY OF THIS PROPERTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION	
RIGHT OF WAY BRANCH	
ORANGE COUNTY	Thu Jan 30 12:05:14 2014
PARCEL # 3	...\6700043_DEED_row-2014-1-30.dgn
DB 243 PG 827	UNKNOWNSCALE

COLOR	DESCRIPTION	SQR FT	ACRES	SQR M	HECTARES
	TCE Right	207.078116	0.004754	19.238263	0.001924

FROM - TO	DISTANCE (FT/M)		BEARING	RADIUS (FT/M)		CURVE LENGTH (FT/M)	
-L- STA. 13+00- 2	37.8	11.53	N 73°46'17" E				
2 - 6	19.0	5.78	N 21°17'32" E				
6 - 7	12.8	3.91	N 72°37'57" E				
7 - 8	22.4	6.83	S 21°17'51" W				
8 - 9	8.2	2.50	S 86°48'27" W				
9 - 2	2.8	0.85	S 86°48'27" W				

COLOR	DESCRIPTION	SQR FT	ACRES	SQR M	HECTARES
	PDE Right	440.000000	0.010101	40.877501	0.004088

FROM - TO	DISTANCE (FT/M)		BEARING	RADIUS (FT/M)		CURVE LENGTH (FT/M)	
-L- STA. 13+00- 6	51.6	15.73	N 56°49'48" E				
6 - 10	48.0	14.63	N 21°17'32" E				
10 - 11	10.0	3.05	S 68°42'28" E				
11 - 12	40.0	12.19	S 21°17'32" W				
12 - 6	12.8	3.90	S 72°37'57" W				

TYPE	COUNT	SQR FEET	ACRES	
ROW LEFT	0	0.0	0.0	
ROW RIGHT	0	0.0	0.0	
PDE LEFT	0	0.0	0.0	
PDE RIGHT	1	440.0	0.010	
TCE LEFT	0	0.0	0.0	
TCE RIGHT	1	207.1	0.005	
TDE LEFT	0	0.0	0.0	
TDE RIGHT	0	0.0	0.0	
TSE LEFT	0	0.0	0.0	
TSE RIGHT	0	0.0	0.0	
PUE LEFT	0	0.0	0.0	
PUE RIGHT	0	0.0	0.0	
OTHER LEFT	0	0.0	0.0	
OTHER RIGHT	0	0.0	0.0	

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS. THE PROPERTY SHOWN ON THIS MAP WAS LOCATED FOR THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR HIGHWAY DESIGN PURPOSES. SOME ERROR MAY EXIST BETWEEN THE GRAPHICAL AND ACTUAL GROUND LOCATIONS OF PROPERTY LINES. THIS MAP IS TO BE USED AS A GRAPHICAL REPRESENTATION OF THE NCDOT'S INTENT TO ACQUIRE PROPERTY FOR RIGHT OF WAY PURPOSES, AND IN NO WAY REPRESENTS AN ACTUAL BOUNDARY SURVEY OF THIS PROPERTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION	
RIGHT OF WAY BRANCH	
ORANGE COUNTY	Thu Jan 30 12:05:14 2014
PARCEL # 3	...\6700043_DEED_row-2014-1-30.dgn
DB 243 PG 827	UNKNOWNSCALE

Prepared by: Graham & Cheshire, Attorneys

8259

NORTH CAROLINA
ORANGE COUNTY

THIS DEED, Made and entered into this the 27th day of June, 1973, by and between JOHN W. JOHNSON and wife, MARTHA T. JOHNSON, parties of the first part, and ORANGE COUNTY, a body politic, party of the second part,

WITNESSETH:

That the said parties of the first part, in consideration of the sum of TEN DOLLARS and other good, valuable and sufficient considerations, paid by the said party of the second part, the receipt of which is hereby acknowledged, have bargained and sold and by these presents do bargain, sell and convey unto the said party of the second part and its successors and assigns, all that certain tract or parcel of land in Cheeks Township, Orange County, North Carolina, and more particularly described as follows:

Such portions of the lands described in Deed Book 229, page 213, and Deed Book 236, page 1684, that are below the 593 foot elevation contour, plus an additional 50 foot strip along the outside perimeter of said property, said property being described as follows:

BEGINNING at a point in the center line of N. C. Secondary Road No. 1120, the Northwest corner of Calvin and Ruth Squires, which beginning point is in the center of State Highway Commission bridge crossing Seven Mile Creek, running thence along the center of SR #1120 North 25 deg. 14 min. 30 sec. East 337.83 feet; thence departing said road and running the following courses and distances: South 79 deg. 00 min. 00 sec. East 42.48 feet, South 62 deg. 51 min. 00 sec. East 139.57 feet, North 89 deg. 24 min. 30 sec. East 137.31 feet, North 63 deg. 21 min. 00 sec. East 206.31 feet, North 70 deg. 51 min. 00 sec. East 88.12 feet, South 59 deg. 03 min. 30 sec. East 102.86 feet, North 21 deg. 44 min. 00 sec. West 146.91 feet, North 27 deg. 37 min. 30 sec. East 177.27 feet, South 71 deg. 12 min. 30 sec. East 151.59 feet, South 72 deg. 17 min. 00 sec. East 113.45 feet, North 74 deg. 14 min. 30 sec. East 54.38 feet, North 29 deg. 04 min. 30 sec. East 95.81 feet, North 21 deg. 08 min. 30 sec. East 156.46 feet, North 07 deg. 57 min. 30 sec. West 134.54 feet, North 08 deg. 12 min. 00 sec. West 182.81 feet, North 68 deg. 46 min. 30 sec. East 128.00 feet, North 55 deg. 59 min. 00 sec. East 162.99 feet, North 89 deg. 24 min. 30 sec. East 101.26 feet, South 50 deg. 41 min. 30 sec. East 152.25 feet, South 65 deg. 20 min. 00 sec. East 172.85 feet, South 85 deg. 32 min. 30 sec. East 134.40 feet, South 86 deg. 20 min. 00 sec. East 99.41 feet, South 04 deg. 57 min. 30 sec. West 422.05 feet,

GRAHAM, KERRIGAN & CHESHIRE
ATTORNEYS AT LAW
HILLSBOROUGH, N. C.

South 04 deg. 40 min. 30 sec. West 186.52 feet, South 04 deg. 45 min. 30 sec. West 412.59 feet, South 84 deg. 24 min. 30 sec. East 634.97 feet, South 02 deg. 52 min. 30 sec. West 1370.74 feet, South 74 deg. 59 min. 30 sec. West 15.66 feet, South 62 deg. 13 min. 00 sec. West 200.94 feet, South 72 deg. 04 min. 00 sec. West 141.06 feet, North 15 deg. 17 min. 30 sec. East 179.78 feet, North 37 deg. 59 min. 00 sec. East 89.66 feet, North 59 deg. 58 min. 30 sec. East 219.33 feet, North 40 deg. 33 min. 00 min. East 144.47 feet, North 50 deg. 56 min. 30 sec. East 101.40 feet, North 23 deg. 21 min. 30 sec. East 110.45 feet, North 78 deg. 15 min. 30 sec. West 107.56 feet, South 80 deg. 21 min. 00 sec. West 309.21 feet, North 32 deg. 02 min. 30 sec. West 177.36 feet, North 00 deg. 58 min. 00 sec. West 198.84 feet, North 05 deg. 26 min. 00 sec. West 83.59 feet, North 12 deg. 38 min. 00 sec. East 89.76 feet, North 05 deg. 37 min. 00 sec. East 123.30 feet, South 45 deg. 16 min. 30 sec. West 183.52 feet, South 39 deg. 19 min. 00 sec. West 102.45 feet, South 57 deg. 23 min. 00 sec. West 198.13 feet, South 75 deg. 57 min. 30 sec. West 137.17 feet, North 43 deg. 46 min. 00 sec. East 252.59 feet, North 25 deg. 39 min. 30 sec. East 103.76 feet, North 86 deg. 02 min. 00 sec. West 1181.43 feet, South 78 deg. 43 min. 30 sec. West 221.71 feet, North 17 deg. 29 min. 30 sec. East 303.95 feet, and North 84 deg. 15 min. 30 sec. West 657.18 feet to the place and point of beginning, containing 53.76 acres, according to survey made June, 1973, by Rose, Pridgen & Freeman, Engineers.

TO HAVE AND TO HOLD the aforesaid tract or parcel of land and all privileges and appurtenances thereunto belonging to the said party of the second part and its successors and assigns in fee simple forever.

And the said parties of the first part do covenant that they are seized of said premises in fee simple and have the right to convey the same in fee simple; that the same are free from encumbrances, and that they will warrant and defend the said title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

John W. Johnson (SEAL)
John W. Johnson

Martha T. Johnson (SEAL)
Martha T. Johnson

NORTH CAROLINA

ORANGE COUNTY

I, Lucille B. Ray, Notary Public, do hereby certify that John W. Johnson and wife, Martha T. Johnson, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Conveyance.

Witness my hand and notarial seal, this the 2nd day of ~~June~~ July, 1973.

LUCILLE B. RAY
Notary Public
ORANGE COUNTY, N. C

Lucille B. Ray
NOTARY PUBLIC

My commission expires: 4-30-76

STATE OF NORTH CAROLINA - ORANGE COUNTY

THE FOREGOING CERTIFICATE ~~(S)~~ OF Lucille B. Ray

A NOTARY ~~(S)~~ PUBLIC OF THE DESIGNATED GOVERNMENTAL UNITS IS ~~(ARE)~~ CERTIFIED TO BE CORRECT

THIS THE 2 DAY OF July A.D. 19 73

BETTY JUNE HAYES REGISTER OF DEEDS BY Linda C. Berry ~~(S)~~ DEPUTY REGISTER OF DEEDS

RETURN Graham & Cheshire

R'S PAID $ 22.00

FILED
BOOK/~~FILE~~# 243 PAGE# 827

JUL 2 2 11 PM '73

BETTY JUNE HAYES
REGISTER OF DEEDS
ORANGE COUNTY, N. C.

BOOK 243 PAGE 829

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-h

SUBJECT: CDBG Program – Language Access Plan

DEPARTMENT: Housing/Human Rights and Community Development

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
Language Access Plan

INFORMATION CONTACT:
James Davis Jr., 245-2490

PURPOSE: To consider approval of a Language Access Plan for the County Community Development Block Grant (CDBG) Program.

BACKGROUND: In August 2010, the N.C. Department of Commerce – Division of Community Assistance notified all local governments receiving Community Development Block Grant (CDBG) Program funds of the requirement to submit a Language Access Plan (LAP) by September 30, 2010.

This Plan details the County's policy to ensure compliance with Title VI of the Civil Rights Act of 1964, and other applicable federal and state laws and the implementing regulations with respect to persons with Limited English Proficiency (LEP). The primary purpose of this policy is to ensure LEP individuals have equal access to benefits and services.

Training was provided in August and the attached Language Access Plan was developed for Orange County. This Plan was originally approved by the Board of Commissioners on September 2, 2010 and must be approved again for the current CDBG Infrastructure Program application. The language of the report is unchanged from the plan approved in 2010.

FINANCIAL IMPACT: All costs associated with implementation are eligible grant expenses under the Community Development Block Grant Program.

RECOMMENDATON(S): The Manager recommends that the Board approve a Language Access Plan for the County Community Development Block Grant (CDBG) Program and authorize the Chair to sign the Plan document.

Language Access Plan
Orange County Housing, Human Rights and Community Development Department

The purpose of this Policy and Plan is to ensure compliance with Title VI of the Civil Rights Act of 1964, and other applicable federal and state laws and their implementing regulations with respect to persons with limited English proficiency (LEP). Title VI of the Civil Rights Act of 1964 prohibits discrimination based on the ground of race, color or national origin by any entity receiving federal financial assistance. Administrative methods or procedures, which have the effect of subjecting individuals to discrimination or defeating the objectives of these regulations, are prohibited.

In order to avoid discrimination on the grounds of national origin, all programs or activities administered by the Orange County Housing, Human Rights and Community Development Department must take adequate steps to ensure that their policies and procedures do not deny or have the effect of denying LEP individuals with equal access to benefits and services for which such persons qualify. This Policy defines the responsibilities the agency has to ensure LEP individuals can communicate effectively.

This policy and plan is effective April 15, 2014.

I. Scope of Policy

These requirements will apply to the Orange County Housing, Human Rights and Community Development Department (herein referred to as "the agency") including subcontractors, vendors, and subrecipients.

The agency will ensure that LEP individuals are provided meaningful access to benefits and services provided through contractors or service providers receiving subgrants from the agency.

II. Definitions

A. Limited English Proficient (LEP) individual – Any prospective, potential, or actual recipient of benefits or services from the agency who cannot speak, read, write or understand the English language at a level that permits them to interact effectively with health care providers and social service agencies.

B. Vital Documents – These forms include, but are not limited to, applications, consent forms, all compliance plans, bid documents, fair housing information, citizen participation plans, letters containing important information regarding participation in a program; notices pertaining to the reduction, denial, or termination of services or benefits, the right to appeal such actions, or that require a response from beneficiary notices advising LEP persons of the availability of free language assistance, and other outreach materials.

C. Title VI Compliance Officer: The person or persons responsible for compliance with the Title VI LEP policies.

D. Substantial number of LEP: 5% or 1,000 people, whichever is smaller, are potential applicants or recipients of the agency and speak a primary language other than English and have limited English proficiency.

III. Providing Notice to LEP Individuals

A. The agency will take appropriate steps to inform all applicants, recipients, community organizations, and other interested persons, including those whose primary language is other than English, of the provisions of this policy. Such notification will also identify the name, office telephone number, and office address of the Title VI compliance officer.

The current name, office telephone number and office address of the Title VI compliance officer appears below:

Marlyn Henriquez Valeiko, LEP Specialist
300 W. Tryon Street
Hillsborough, NC 27278
(919) 245-2490

B. The agency will post and maintain signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of contact. These signs will inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services. These signs will be posted in the lobby and intake office of both our Chapel Hill and Hillsborough locations.

C. The agency will include statements of the right to free language assistance in Spanish and other significant languages in all outreach material that is routinely disseminated to the public (including electronic text).

D. The agency will also disseminate information in the following manner:

Bilingual LEP Specialist Marlyn Henriquez Valeiko will do outreach with LEP communities. This will be accomplished by utilizing opportunities at local fairs and festivals, inter-departmental outreach in collaboration with Social Services, information available on the website, and through the development of LEP-accessible brochures.

IV. Provision of Services to LEP Applicants/Recipients

A. Assessing Linguistic Needs of Potential Applicants and Recipients

1. The agency will assess the language needs of the population to be served, by identifying:

   a. the language needs of each LEP applicant/recipient
   b. the points of contact where language assistance is needed; and
   c. the resources needed to provide effective language assistance, including location, availability and arrangements necessary for timely use.

2. Determining the Language Needs of the Population to be Served

   The agency is responsible for assessing the needs of the population to be served. Such assessment will include, but not be limited to the following:

   a. The non-English languages that are likely to be encountered in its program will be identified.

   b. An estimate of the number of people in the community for whom English is not the primary language used for communication will be completed and updated annually. To identify the languages and number of LEP individuals local entities should review:

      i. census data
      ii. school system data
      iii. reports from federal, state, and local governments
      iv. community agencies' information, and
      v. data from client files

   c. The points of contact in the program or activity where language assistance is likely to be needed will be identified.

3. Determining the Language Needs of Each Applicant/Recipient

   The agency will determine the language needs of each applicant/recipient. Such assessment will include, but not be limited to the following:

   a. At the first point of contact, each applicant/recipient will be assessed to determine the individual's primary language. The method used will be multi-language identification cards, a poster-size language list, or the use of "I speak" peel-off language identification cards for indicating preferred languages

   b. If the LEP person does not speak or read any of these languages, the agency will use a telephone interpreting service to identify the client's primary language.

c. Staff will not solely rely on their own assessment of the applicant or recipient's English proficiency in determining the need for an interpreter. If an individual requests an interpreter, an interpreter will be provided free of charge. A declaration of the client will be used to establish the client's primary language.

d. When staff place or receive a telephone call and cannot determine what language the other person on the line is speaking, a telephone interpreting service will be utilized in making the determination.

e. If any applicant/recipient is assessed as LEP, they will be informed of interpreter availability and their right to have a language interpreter at no cost to them with a notice in writing in the languages identified in Section C. Provisions of Written Translations.

B. Provision of Bilingual/Interpretive Services

1. The agency will ensure that effective bilingual/interpretive services are provided to serve the needs of the non-English speaking population. The provision of bilingual/interpretive services will be prompt without undue delays. In most circumstances, this requires language services to be available during all operating hours.

   This requirement will be met by LEP Specialist Marlyn Henriquez Valeiko, who is fluent in Spanish. Ms. Valeiko is available to assist staff in all sections of the agency with their interactions with LEP customers. The agency also uses a Language Line to assist LEP customers speaking languages other than Spanish.

2. The agency will provide language assistance at all levels of interaction with LEP individuals, including telephone interactions.

   On-site interpreters will be used when possible. When an on-site interpreter is not available, the agency will use certified interpreters through the Language Line.

3. Interpreter Standards

   a. Those providing bilingual/interpretive services will meet the linguistic and cultural competency standards set forth below. The agency will ensure that interpreters and self-identified bilingual staff, have first been screened to ensure that the following standards are met before being used for interpreter services:

i. Can fluently and effectively communicate in both English and the primary language of the LEP individual
ii. Can accurately and impartially interpret to and from such languages and English
iii. Has a basic knowledge of specialized terms and concepts used frequently in the provision of the agency's services
iv. Demonstrates cultural competency
v. Understands the obligation to maintain confidently
vi. Understands the roles of interpreters and the ethics associated with being an interpreter

The agency ensures the competency of bilingual staff and interpreters through a Spanish Assessment Tool that measures both linguistic aptitude and cultural competency. Language Line interpreters are independently trained and certified.

b. When staff members have reason to believe that an interpreter is not qualified or properly trained to serve as an interpreter, the staff member will request another interpreter.

4. Using Family Members or Friends as Interpreters

a. Applicants/recipients may provide their own interpreter; however the agency will not require them to do so.

b. The agency will first inform an LEP person, in the primary language of the LEP person, of the right to free interpreter services and the potential problems for ineffective communication. If the LEP person declines such services and requests the use of a family member or friend, the agency may utilize the family member or friend to interpret only if the use of such person would not compromise the effectiveness or services or violate the LEP person's confidentiality. The agency will monitor these interactions and again offer interpreter services, if it appears there are problems with this arrangement.

c. The agency will indicate in the LEP individual's file that an offer of interpreter services was made and rejected; that the individual was informed of potential problems associated with using friends or family members and the name of the person serving as an interpreter at the LEP individual's request.

d. Only under extenuating circumstances shall the agency allow a minor (under the age of 18 years) to temporarily act as an interpreter. The agency will keep a written record of when it has used a minor as an interpreter, and this information will be shared

with the NC Department of Community Assistance (DCA) upon request.

5. The agency will ***not*** require the applicant/recipient to pay for bilingual/interpretive services.

C. Provision of Written Translations

1. The agency must provide written materials in languages other than English where a substantial number or percentage of the population eligible to be served or likely to be directly affected by the program needs services or information in a language other than English to communicate effectively.

2. Translation of Vital Documents

a. The agency will ensure that vital documents for locally designed programs are translated into Spanish.

b. When DCA forms and other written material contain spaces in which the local entity is to insert information, this inserted information will also be in the individual's primary language. When such forms are completed by applicants/recipients in their primary language, the information must be accepted.

c. If, as a result of the local language assessment, it appears there are a substantial number of potential applicants or recipients of the agency (defined as 5% or 1,000 people whichever is less) who are LEP and speak a language other than Spanish, the agency will translate and provide vital documents in the appropriate language.

d. The agency will keep a record of all vital documents translated, and will submit this information to DCA at their request.

3. If the primary language of an LEP applicant or recipient is a language other than Spanish AND the language does not meet the threshold for translation as defined in the preceding paragraph, the LEP individual will be informed in their own language of the right to oral translation of written notices. The notification will include, in the primary language of the applicant/recipient, the following language: IMPORTANT: IF YOU NEED HELP IN READING THIS, ASK THE AGENCY FOR AN INTERPRETER TO HELP. AN INTERPRETER IS AVAILABLE FREE OF CHARGE.

D. Documentation of Applicant/Recipient Case Records

1. The agency will maintain case record documentation in sufficient detail to permit a reviewer to determine the agency's compliance with this policy.

2. The agency will ensure that case record documentation, including computerized records if appropriate, identifies the applicants/recipient's ethnic origin and primary language. In those cases where the applicant/recipient is non-English speaking, the agency will:

   a. Document the individual's acceptance or refusal of forms or other written materials offered in the individual's primary language.

   b. Document the method used to provide bilingual services, e.g., assigned worker is bilingual, other bilingual employee acted as interpreter, volunteer interpreter was used, or client provided interpreter. When a minor is used as interpreter, the agency will document the circumstances requiring temporary use of a minor and will provide this information to DCA upon request.

3. Consent for the release of information will be obtained from applicants/recipients when individuals other than agency employees are used as interpreters and the case record will be so documented.

E. Staff Development and Training

1. The agency will provide staff training at new employee orientation and continuing training programs. The training will include, but not be limited to:

   a. Language assistance policies and procedures, resources available to support such procedures, methods of effective use of interpreters, and familiarization with the discrimination complaint process.

   b. Cultural awareness information, including specific cultural characteristics of the groups served by the agency to provide a better understanding of, and sensitivity to, the various cultural groups to ensure equal delivery of services.

2. The agency will provide or ensure training is provided for bilingual staff and interpreters employed or utilized by the agency. This includes the ethics of interpreting, including confidentiality; methods of interpreting; orientation to the organization; specialized terminology used by the agency; and cultural competency.

3. The agency will ensure that applicable grantees, contractors, cooperative agreement recipients and other entities receiving state or federal dollars are trained in the requirements of this policy. This training will be a

prerequisite of signing a contract with the agency and will be offered by agency staff.

4. The agency will collect and maintain the following information about training provided to staff: the date(s) of such training, the content of such training, the number and types of credit hours awarded; and the names and identifying information of each attendee at the training. The agency will ensure that grantees, contractors, cooperative agreement recipients and other applicable funded entities collect and maintain such information as well.

V. Compliance Procedures, Reporting and Monitoring

A. Reporting

1. The agency will complete an annual compliance report and send this report to DCA.

B. Monitoring

1. The agency will complete a self-monitoring report on a quarterly basis, using a standardized reporting system providing by the DCA. These reports will be maintained and stored by the Title VI compliance officer and will be provided to the DCA upon request.

2. The agency will cooperate, when requested, with special review by the DCA .

VI. Applicant/Recipient Complaints of Discriminatory Treatment

A. Complaints

1. The agency will provide assistance to LEP individuals who do not speak or write in English if they indicate that they would like to file a complaint. A complaint will be filed in writing, contain the name and address of the person filing it or his/her designee and briefly describe the alleged violation of this policy.

2. The agency will maintain records of any complaints filed, the date of filing, actions taken and resolution.

3. The agency will notify the appropriate agency or Division within DCA of complaints filed the date of filing, actions taken and resolution. This information will be provided within 30 days of resolution.

B. Investigation

1. The DCA Compliance Office will conduct an investigation of the allegations of the complaint. The investigation will afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to the complaint.

2. The investigation will not exceed 30 days, absent a 15-day extension for extenuating circumstances.

C. Resolution of Matters

1. If the investigation indicates a failure to comply with the Act, the local unit of government, agency Director or his/her designee will so inform the recipient and the matter will be resolved by informal means whenever possible within 60 days.

2. If the matter cannot be resolved by informal means, then the individual will be informed of his or her right to appeal further to the Department of Justice. This notice will be provided in the primary language of the individual with Limited English Proficiency.

3. If not resolved by DCA, then complaint will be forwarded to the Department of Justice, HUD Field Office.

SUBMITTED AND APPROVED BY:

_____

Barry Jacobs
Chair, Board of Commissioners

_____
Date

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-i

SUBJECT: Agreement with the State for Federal Assistance

DEPARTMENT: Emergency Services
Financial Services

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
State – Applicant Disaster Assistance Agreement

INFORMATION CONTACT:
Jim Groves, 919-245-6140
Shari Porterfield, 919-245-2456
Clarence Grier, 919-245-2453
Josh Hollingsworth, 919-245-6138

PURPOSE: To approve an agreement with the State of North Carolina for assistance related to the recovery from the March 6-7, 2014 Severe Winter Weather incident.

BACKGROUND: On March 6 and March 7, 2014, Orange County was greatly impacted by freezing rain, sleet, and snow that occurred in the overnight, early morning, and daytime hours. Because of the winter weather, the Orange County Emergency Operations Center was activated, which required staffing by County personnel and partnering agencies.

Along with emergency protective measures that were taken by the County, numerous trees succumbed to the weight of ice from the freezing rain, and numerous trees fell in portions of the County, generating a significant amount of debris. Removal of this debris has been ongoing since the incident, and this has required a number of resources both from the County and the State of North Carolina. Orange County is currently handling debris collection at sites located within the County.

Following the winter weather incident, a request was made to the State to conduct a damage assessment to assess if assistance could be provided. Upon conducting the assessment in Orange County, as well as a number or surrounding counties, the State then requested assistance from the Federal Emergency Management Agency (FEMA).

On March 20, 2014 FEMA representatives met with Orange County and partnering agencies within the County to gather preliminary storm damage data. Following this meeting and meetings with other affected counties, it was determined that the State would meet the threshold to receive assistance from the federal government. The request for assistance was made by Governor Pat McCrory on March 25th. On March 31, 2014 Orange County, along with eight other counties, became federally declared disaster areas due to the ice storm (Disaster Number: FEMA-4176-DR-NC). This declaration has granted the nine counties eligible to receive funding from FEMA's Public Assistance program.

Another meeting was held with the State of North Carolina Emergency Management officials and the assigned FEMA Federal Coordinating Officer to brief potential assistance applicants on the application process. Orange County has completed the "Request for Public Assistance (RPA)." The County must now enter in an agreement with the State to receive federal assistance.

FINANCIAL IMPACT: The estimated cost to the County related to the ice storm is in excess of $100,000. Receiving funding from FEMA's Public Assistance Agency would help the County to recover much of the costs associated with the winter weather storm.

RECOMMENDATION(S): The Manager recommends that the Board approve the "State – Applicant Disaster Assistance Agreement" and authorize the Chair to sign the agreement and all related attachments/documents as necessary.

North Carolina Department of Public Safety
Division of Emergency Management

APPLICANT: Orange County DISASTER: Severe Winter Storm

FEMA- 4167 -DR-NC

PUBLIC ASSISTANCE **CFDA# 97.036**

STATE – APPLICANT DISASTER ASSISTANCE AGREEMENT

This Agreement made by and between the State of North Carolina, Dept. of Public Safety, Division of Emergency Management ("the State") and Orange County ("the Applicant") shall be effective on the date signed by the State and the Applicant. It shall apply to all disaster assistance funds provided by or through the State to the Applicant as a result of the disaster called Severe Winter Storm ; and pursuant to the Disaster Declaration made by the President of the United States numbered FEMA - 4167 - DR-NC.

The designated representative of the Applicant (Applicant's Agent) certifies that:

1. He/She has legal authority to apply for assistance on behalf of the Applicant pursuant to a resolution duly adopted or passed by the Applicant's governing body.

2. The Applicant shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving Federal and State disaster grant assistance.

3. The applicant shall use disaster assistance funds solely for the purpose for which these funds are provided and as approved by the Governor's Authorized Representative (GAR).

4. The Applicant is aware of and shall comply with cost-sharing requirements of Federal and State disaster assistance: specifically that Federal assistance is limited to 75% of eligible expenditures, and that State assistance is limited to 25% of the eligible costs. Alternate projects selected by the Applicant may be eligible for only 75% of the approved Federal share of estimated eligible costs.

5. The Applicant shall provide the following completed documentation to the State:

   - Designation of Applicant's Agent;
   - State-Applicant Disaster Assistance Agreement
   - Private Non-Profit Organization Certification (if required);
   - Summary of Documentation Form itemizing actual costs expended for large project payment requests;
   - Monthly Progress Reports;
   - Copies of Single Audit Reports as applicable.

If the Applicant fails to provide any of the above documentation, the State will be under no obligation to reimburse the Applicant for eligible expenses.

6. The Applicant shall establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting principals or as directed by the Governor's Authorized Representative. If applicable, the Applicant shall conduct audit(s) pursuant to the Single Audit Act of 1984, 31 U.S.C. ∋7501 et. seq., 44 C.F.R. Part 14, OMB Circular A-133, "Audits of States, Local Governments and Non-profit Organizations," and applicable North Carolina laws, rules and regulations.

7. The Applicant shall provide to the State monthly Progress Reports for all open large projects funded by State and Federal disaster assistance grants. The first Progress Report will be due on the 10th day of the first month following initiation of the project and subsequent Progress Reports will be due on the 10th day of each and every month thereafter until project completion. Forms and reporting requirements will be provided by the Governor's Authorized Representative.

8. The Applicant, its employees and agents, including consultants, contractors and subcontractors to be paid with funds provided under this Agreement, shall give State and Federal agencies designated by the Governor's Authorized Representative, full access to and the right to examine all records and documents related to the use of disaster assistance funds.

9. The Applicant shall return to the State, within thirty (30) days of a request by the Governor's Authorized Representative, any funds advanced to the Applicant that are not supported by audit or other Federal or State review of documentation maintained by the Applicant.

10. The Applicant shall comply with all applicable codes and standards in the completion of eligible work to repair or replace damaged public facilities.

11. The Applicant shall comply with all applicable provisions of Federal and State statutes, rules and regulations regarding the procurement of goods and services and regarding contracts for the repair and restoration of public facilities.

12. The Applicant shall begin and complete all items of work within the time limits established by the Governor's Authorized Representative and in accordance with applicable Federal and State statues, rules and regulations.

13. The Applicant shall request a final inspection within ninety (90) days after completion of each and every large project funded under this Agreement, or within ninety (90) days after the expiration of the time limit established for each project under Paragraph 12 above, whichever occurs first. Applicant shall present all supporting documentation to State and/or Federal inspectors at the time of final inspection. **The State, as Grantee, reserves the right to conduct a final inspection of any large project after expiration of the ninety- (90) day period and to reimburse Applicant only for costs documented at the time of final inspection.**

14. The Applicant shall comply with all applicable Federal and State statutes, rules and regulations for publicly financed or assisted contracts including, but not limited to, non-discrimination, labor standard, and access by the physically handicapped.

15. The Applicant's Designated Agent shall execute and comply with the Lobbying Prohibition document incorporated herein as Attachment A.

16. The Applicant's Designated Agent shall execute and comply with the Statement of Assurances (SF 424D) document incorporated herein as Attachment B.

17. The Applicant shall not enter into cost-plus-percentage-of-cost contracts for debris removal, emergency protective measures, or completion of disaster restoration or repair work.

18. The Applicant shall not enter into contracts for which payment is contingent upon receipt of State or Federal funds.

19. The Applicant shall not enter into any contract with any entity that is debarred or suspended from participation in Federal Assistance. The State and/or FEMA will not be under any obligation to reimburse Applicant for payments made to a debarred or suspended contractor. Applicant may search for debarred or suspended contractors on the "Excluded Parties List System" (EPLS) at the following website: www.sam.gov.

20. The Applicant shall comply with the provisions of 42 U.S.C. ∋5155 (Section 312 of the Stafford Act) which prohibits duplication of benefits. Applicant shall notify State immediately if any other source of funds is available to offset disaster assistance provided pursuant to this Agreement. Applicant agrees that eligible costs under this Agreement will be reduced by duplicate benefits received from any other source.

21. The Applicant shall comply with all uniform grant administration requirements required by State and Federal statutes, rules and regulations, including but not limited to, the Robert T. Stafford Disaster Relief and Emergency assistance Act, Public Law 93-288, as amended, Title 44 of the Code of Federal Regulations, applicable OMB Circulars, and policy guidance issued by the Federal Emergency Management Agency (FEMA).

22. If the Applicant pays contractors, subcontractors or consultants with funds provided through this Agreement then the Applicant shall include language in all contracts that binds the contractor, subcontractor or consultant to the terms and conditions of this Agreement with the State. Contractual arrangements with contractors, subcontractors or consultants shall in no way relieve the Applicant of its responsibilities to ensure that all funds provided through this Agreement are administered in accordance with all State and Federal requirements.

FOR THE APPLICANT:

BY: _____
Signature

_____
Date

56-6000327
Applicant's Federal Tax I.D. Number (required)

_____
Typed Name

_____
Title

FOR THE STATE:

BY: _____
Signature

_____
Date

_____
Typed Name

_____
Title

ATTACHMENT A

LOBBYING PROHIBITION

The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence either directly or indirectly an officer or employee of any State or Federal agency, a member of the N.C. Legislature, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-L. "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all recipients of funds under this Agreement shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

_____
Name of Applicant

BY: _____
Signature of Applicant's Designated Agent

ATTACHMENT B-1

OMB Approval No. 0348-0042

ASSURANCES-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project costs) to ensure proper planning, management and completion of the project described in this application

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply by the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ∋∋4728-2763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ∋∋4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statures relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ∋∋1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ∋ 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. ∋∋ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ∋∋523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. ∋∋290 dd-3 and 290 ee 3), as amended relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. ∋∋3601 et seq.), as amended relating to nondiscrimination in the sale, rental, or financing of housing ; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

ATTACHMENT B-2

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. ∋∋1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S. C. ∋∋276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. ∋874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. ∋∋327-333) regarding labor standards for federally-assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L.93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514: (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ∋∋1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. ∋∋7401 et seq.); (g) protection of under ground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ∋∋1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. ∋470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ∋∋469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 6-j

SUBJECT: Designation of Orange County Agent for FEMA Public Assistance

DEPARTMENT: Emergency Services
Financial Services

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
Resolution – Designation of Applicant's Agent

INFORMATION CONTACT:
Jim Groves, 919-245-6140
Shari Porterfield, 919-245-2456
Clarence Grier, 919-245-2453
Josh Hollingsworth, 919-245-6138

PURPOSE: To designate an agent for Orange County's application for FEMA's Public Assistance for the recovery related to the March 6-7, 2014 Winter Storm.

BACKGROUND: On March 6 and March 7, 2014 Orange County was greatly impacted by freezing rain, sleet, and snow that occurred in the overnight, early morning, and daytime hours. Because of the winter weather, the Orange County Emergency Operations Center was activated, which required staffing by County personnel and partnering agencies.

Along with emergency protective measures that were taken by the County, numerous trees succumbed to the weight of ice from the freezing rain, and numerous trees fell in portions of the county, generating a significant amount of debris. Removal of this debris has been ongoing since the incident, and this has required a number of resources both from the County and the State of North Carolina. Orange County is currently handling debris collection at sites located within the County.

Following the winter weather incident, a request was made to the State to conduct a damage assessment to assess if assistance could be provided. Upon conducting the assessment in Orange County, as well as a number or surrounding counties, the State then requested assistance from the Federal Emergency Management Agency (FEMA).

On March 20, 2014, FEMA representatives met with Orange County and partnering agencies within the County to gather preliminary storm damage data. Following this meeting and meetings with other affected counties, it was determined that the State would meet the threshold to receive assistance from the federal government. The request for assistance was made by Governor Pat McCrory on March 25th. On March 31, 2014, Orange County, along with eight other counties, became federally declared disaster areas due to the ice storm (Disaster number: FEMA-4176-DR-NC). This declaration has granted the nine counties eligible to receive funding from FEMA's Public Assistance program.

Another meeting was held with the State of North Carolina Emergency Management officials and the assigned FEMA Federal Coordinating Officer to brief potential assistance applicants on the application process. Orange County has completed the Request for Public Assistance (RPA) and the State – Applicant Disaster Assistance Agreement. As part of the process, the County must adopt a resolution designating an agent to apply for and receive federal assistance.

FINANCIAL IMPACT: The estimated cost to the County related to the ice storm is in excess of $100,000. Receiving funding from FEMA's Public Assistance Agency would help the County to recover much of the costs, associated with the winter weather storm.

RECOMMENDATION(S): The Manager recommends that the Board approve the attached resolution with the designation of Shari Porterfield (primary agent) and Clarence Grier (secondary agent) for the federal assistance, and direct the Clerk to the Board of County Commissioners to sign as the Certifying Official.

RESOLUTION
DESIGNATION OF APPLICANT'S AGENT
North Carolina Division of Emergency Management

Organization Name (hereafter named Organization): Orange County, NC

Disaster Number: FEMA-4176-DR-NC

Applicant's State Cognizant Agency for Single Audit purposes (If Cognizant Agency is not assigned, please indicate):

Applicant's Fiscal Year (FY) Start — Month: July Day: 1

Applicant's Federal Employer's Identification Number: 56-6000327

Applicant's Federal Information Processing Standards (FIPS) Number: 037-135-

PRIMARY AGENT	SECONDARY AGENT
Agent's Name: Shari Porterfield	Agent's Name: Clarence Grier
Organization: Orange County	Organization: Orange County
Official Position: Financial Services Manager	Official Position: Asst. County Manager
Mailing Address: P.O. Box 8181	Mailing Address: P.O. Box 8181
City ,State, Zip: Hillsborough, NC 27278	City ,State, Zip: Hillsborough, NC 27278
Daytime Telephone: 919-245-2456	Daytime Telephone: 919-245-2453
Facsimile Number: 919-644-3324	Facsimile Number: 919-644-3324
Pager or Cellular Number: 919-428-0546	Pager or Cellular Number: 336-558-6621

BE IT RESOLVED BY the governing body of the Organization (a public entity duly organized under the laws of the State of North Carolina) that the above-named Primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act, (Public Law 93-288 as amended) or as otherwise available. BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the Organization in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and **the assurances printed on the reverse side hereof.** BE IT FINALLY RESOLVED THAT the above-named agents are authorized to act severally. PASSED AND APPROVED this _____ day of _____, 20__.

GOVERNING BODY	CERTIFYING OFFICIAL
Name and Title	Name
Name and Title	Official Position
Name and Title	Daytime Telephone

CERTIFICATION

I, _____, (Name) duly appointed and _____ (Title) of the Governing Body, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Governing Body of _____ (Organization) on the _____ day of _____, 20__.

Date: _____ **Signature:** _____

Rev. 06/02

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda
Item No. 7-a

SUBJECT: Bid Award – Orange County MSW Landfill Closure

DEPARTMENT: Solid Waste Management **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):
1) Certified Bid Tabulation
2) Construction Agreement
3) General Conditions

INFORMATION CONTACT:

Gayle Wilson, (919) 968-2885
David Cannell, (919) 245-2651
Michael Talbert, (919) 245-2153

PURPOSE: To consider:

- Awarding the general construction bid to and approve a construction agreement with T&K Construction, LLC of Vinemont, AL in the amount of $3,432,142 for the construction associated with the closure of the Orange County Municipal Solid Waste (MSW) Landfill;
- Authorizing the Chair to sign the general construction agreement on behalf of the Board of County Commissioners, subject to the final review by the County Attorney; and
- Authorizing the Manager to execute individual change orders within the limits of the Manager's authority ($250,000) up to the extent of the project budget.

BACKGROUND: The BOCC approved proceeding with the final closure of the Orange County MSW Landfill as part of the Fiscal Year 2013/2014 budget process. This phase of the construction project will include installing the final capping liner system to officially close out the south MSW landfill unit.

The BOCC authorized the cessation of accepting MSW waste at the landfill located off of Eubanks Road in Chapel Hill. The last day that MSW waste was accepted at the landfill was June 29, 2013. Shortly after waste was no longer accepted, County Solid Waste staff began the regulatory required process of closing the landfill by installing the intermediate soil cover layer over the landfill and by grading the top of the landfill to meet slope requirements.

Formal bidding of the project for the capping system to be installed was original anticipated to occur prior to last day of waste acceptance so that construction of the cap could begin in July 2013. In anticipation of the June 2013 closure, Solid Waste Staff with the assistance of the project engineering consultant, HRD Engineering, Inc. of the Carolinas, submitted a permit modification to NC Department of Environment and Natural Resources (DENR) in January of 2012 for approval of the closure plans. Due to the modified capping configuration, the

construction documents could not be developed prior to receiving approval from NC DENR. The approval was received by the County in October 2013.

Development of construction documents was started by HDR immediately following the receipt of permit modification approval. On February 17, 2014 the County advertised Bid Number 367-293 for the construction project. A mandatory pre-bid conference was held on March 6, 2014 with County Staff and the design engineer in attendance. The meeting was held at the Solid Waste Administration office and a site walk was conducted following the meeting. Sealed bids were received by the County on March 25, 2014 with six companies submitting bids. Attachment 1 is the certified bid tabulation of the results.

HDR reviewed the submitted bids for conformance with the bidding requirements, and T&K Construction, LLC out of Vinemont, AL was determined to be the lowest responsive, responsible bidder for this specialized construction project. To the base bid of $3,340,600 is added:

Supply and Install Landfill Gas System Extensions	$59,052
Supply and Install Landfill Gas System Boots	$26,790
Leachate Collection System Cleaning and Videotaping	$ 5,700

Total Construction Contract = $3,432,142

Below is the anticipated schedule for this project:

Task	Proposed Start Date	End by Date
BOCC Action: Orange County MSW Landfill Closure Bid Award	April 15, 2014	April 15, 2014
Closure construction – substantial completion	April 28, 2014	October 25, 2014
Project closeout – final completion	October 25, 2014	November 24, 2014

FINANCIAL IMPACT: Financing for the closure project was included in the Fiscal 2013/14 Capital Investment Plan and operating budget. The amount of $3,735,453 was appropriated from landfill reserves to fund closure construction.

RECOMMENDATION(S): The Manager recommends that the Board:

1) Award the general construction bid to and approve the construction agreement with T&K Construction, LLC of Vinemont, AL in the amount of $3,432,142 for the construction associated with the closure of the Orange County MSW Landfill;
2) Authorize the Chair to sign the general construction agreement on behalf of the Board of County Commissioners, subject to final review by the County Attorney; and
3) Authorize the Manager to execute individual change orders within the limits of the Manager's authority ($250,000) up to the extent of the project budget.

April 3, 2014

Gayle Wilson
Solid Waste Management Director
Orange County Solid Waste Management Department
1207 Eubanks Road
Chapel Hill, NC 27516

Re: Orange County MSW Landfill
Closure Construction
HDR Project No. 350207-142839-018

Dear Mr. Wilson:

HDR Engineering, Inc. of the Carolinas (HDR) has reviewed the bids for the Orange County MSW Landfill Closure Construction project. The project consists of constructing a cap over the entire lined landfill facility of approximately 25 acres. Construction activities include surface preparation, placement of a 40 mil LLDPE geomembrane and geocomposite drainage layer, placement of an 18-inch thick soil cushion and 6-inch thick topsoil layer over the geosynthetic components of the final cover system, stormwater controls, erosion and sediment control measures, and other incidental work.

The following information is provided regarding our evaluation of bids received.

Background

Six bids were received for the Orange County MSW Landfill Closure Construction project by 3:00 p.m. on March 25, 2014 from the following contractors and are listed from lowest to highest base bids:

Contractor	Base Bid (On-Site Soils)	Bid Alternate No. 1 (Off-Site Soils)	Bid Alternate No. 2 (Off-Site Topsoil)	Irregularities (See Notes)
T&K Construction, LLC	$3,340,600	$3,766.600	$3,543,100	No
Southeast Environmental Contracting, Inc.	$3,544,000	$4,740,000	$3,822,000	Yes[1]
Triangle Grading & Paving, Inc.	$3,687,539	$4,679,033	$4,057,369	Yes[2]
Thalle Construction Co. Inc.	$3,847,698	$4,360,687	$3,996,777	No
Sargent Corporation	$4,209,400	$4,980,300	$4,369,125	No
Rifenburg Construction Inc.	$6,155,378	$6,130,378	$6,655,378	Yes[2]

Notes: 1. Did not submit Subcontractor and Supplier Tabulation.
2. Did not submit Qualification Statement.

Tabulation

The above-referenced bids were examined for accuracy and compliance with the bid requirements. A certified tabulation is enclosed and includes all numerical information provided with the bid and any irregularity that was discovered. As shown in the above table, three of the bids (Southeast Environmental Contracting, Inc.;

Triangle Grading & Paving, Inc.; and Rifenburg Construction Inc.) contained irregularities which consisted of failure to include required information with the bid. The apparent low bidder, T&K Construction, LLC (T&K), had the lowest base bid and was lowest for both bid alternates.

Required Contractor Qualifications

HDR requested qualifications from the low responsive bidder, T&K. Attached is a copy of the financial and legal documents provided for review by HDR and Orange County. HDR's review of these documents generally found them to be responsive to the requirements contained in Section 00100, Instructions to Bidders, of the Bid Documents. HDR also contacted professional references supplied by T&K. The references contacted indicated T&K performed satisfactorily during their projects.

Recommendations

It is the opinion of HDR, based on HDR's review of the bids and supplemental information submitted by T&K, that T&K provided the lowest priced responsive bid. HDR finds that T&K has the experience to complete this type of work and would be an acceptable contractor for the project.

HDR recommends that the County award the contract to T&K Construction, LLC for the Base Bid amount of **Three Million, Three Hundred Forty Thousand, Six Hundred Dollars ($3,340,600.00)**. In addition to the Base Bid amount, HDR recommends that the County award the following Unit Cost Items to T&K Construction, LLC:

Supply and Install Landfill Gas System Extensions	$59,052.00
Supply and Install Landfill Gas System Boots	$26,790.00
Leachate Collection System Cleaning and Videotaping	$ 5,700.00
TOTAL UNIT COST ITEMS	**$91,542.00**

The total construction contract would be for **Three Million, Four Hundred Thirty Two Thousand, One Hundred Forty Dollars ($3,432,142)**.

In addition, HDR recommends that the County budget a contingency equal to a minimum of 10% of the Base Bid (**$334,060**) for the other line item work included in the bid that may become necessary due to uncertainties related to the availability or quality of on-site soils and other unforeseen conditions.

HDR appreciates the opportunity to provide continued service to Orange County. Please feel free to contact me at (919) 232-6682 should you have questions regarding this information.

Respectfully submitted,

HDR Engineering Inc. of the Carolinas

Thomas M. Yanoschak, PE
Project Engineer

NORTH CAROLINA PROFESSIONAL SEAL 19987 ENGINEER THOMAS M. YANOSCHAK

4/3/14

Enclosures: Bid Tabulation Summary
Supplemental Post-Bid Information Provided by T&K

cc: Gordon Dively, PE, Orange County
Ed Shuffler, PE, HDR
Jeff Murray, PE, HDR

HDR Engineering, Inc. of the Carolinas

Bid Tabulations Summary
Orange County MSW Landfill Closure Bid
Bids Received Tuesday March 25, 2014 at 3:00 pm

		CONTRACTOR:	T & K Construction LLC		Southeast Environmental Contracting, Inc.		Triangle Grading & Paving, Inc.		Thalle Construction Co. Inc.		Sargent Corporation		Rifenburg Construction Inc.	
		ADDRESS:	235 County Road 1242		5667 Val Del Rd		PO Drawer 2570		900 NC 86 North		378 Bennoch Road PO Box 435		303 Highway 70 Bypass	
			Vinemont AL 35179		Hahira, GA 31632		Burlington, NC 27215		Hillsborough NC 27278		Stillwater, ME 04489		Durham, NC 27703	
		LICENSE #:	55999		41556		17456		35203		65779		37580	
Item No.	Description	Unit	Cost	Rank	Cost	Rank	Cost	Rank	Cost	Rank	Cost	Rank	Cost	Rank
	Base Bid	LS	$ 3,340,600	1	$ 3,544,000	2	$ 3,687,539	3	$ 3,847,698	4	$ 4,209,400	5	$ 6,155,378	6
	Bid Alternative No. 1	LS	$ 3,766,600	1	$ 4,740,000	4	$ 4,679,033	3	$ 4,360,687	2	$ 4,980,300	5	$ 6,130,378	6
	Bid Alternative No. 2	LS	$ 3,543,100	1	$ 3,822,000	2	$ 4,057,369	4	$ 3,996,777	3	$ 4,369,125	5	$ 6,655,378	6
	Unit Cost Items		Unit Cost		Unit Cost		Unit Cost		Unit Cost		Unit Cost		Unit Cost	
1	Supply and Install Soil Cushion Layer (obtained onsite including any processing required to meet project specifications)	SY	$ 3.20		$ 4.00		$ 6.50		$ 8.00		$ 4.90		$ 12.00	
2	Supply and Install Soil Cushion Layer (obtained off-site including any processing required to meet project specifications)	SY	$ 3.99		$ 7.50		$ 13.00		$ 10.00		$ 8.20		$ 15.00	
3	Supply and Install Topsoil Layer (obtained on-site including any processing required to meet project specifications)	SY	$ 2.28		$ 3.00		$ 2.55		$ 8.00		$ 2.10		$ 3.85	
4	Supply and Install Topsoil Layer (obtained off-site including any processing required to meet project specifications)	SY	$ 6.27		$ 8.50		$ 5.15		$ 10.00		$ 3.25		$ 9.00	
5	Supply and Install Landfill Gas System Extensions	LS	$ 59,052.00		$ 68,750.00		$ 45,875.00		$ 30,000.00		$ 24,025.00		$ 45,000.00	
6	Supply and Install Landfill Gas System Boots	LS	$ 26,790.00		$ 10,900.00		$ 27,500.00		$ 12,675.00		$ 11,550.00		$ 37,000.00	
7	Excavate, Dispose, and Backfill Waste	CY	$ 9.12		$ 9.00		$ 29.15		$ 23.50		$ 26.60		$ 50.00	
8	Supply and Install Additional Intermediate Cover/General Fill/Structural Fill (obtained on-site including any processing required to meet project spec fications)	CY	$ 7.76		$ 4.00		$ 15.90		$ 15.00		$ 7.40		$ 25.00	
9	Leachate Collection System Cleaning and Videotaping	LS	$ 5,700.00		$ 36,315.00		$ 38,000.00		$ 34,000.00		$ 32,280.00		$ 47,000.00	
10	Additional cost to sede with Carthage Switchgrass instead of specified mixture.	AC	$ 1,026.00		$ 200.00		$ 500.00		$ 400.00		$ 240.00		$ 500.00	
	All Addenda Acknowledged		4 Addenda Acknowledged		4 Addenda Acknowledged		4 Addenda Acknowledged		4 Addenda Acknowledged		4 Addenda Acknowledged		4 Addenda Acknowledged	
	Identification of HUB Certified/Minority Business Participation		Included		Included		Included		Included		Included		Included	
	State of NC MBE Affidavit A or B		Included		Included*		Included		Included		Included*		Included	
	Subcontractor and Supplier Tabulation		Included		Not included*		Included		Included		Included		Included	
	Qualification Statement		Included		Included		Not included*		Included		Included		Not included*	
	Contractor Safety Record		Included		Included		Included		Included		Included		Included	
	Bid Bond		Included		Included		Included		Included		Included		Included	
	Irregularities (see highlighted areas on form)*				*Crossed out "North Carolina" and put "Georgia" in the title						*Crossed out "North Carolina" and put "Maine" in the title			

CERTIFICATION: This is certified to be an accurate tabulation of bids received for the project.

NORTH CAROLINA PROFESSIONAL SEAL 040654 ENGINEER JEFFREY S. MURRAY

3/31/14

[Departmental Use Only]
TITLE Orange CO MSW LF Closure
FY 13-14

NORTH CAROLINA

CONSTRUCTION AGREEMENT OVER $250,000.00

ORANGE COUNTY

THIS CONSTRUCTION AGREEMENT (hereinafter called "Agreement"), made as of the day of April, 2014, by and between T&K Construction LLC, (hereinafter called the "Contractor"), and Orange County, a body politic and a political subdivision of the State of North Carolina, (hereinafter called the "Owner").

W I T N E S S E T H:

That the Contractor and the Owner, for the consideration herein named, agree as follows:

1. CONTRACT DOCUMENTS; PRIORITY

The Contract Documents consist of this Agreement, the General Conditions which are fully incorporated in this Agreement, the Request for Proposals, designer approved communications and/or field orders, the Proposal, Construction Documents and Drawings and Written Specifications. The Contract Documents form the Contract. In the event of any inconsistency between or among the Contract Documents the Contract Documents shall be interpreted in the following order of priority:

a. This Agreement with incorporated General Conditions.

b. Designer approved and stamped construction documents and drawings and written specifications.

c. Designer approved communications and/or field orders.

d. Request for Proposals and addenda thereto.

e. Proposal.

2. SCOPE OF WORK

The Contractor shall furnish and deliver all of the materials, and perform, and be fully responsible for all of the Work required by this Agreement within the time period stipulated in a written Notice-to-Proceed to be executed by the Contractor and Owner and in accordance with the following enumerated documents, which are made a part hereof as if fully contained herein:

a. Construction Drawings prepared by HDR Engineering Inc. of the Carolinas (Sheet sets 00G-01 - 03; 00C-01 - 07 dated February 2014, and all related addendum as acknowledged in submitted proposal)

b. Written specifications prepared by the Designer.

c. T&K Construction LLC proposal dated March 25, 2014 which fully describes the work to be performed, such work (hereinafter called the "Work").

d. Related documents listed under Section 2 above.

3. TERM AND SCHEDULING

a. The Contractor agrees to commence work pursuant to the written Notice-to Proceed.

b. The Contractor agrees to complete substantially all Work included by October 25, 2014 or 120 calendar days from the time of written Notice to Proceed.

c. Time is of the essence with respect to all dates specified in the Contract Documents as Completion Dates.

d. The Contractor shall perform the Work in the time, manner and form required by the Contract Documents and as stipulated in a written Notice-to-Proceed to be executed by the Contractor and Owner.

4. STANDARD OF CARE AND DUTIES OF CONTRACTOR

a. The Contractor shall exercise reasonable care and diligence in performing the Work in accordance with the generally accepted standards of this type of Contractor practice throughout the United States and in accordance with applicable federal, state and local laws and regulations applicable to the performance of these services. Contractor is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work.

b. The Contractor shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety, intended performance or configuration.

c. Contractor shall be responsible for all Contractor, Subcontractor, and Sub-subcontractor errors or omissions, in the performance of the Agreement together with the errors and omissions of any agent or employee of the Contractor or any Subcontractor or Sub-subcontractor. Contractor shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the Owner.

d. Contractor is an independent contractor of Owner. Any and all employees of the Contractor engaged by the Contractor in the performance of any work or services required of the Contractor under this Agreement, shall be considered employees or agents of the Contractor only and not of the Owner, and any and all claims that may or might arise under any workers compensation or other law or contract on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Contractor.

e. Contractor agrees that Contractor, its employees, agents and its subcontractors, if any, shall be required to comply with all federal, state and local antidiscrimination laws, regulations and policies that relate to the performance of Contractor's services under this Agreement.

f. If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Contractor represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses certifications, or credentials are current, active, and not in a state of suspension or revocation.

g. The Contractor shall supervise and direct the Work efficiently and with the Contractor's best skill and attention. Except as specifically set forth in the Contract Documents the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, and for safety precautions and programs in connection with the Work. The

Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

h. The Contractor shall appoint a competent Project Manager with general authority to manage the Project for the Contractor. The Contractor shall also keep on the Project at all times during the Work of the Contractor a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Designer or by the Owner if a Designer is not retained for the Project.

i. If, in the opinion of the Designer, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, such Subcontractor shall be replaced by the Contractor with no increase in the Contract Price if and when directed by the Designer.

j. The Contractor shall attend all progress conferences and all other meetings or conferences. The Contractor shall be represented at these progress conferences by a representative having the authority of the Project Manager and by such other representatives as the Designer may direct.

k. Costs and expenses of providing samples for and assistance in any testing shall be borne by the Contractor. Any Work in which untested materials are used without approval or written permission of the Owner and/or Designer shall be removed and replaced at Contractor's expense.

5. PAYMENT & TAXES

a. The Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, and the Contractor hereby agrees to perform all of the Work for a sum not-to-exceed Three Million Four Hunderd Thirty Two Thousand and One Hundred Forty Two Dollars ($3,432,142). Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the Owner's Representative, generally the Designer if a Designer is retained on the Work, a Request for Payment for work done during the previous calendar month.

(i) The Request for Payment shall be in form of a standardized invoice or AIA Document G702-703 appropriately addressed to Owner's Representative at PO Box 17177 Chapel Hill, NC 27516-7177 and shall show substantially the value of work done during the previous calendar month.

(ii) The amount due for payment shall be ninety-five percent (95%) of the value of work completed since the last Request for Payment and this amount shall be paid by the Owner on or before the last business day of the month. Owner shall retain five percent (5%) (the "Retainage").

(1) Upon Owner's Representative's certification that fifty percent (50%) of the Work has been satisfactorily completed Retainage shall be reduced to two and one half percent (2½%).

(2) Upon Owner's Representative's certification that ninety percent (90%) of the Work has been satisfactorily completed Retainage may be discontinued. Retainage may be discontinued, at Owner's Discretion, so long as work continues to be completed satisfactorily and on schedule.

(iii) Final payment shall not be due to the Contractor until thirty (30) days after Final Completion of the Work, including punch list work, has been satisfactorily completed and an appropriate Affidavit, Indemnification, and Release as required in Section 8(d) below has been received by Owner.

b. Should Owner reasonably determine that Contractor has failed to perform the Work related to a Request for Payment, Owner, at its discretion may provide the Contractor ten (10) days to cure the breach. Owner may withhold the accompanying payment without penalty until such time as Contractor cures the breach.

(i) Should Contractor or its representatives fail to cure the breach within ten (10) days, or fail to reasonably agree to such modified schedule, Owner may immediately terminate this Agreement in writing, without penalty or incurring further obligation to Contractor.

(ii) This section shall not be interpreted to limit the definition of breach to the failure to perform the Work related to a Request for Payment.

c. The Contractor has included in the Contract Price and shall pay all taxes assessed by any authority on the Work or the labor and materials used therein. It shall be the Contractor's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of its subcontractors.

d. Should the Owner receive notice that the Contractor has failed to pay a Subcontractor for the Work performed related to a Request for Payment, Owner shall have the authority to withhold payment of the disputed amount until parties resolve their dispute. Failure to pay the Contractor pursuant to this section of the Agreement shall not be deemed to be a breach of the Agreement.

6. NON–APPROPRIATION

a. Contractor acknowledges that Owner is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate.

b. In the event that public funds are unavailable and not appropriated for the performance of Owner’s obligations under this Agreement, then this Agreement shall automatically expire without penalty to Owner immediately upon written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that Owner shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis.

c. In the event of a change in the Owner’s statutory authority, mandate and/or mandated functions, by state and/or federal legislative or regulatory action, which adversely affects Owner’s authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to Owner upon written notice to Contractor of such limitation or change in Owner’s legal authority.

7. NOTICES

Any notice required by this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested to the following:

Owner:	Contractor:
Orange County	T&K Construction LLC
Attn: Gayle Wilson	235 County Road 1242
P.O. Box 8181	Vinemont, AL 35179
Hillsborough, NC 27278	

8. MISCELLANEOUS

a. Duties and Obligations imposed by the Contract Documents shall be in addition to any Duties and Obligations imposed by state, federal or local law, rules, regulations and ordinances.

b. No act or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty granted them under the Contract Documents, nor shall any act or failure to act constitute any approval except as specifically agreed in writing.

c. The Work shall be tested and inspected as required by the Contract Documents and as required by law. Unless prohibited by law the costs of all such tests and inspections related to state and federal codes such as ADA, Administrative, Electrical, Plumbing, Mechanical and Building Codes shall be borne by the Contractor. The costs for material and structural testing shall be conducted by an independent third party at the expense of the Owner. Delays related to any of the aforementioned tests and inspections shall not be grounds for delaying the completion of the work. If any such tests and inspections reveal deficiencies in the Work such that the Work does not comply with terms or requirements of the Contract Documents and/or the requirements of any code or law the Contractor is solely responsible for the cost of bringing such deficiencies into compliance with the terms of the Contract Documents and/or any code or law.

d. Should the Designer, if a Designer is retained for the project involving the Work, or Owner reject any portion of the Work for failing to comply with the Contract Documents Contractor shall immediately, at Contractor's expense, correct the Work. Any such rejection may be made before or after substantial completion. If applicable, any additional expense borne by the Designer under this section shall be paid at Contractor's expense.

e. The Contractor shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the Owner.

9. CONSEQUENTIAL DAMAGES

a. Owner and Contractor mutually waive any claim against each other for consequential damages. Consequential Damages include:

(i) Damages incurred by Owner for loss of use, income, financing, or business.

(ii) Damages incurred by Contractor for office expenses, including personnel, loss of financing, profit, income, business, damage to reputation, or any other non-direct damages.

10. ENTIRE AGREEMENT

All of the documents listed, referenced or described in this Agreement, the written Notice-to-Proceed, together with Modifications made or issued in accordance herewith are the Contract Documents, and the work, labor, materials and completed construction required by the Contract Documents and all parts thereof is the

Work. The Contract Documents constitute the entire agreement between Owner and Contractor. This Agreement may be amended only by written instrument signed by both parties. Modifications may be evidenced by facsimile signatures. If any provision of the Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and date first above written in a number of counterparts, each of which shall, without proof or accounting for other counterparts, be deemed an original contract.

ORANGE COUNTY

_____
Signature

Attest:

_____
Donna Baker, Clerk to the Board

CONTRACTOR

_____
Signature

_____
Printed Name and Title

This instrument has been approved as to technical content.

_____
Gayle Wilson, Department Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____
Office of the Chief Financial Officer

This instrument has been approved as to legal form and sufficiency.

_____
Office of the County Attorney

GENERAL CONDITIONS

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ARTICLE 1. DEFINITIONS

1.1 Agreement - The Construction Contract, these General Conditions, and any Supplementary Conditions.

1.2 AIA - The American Institute of Architects.

1.3 ASTM - The American Society for Testing and Materials.

1.4 Beneficial Occupancy – Use of the Project by the Owner after Substantial Completion, but prior to Final Completion..

1.5 Change Order - A written order to the Contractor signed by the Owner and the Designer authorizing an addition, deletion, or revision in the Work and/or an adjustment in the Contract Price and/or the Contract Time issued after execution of the Construction Contract. See paragraph 14.1.

1.6 Completion Date - Those dates identified as Completion Dates in the Contract Construction Schedule or elsewhere in the Contract Documents.

1.7 Construction Contract – The document executed by the Contractor and the Owner to formally memorialize their consent to the terms of the Agreement.

1.8 Construction Change Directive – A written order to the Contractor signed by the Owner and the Designer directing an addition, deletion, or revision in the Work after execution of the Construction Contract, in circumstances when the parties have been unable to agree on an adjustment to the Contract Price or the Contract Time, but the Owner requests that the Contractor proceed with said addition, deletion, or revision in the Work subject to adjustment of the Contract Price and/orContract Time under the procedures described herein.

1.9 Construction Manager(s) - The person(s) or firm designated as the Construction Manager in the Contract Documents, or their authorized representatives. The Construction Manager(s), as referred to herein, will be referred to hereinafter as if each were of the singular number and masculine gender.

1.10 Contract Construction Schedule - That schedule described in Article 13 hereof and identified as the Contract Construction Schedule.

1.11 Contract Documents - All of the documents that make up the Agreement, plus the Drawings and Specifications that describe the scope of the Work, plus allowable Modifications to the Contract Documents.

1.12 Contract Price - The total monies payable to the Contractor under the Contract Documents pursuant to paragraph 15.1 of the Agreement.

1.13 Contract Time - The number of calendar days stated in, or computed from, the Contract Documents for the completion of the Work, or any portion thereof. See, particularly, Article 13 hereof and the Contract Construction Schedule. Time of completion as specified therein is of the essence. The time used and referred to on the Project will be that time which is observed in Raleigh, North Carolina, being Eastern Daylight Savings Time (EDT), Eastern Standard Time (EST), or other as designated by the Designer.

1.14 Contractor - The Contractor shall be that party identified as such in the Contract Documents.

1.15 Days - Unless otherwise indicated, the term "days" shall mean consecutive calendar days.

1.16 Daylight Hours - The hours or portions of hours between sunrise and sunset local time.

1.17 Designer(s) – The person or firm designated as the Designer in the Contract Documents, or their authorized representatives. The Designer(s), as referred to herein, shall mean architect, landscape architect, and/or engineer. They will be referred to hereinafter as if each were of the singular number and masculine gender. On projects for which there is no Designer designated references to approvals or authorizations of or by the Designer shall be interpreted to refer to approvals or authorizations of Owner or Owner's designee.

1.18 Drawings - The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, and generally including plans, elevations, sections, details, schedules and diagrams. A list of the Drawings is contained in the Contract Documents.

1.19 Field Order - A written order issued by the Designer which clarifies or interprets the Contract Documents or orders minor changes in the Work in accordance with the Contract Documents. See paragraph 14.2.

1.20 Final Completion - The point at which the Contractor has completed the Work, with the exception of guaranty and warranty obligations and as determined by the Designer and becomes entitled to final payment upon the recommendation of the Designer and determination by the Owner.

1.21 The words "furnish," "furnish and install," "install," and "provide" or words with similar meanings shall be interpreted, unless otherwise stated, to mean furnish and install complete, in place and ready for service.

1.22 Liquidated Damages – See paragraph 13.18 of these General Conditions.

1.23 Modification - (A) a written amendment to the Contract Documents signed by the Owner and the Contractor and identified therein as such, (B) a Change Order, (C) Construction Change Directive, or (D) a Field Order. A Modification may only be issued after execution of the Agreement.

1.24 Notice of Award - The written notice by the Owner to the Contractor that the Contractor is the successful Bidder and that upon compliance with the conditions precedent to be fulfilled by

the Contractor within the time specified, the Owner will execute and deliver the Agreement to him.

1.25 Notice to Proceed - See paragraph 13.3.

1.26 Owner - The Owner is the person designated as such in the Agreement.

1.27 Owner's Authorized Representative - A person, or persons, employed by the Owner and designated from time to time by written notice to the Contractor to administer the Contract Documents, and to observe and monitor the Work on behalf of the Owner with authority and responsibility as herein specified.

1.28 Notice - The term "notice" or "written notice" as used herein shall mean and include all written notices, demands, instructions, and claims approvals and disapprovals furnished by the Owner or the Designer to obtain compliance with the requirements of the Contract Documents, as well as all written notices, demands, instructions and claims furnished by the Contractor as required by the Contract Documents. Where notice is required under the terms of the Contract Documents written notice shall always be required, and oral or "constructive" notice shall be insufficient and ineffective as notice. Email or other electronic delivery shall be insufficient and ineffective as notice unless specifically allowed by the Supplementary Conditions or a Modification to the Agreement. Written notice shall be deemed to have been duly served on the date that it is delivered in person to the individual or to a member of the firm, to an officer of the corporation for whom it is intended, to an authorized representative of such individual, firm, or corporation, or on the date that it is mailed by registered or certified mail, return receipt requested, addressed to the last business address of such individual, firm, or corporation known to the person giving the notice. Written notice may also be given by facsimile transmission, provided that proof of delivery is obtained. In the case of delivery in person, such delivery shall not be effective unless and until a written and signed receipt showing the date and time of delivery is obtained.

1.29 Project - The total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.30 Project Expediter – As used herein, is an entity stated in the Contract Documents, designated to effectively facilitate scheduling and coordination of Work activities. For the purpose of a single prime contract, the single prime contractor is designated as the Project Expediter. For the purpose of a project involving separate prime contracts, the Contractor for general work shall be designated as the Project Expediter unless otherwise indicated in the Supplementary General Conditions. See paragraph 7.27.

1.31 Project Manager - That person designated by the Contractor in accordance with paragraph 7.2 who shall be in general charge of the Work and its performance and who shall have the authority set forth in the last sentence of paragraph 7.2.

1.32 Request for Information - A written communication from the Contractor to the Designer for any interpretation of, or information needed, required, or desired under the Contract Documents. The Owner reserves the right to determine the reasonable format and contents required for a Request for Information. In any Request for Information, the Contractor shall state a reasonable date by which a response is necessary in order to avoid delay in progress on the Work and shall

make such request sufficiently in advance of such date as to avoid any such delay. The Designer shall respond in writing to the Request for Information by the date stated by the Contractor unless he cannot reasonably do so, in which case he shall prior to that date notify the Contractor of the date by which he can reasonably respond. The Contractor shall not be entitled to any additional time for the completion of the Work or any portion thereof by reason of the Designer's failure to respond if he has not submitted his Request for Information sufficiently in advance to allow the Designer a reasonable time within which to respond.

1.33 Request for Payment - The form, in the form of AIA Document G702 (latest ed.) or other published document approved by Owner, which is to be used by the Contractor in requesting progress payments and which is to include a Schedule of Values as required by the Contract Documents and an affidavit of the Contractor that progress payments theretofore received from the Owner on account of the Work have been applied by the Contractor to discharge in full all the Contractor's obligations incurred in connection with Work covered by all prior applications for payment. See paragraph 20.2.

1.34 Resident Superintendent - That person designated by the Contractor in accordance with paragraph 7.2 who has day-to-day responsibility for the prosecution of the Work and the obtaining of proper materials and equipment, and adequate labor and who shall have the authority set forth in the last sentence of paragraph 7.2.

1.35 Schedule of Values - Any breakdown of the Contract Price which may be required by the Contract Documents, and designated as such. See paragraph 20.1.

1.36 Specifications - That portion of the Contract Documents consisting generally of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

1.37 Subcontractor - A person, firm, or corporation who has entered into a direct contract with the Contractor to perform any of the Work at the Project.

1.38 Submittal - Shop drawings, product data, samples, and other documents required by the Contract Documents to be submitted by the Contractor to the Designer.

1.39 Submittal Register - See paragraph 13.2 of these General Conditions.

1.40 Substantial Completion - The point at which the Work, and Work by other Contractors on or in connection with the Project, as determined by the Designer, is sufficiently complete in accordance with the Contract Documents that it can be beneficially occupied by the Owner, and the Work can be utilized by the Owner for its intended use, and all necessary permits and permissions for Beneficial Occupancy and utilization having been obtained by the Contractor. All operations and maintenance manuals, Owner training, and as-built drawings must be submitted prior to Substantial Completion being achieved.

1.41 Sub-subcontractor - A person or entity that has a direct or indirect contract with a Subcontractor to perform any of the Work at the Project.

1.42 Work - The construction and services required by the Contract Documents, including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

1.43 All references in the Contract Documents to the masculine shall be interpreted as including the feminine or neuter and all references in the Contract Documents to the singular or the plural shall be interpreted as including the other, as may be appropriate in the reasonable interpretation of the Contract Documents.

ARTICLE 2. CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

2.1 It is the intent of the Specifications and Drawings and other Contract Documents to describe a complete Project in accordance with the Contract Documents.

2.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall notify the Designer in writing before proceeding with the Work affected thereby. In resolving such conflicts, errors and discrepancies, the Contract Documents shall be given preference in the following order: Construction Contract, Modifications, Addenda, General Conditions, Specifications, and Drawings. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which, so applied, have a well-known technical trade meaning shall be deemed to refer to such meaning and to incorporate any recognized standards which are a part of such meaning if not otherwise defined within the Contract Documents.

2.3 Miscellaneous items, accessories and work which are not specifically mentioned, but which are essential to produce a complete and properly operating installation, or useable structure or plant providing the indicated function shall be furnished and installed without change in the Contract Price. Such miscellaneous items and accessories shall be of the same quality standards, including material, style, finish, strength, class, weight and other applicable characteristics, as specified for the major component of which the miscellaneous item or accessory is an essential part, and shall be approved by the Designer before installation. This requirement is not intended to include major components not covered by or inferable from the Contract Documents.

2.4 The Work of all trades under the Contract Documents shall be coordinated by the Contractor in such a manner as to obtain the best workmanship possible for the entire Project and all components of the Work shall be installed or erected in accordance with the best practices of the particular trade.

2.5 The Contractor shall fully complete the Work and shall be responsible for all of the Work under the Contract Documents to which the Construction Contract applies. If the Contractor is prevented from doing so by any limitation of the Contract Documents, the Contractor shall immediately give notice thereof to the Designer and the Owner in writing.

2.6 Standard specifications or manufacturers' literature, when referenced, shall be of the latest revision or printing unless otherwise stated and is intended to establish the minimum requirements acceptable.

2.7 For those materials specified without the use of brand names, the Contractor shall submit within thirty (30) days after his receiving the Construction Contract for signatures, any product that meets the express requirements of the Specifications. Such Submittal shall include manufacturer's data, test reports, performance data and certifications, samples, erection details, and other applicable information as required to permit determination by the Designer whether such proposed products are suitable. The Designer shall be the sole judge as to the suitability of any proposed product. The burden of proof of quality rests with the Contractor.

2.8 The Contractor is required to examine and read the complete set of Contract Documents for information concerning the Work, because some of the Work for which the Contractor will be responsible may be indicated on or in documentation applying primarily to the Work of one or more other separate prime contractors. No allowance will be made for the Contractor's failure to become familiar with the complete set of project documents.

2.9 Contractor's requests for clarification or information shall clearly define the cause(s) of Contractor's request and, as appropriate, shall include Contractor's interpretation and Contractor's proposed solution.

ARTICLE 3. FAMILIARITY WITH WORK, CONDITIONS AND LAWS

3.1 The Contractor has investigated prior to bidding and is satisfied with all conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, roads and uncertainties of weather, or similar physical conditions at the Project site, and the character of equipment and facilities needed prior to and during prosecution of the Work. The Contractor is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from inspection of the Project site, including all exploratory work done by the Owner, as well as from information presented by the Contract Documents, or any other information made available to the Contractor prior to receipt of bids. Any failure by the Contractor to become acquainted with the available information shall not relieve the Contractor from the responsibility for estimating properly the difficulty or cost of successfully performing the Work.

3.2 The Contractor shall be entitled to make all inferences from the Contract Documents that would reasonably be made by a contractor having knowledge and experience with similar work; however, the Contractor shall not be entitled to infer from the Contract Documents any fact or condition which would not be inferred by a contractor having knowledge and experience with similar work and the Contractor shall be required to obtain independently such other information as a knowledgeable and experienced contractor would prudently obtain in order to evaluate any such condition.

3.3 The Contractor specifically acknowledges familiarity with all Federal, State, and local laws, ordinances, rules, and regulations which may in any manner affect those engaged or employed in the Work, or the materials or equipment in or about the Work, or in any way affect the conduct of the Work and agrees that the Contractor and the Contractor's employees, subcontractors,

and suppliers will, at all times, comply with same. If the Contractor shall discover any provisions in the Contract Documents which are contrary to or inconsistent with any such law, ordinance, rule, or regulation, the Contractor shall immediately give notice thereof to the Designer and the Owner in writing, identifying any items of Work affected, and the Contractor shall not proceed until the Contractor has received written direction from the Designer with respect to these items. If the Contractor performs contrary to or inconsistently with any such law, ordinance, rule, or regulation without such written direction, the Contractor shall bear all costs which are a consequence of such performance.

3.4 At times selected by the Designer after execution by the Contractor of the Construction Agreement, a pre-construction conference shall be scheduled and conducted for the benefit of the Project.

ARTICLE 4. BONDS

4.1 A performance bond in the full amount of the Contract Price shall be required of the Contractor to guarantee the faithful performance of the Work in compliance with the Contract Documents, in such form as may be required by law and approved by the Owner. The bond shall be dated the same date as the Construction Contract and must be accompanied by a current copy of the power of attorney for the attorney-in-fact executing such bond on behalf of a surety company licensed to do business in the state of North Carolina.

4.2 A payment bond in the full amount of the Contract Price shall be required of the Contractor to guarantee the payment of all labor and material costs or claims in connection with compliance with the Contract. The payment bond shall be in such form as may be required by law and approved by the Owner. Said bond shall be dated and executed in the same manner as the performance bond in paragraph 4.1.

ARTICLE 5. INSURANCE AND INDEMNITY

5.1 CONTRACTOR PROVIDED INSURANCE
The Contractor shall, without limiting its obligations or liabilities, procure, pay for and maintain such insurance as is required by law and as is required by this Agreement to protect the Contractor and the Owner from claims for damages for bodily injury, including death, and from claims for property damage which may arise from the Contractor's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Agreement. Such insurance shall be of the kinds and have limits of liability and coverages not less than the minimum limits hereinafter specified or required by law, whichever is greater. The Owner makes no representation as to the adequacy or sufficiency of such coverages.

The following requirements shall in no way be construed to limit or eliminate the liability of the Contractor, which arises from performance of Work under the Agreement. The Contractor is strictly responsible for any losses, claims, and costs of any kind which exceed the Contractor's limits of liability, or which may be outside the coverage scope of the policies. The insurance specified shall be provided by an insurer approved by the Owner, authorized to do such business in the State of North Carolina, and on terms approved by the Owner. Insurance companies utilized shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. If the insurer has a Best Rating less than A- and Class VII, the

Contractor must receive specific written approval from the Owner prior to proceeding with any Work under the Agreement.

All agents and brokers shall hold valid licenses from the State of North Carolina. Before commencing mobilization to the Project site and not later than 7 days after the receipt of the Construction Contract by the Contractor for signatures, the Contractor shall furnish to the Owner a certificate or certificates of insurance in a form satisfactory to the Owner. Upon request of the Owner, the Contractor shall provide the Owner with certified copies of the insurance policies required by this Article, including without limitation declaration pages, conditions, exclusions and endorsements, and confirmation that each policy premium has been paid for the required term of this Agreement. A copy of the umbrella policy shall be provided to the Orange County Risk Manager. Certificates shall be signed by a person authorized by that insurer to bind coverage on its behalf. All insurance policies shall provide, as evidenced by Certificates of Insurance, that the insurance shall not be canceled, reduced, restricted, or changed in any way without at least 30 days prior written notice to the Owner.

With regard to expiration, cancellation, reduction, restriction, or any other change, certificates shall state: "Should any of the following described policies be canceled before expiration date or be due to expire within 30 days, the insurer shall mail 30 days prior written notice to named certificate holder." In the event of any such cancellation, non-renewal, reduction, restriction, or change in any insurance, the Contractor is obligated to replace such insurance within 7 days without a gap in coverage and file accordingly such notice with the Owner, and other interested parties. Failing immediate receipt of evidence of such replacement of insurance the Owner reserves the right to procure such insurance as the Owner considers desirable and the Contractor shall pay or reimburse the cost of the premium in respect thereof. It is expressly provided, however, that any action or inaction on the part of the Owner in this respect shall in no way change or reduce the Contractor's responsibilities and liabilities under this Agreement. Self-funded, policy fronting, or other non-risk transfer insurance mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of the Agreement, justifying termination for default.

The Contractor shall name the Owner, the Designer, the Designer’s consultants, and the Construction Manager as additional insureds under all its insurance contracts (except workers' compensation) with respect to and including without limitation liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, and automobiles owned, hired, leased, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

For any claims related to this Project, the Contractor's insurance or self-insurance shall be primary and noncontributory with respect to the Owner’s insurance. Any insurance or self-insurance maintained by the Owner shall be excess and noncontributory with respect to the Contractor's insurance. All policies of insurance shall contain a clause waiving rights of subrogation against the Owner, unless the Owner approves otherwise in writing. Limits of coverage are not to be amended by deductible clauses of any nature without the express written consent of the Owner.

The Contractor shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under this Agreement. In addition, the Contractor shall be responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required herein, or not covered as a result of a normal policy exclusion or that falls within the self-insured retention, if Contractor self-insured. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The claim provisions in the Contractor's insurance policies must specifically state the insurance company or Contractor's Third Party Administrator, if self-insured, has both the right and duty to adjust a claim and provide defense. The policies shall not contain any provision or definition which would serve to exclude or eliminate from coverage third party claims, including exclusions of claims for bodily or other injury to shareholders, partners, officers, directors, or employees of the insured, the premises owner, real estate manager, or the insured's Subcontractor, or any family relative of such persons.

If the policies contain any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the Contractor's willful or intentional noncompliance with applicable government regulations. Any failure by any person to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees. The insolvency or bankruptcy of the Insured or of the Insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken. Failure to comply with these requirements shall be a material breach of this Agreement justifying termination for default.

5.1.1 Worker's Compensation and Employers' Liability Insurance

The Contractor and its Subcontractors shall procure and maintain Workers' Compensation Insurance in the amount and type required by the State of North Carolina and federal law for all employees employed under the Agreement who may come within the protection of Workers' Compensation Laws and covering all operations under the Agreement whether performed by the Contractor or by his Subcontractors. In jurisdictions not providing complete Workers' Compensation protection, the Contractor and his Subcontractors shall maintain employers' liability insurance in an amount, form, company, and agency satisfactory to the State of North Carolina and the Owner for the benefit of all employees not protected by Workers' Compensation Laws and covering all operations under the Agreement whether performed by the Contractor or by his Subcontractors.

The Contractor shall pay such assessments as will protect the Contractor and the Owner from claims under the Workers' Compensation Laws, workers' or workmen's compensation disability benefits, and other similar employee benefit acts. The current Experience Modification Factor shall be indicated on the Certificate of Insurance. Coverage under this section shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:

Coverage A: Statutory, State of North Carolina
Employers' Liability: Each Accident $1,000,000
Disease - Policy Limit $1,000,000
Disease - Each Employee $1,000,000

Such insurance shall include Voluntary Compensation coverage, a Waiver of Subrogation

in favor of the Owner as well as other endorsements that may be required by applicable jurisdictions.

5.1.2 Automobile Liability Insurance
The Contractor shall procure and maintain automobile insurance against liability for bodily injury and property damage as described below, that may arise with respect to the Work being performed under the Agreement, and as will provide protection from claims which may arise out of or result from the Contractor's performance of the Work and the Contractor's other obligations under the Agreement, whether such performance of the Work is by the Contractor, by any representative or Subcontractor, by anyone, both officially and personally, directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

This policy of insurance shall carry the following minimum Limit of Liability: Combined Single Limit $1,000,000.

The policy of insurance shall contain or be endorsed to include the following:

a) owned, hired, and non-owned automobile liability.

b) If the policy contains a warranty stating that coverage is null and void (or words to that effect) if the transporter does not comply with the most stringent regulations governing the Work, it shall be modified so that coverage shall be afforded in all cases except for the transporter's willful or intentional noncompliance with applicable government regulations.

Any failure by any party to comply with reporting or other provisions of the policy including breach of warranties, shall not affect coverage provided to the Owner and its representatives, officials, and employees. No subcontracting of waste hauling shall be permitted without prior, written approval of the Owner.

5.1.3 General Liability
This policy must be written on an Occurrence basis, with the following minimum Limits of Liability:
General Aggregate per project $2,000,000.00
Products/Completed Operations Aggregate $2,000,000.00
Bodily Injury and Property Damage csl/each occurrence $1,000,000.00
Personal Injury and Advertising Injury $2,000,000.00

The policy of insurance shall contain or be endorsed to include the following:
a) Blanket Contractual Liability covering Contractor’s indemnification obligations under this Agreement, in accordance with ISO policy form CG 00 01. Modifications to the standard provision will not be acceptable if they serve to reduce coverage.

b) Premises/Operations Liability.

c) Explosion, collapse, and underground fault.

d) Independent Contractors and Independent Subcontractors coverage.

e) Broad Form Property Damage.

f) Personal Injury

g) Cross Liability/Severability of Interest clause.

h) Employer's Stop-Gap Liability endorsement, if applicable.

i) Amendment of the Pollution Exclusion Endorsement to allow coverage for bodily injury or property damage caused by heat, smoke, or fumes from a hostile fire.

j) Designated General Aggregate Limit Endorsement if required by the Contract Documents.

Coverage shall remain continuously in effect and without interruption for at least 6 years from the date of the Notice of Award and shall include coverage for exposures arising from operations that have been completed. The Contractor shall furnish the Owner and each other additional insured listed in the Agreement to whom the Certificates have been issued, evidence satisfactory to the Owner of continuation of such insurance at the date of Preliminary Acceptance and each year thereafter.

5.1.4 Pollution Legal Liability (PLL)
Pollution Legal Liability coverage will be provided if required by the Supplementary General Conditions.

5.1.5 Umbrella Liability
The Contractor shall maintain an occurrence basis (as distinguished from a "claims made" basis) Umbrella Liability policy (true follow form) over the underlying General Liability, Automobile Liability, and Employer's Liability, with the following limits of liability: Each Occurrence $3,000,000, Aggregate $3,000,000.

On a fully insured basis such coverage will be subject to a deductible no greater than $10,000 per occurrence where coverage is not provided by the underlying insurance, but is provided by the Umbrella Liability policy.

The Contractor may use any combination of primary and umbrella insurance policies to comply with the insurance requirements, provided the resulting insurance is equivalent to the insurance stated herein.

All Occupational Disease exclusions must be deleted. Any Pollution Exclusion must be amended to allow coverage for bodily injury or property damage caused by spill, upset, overturn, heat, smoke, or fumes from a hostile fire.

5.1.6 Property Insurance
The Contractor shall purchase All Risk Property Insurance on a Completed Value Form in the names of the Owner, Contractor, Subcontractors, and sub-subcontractors as their interests may appear with limits as follows:

a) Full insurance value of the Work, or

b) Amount equal to the Contract Price for the Work, whichever is higher.

The Contractor is responsible for all physical damage to owned or rented machinery, tools, equipment, forms, and other items owned, rented or used by the Contractor and/or Subcontractor(s) in the performance of the Work. The insurance coverage evidencing such shall include a waiver of subrogation in favor of the Owner.

5.1.7 Valuable Papers and Records
The Contractor shall provide valuable papers and records insurance with coverage in an amount commensurate with project scope and set forth in the Supplementary General Conditions.

5.1.8 Claims
The Contractor shall notify the Owner within 24 hours of any claims or alleged claims received by the Contractor covered by any of the policies of insurance required in this Agreement. The Contractor shall provide a written copy of the claim or alleged claim to the Owner within 3 days of the Contractor's receipt of the claim or alleged claim. If a claim is settled to the satisfaction of the claimant, the Contractor shall submit a copy of the claimant's release to the Owner. If a claim or alleged claim is rejected by the Contractor and/or its insurance company, the Contractor shall immediately report this fact to the Owner.

Should 30 days elapse after the claim or alleged claim has been received by the Contractor, and the Contractor is not able to report a settlement or rejection of the claim, it shall report to the Owner the steps being taken with respect to the claim. Without limiting the foregoing, the Contractor shall notify in writing the county risk manager of any paid or incurred claims which may impair annual aggregate or general liability.

5.1.9 Deductibles and Self-insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: a) the insurer shall reduce to a maximum of $250,000 or eliminate such deductibles or self-insured retentions with respect to the Owner, or (b) the Contractor shall provide evidence of collateral provided to insurers or procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses within the deductible or self-insured retention amount. Any self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits or liability.

5.1.10 Subcontractors
The Contractor shall include all Subcontractors as Insureds under its policies, or shall furnish separate certificates, policies, and endorsements for each Subcontractor the Contractor intends to use. If a Subcontractor does not take out insurance in his own name and the Contractor wishes to provide insurance protection for such Subcontractor and such Subcontractor's employees, the Contractor shall either (a) procure appropriate policies in the name of the Subcontractor, or (b) cause a rider or riders to be attached to the Contractor's policies which shall identify the Subcontractor thereby covered; provided, however, in the case of the latter option, such a rider need not be attached to the Contractor's workers' compensation policy if such policy by its terms is sufficiently broad to cover the employees of all Subcontractors performing Work under the Contract Documents. Except as otherwise approved by the Owner in writing, Limits of Liability and coverage scope must be at a minimum as stringent as required of the Contractor by the Contract Documents. All Work performed for the Contractor by any Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the

Subcontractor which shall contain provisions that waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by insurance as provided herein. Insurance monies received from any loss shall be divided as the respective interest of the parties affected shall appear.

5.2 OWNER CONTROLLED PROJECT SPECIFIC INSURANCE
In the event the Owner elects to purchase project-specific insurance affording coverage to the Contractor and Subcontractors, the terms and conditions of such coverage shall be set forth in the Supplementary Conditions.

5.3 CONTRACTOR AS JOINT VENTURE
If the Contractor is completing this Project on a joint venture basis, both joint venture partners retain all liabilities assumed by this Agreement, individually and collectively. This may include, but is not limited to, all premiums due, deductibles/self-insured retentions, coinsurance provisions, claim provisions, insurance policy conditions, and indemnification provisions hereunder.

Evidence of a Blanket Joint Venture Endorsement must be obtained from the General Liability and Contractor's Pollution Legal Liability carriers of each joint venture partner for a period of 6 years after completion of the Project, substantially as follows: **With respect to "your work", and the "products-completed operations hazard", you are an insured for your liability arising out of the conduct of any partnership or joint venture of which you were a partner or member, even though this partnership or joint venture is not shown as a Named Insured in the Declarations. This coverage is excess over any available liability purchased specifically to insure the partnership or joint venture. This coverage will not inure to the benefit of any other party except you."**

5.4 INDEMNIFICATION
The Contractor, to the fullest extent not expressly prohibited by law, shall defend, indemnify, and save harmless the Owner, the Designer, the Construction Manager and their respective officials, officers, employees, and agents from and against any and all liabilities (foreseeable or unforeseeable), penalties, fines, liens, forfeitures, demands, claims, causes of actions, suits, judgments, and costs and expenses incidental thereto, (including, without limitation, amounts paid pursuant to investigations, defense or settlements, and reasonable attorneys' fees), which any or all of them may hereafter suffer, incur, be responsible for, or pay out as a result of but not limited to:

a) bodily injury (including sickness, disease, or death) to any person including but not limited to, the Contractor's employees or its representatives while on the site of the Project; or

b) actual or alleged damage (including loss of use) to any property (public or private, including the Project or other property on the Project site); or

c) contamination of or adverse effects on the environment arising directly or indirectly out of or in connection with the performance of the Work, including but not limited to any hazardous or toxic waste, substance, or constituent of any substance subject to regulation under CERCLA, RCRA, TSCA, and other Federal and state authorities that is spilled, released, threatening to release, or disposed of or destroyed by the Contractor or its Subcontractors on or off the site of the Project or while in transport to or from the site; or

d) any violation or alleged violation of laws and regulations, arising out of or in any way connected with the Work, caused in whole or in part by the Contractor, any Subcontractor or supplier or any representatives of the Contractor. The Contractor shall not be required to indemnify the Owner against losses resulting from a breach of this Agreement by the Owner or its other agents and contractors, or resulting from negligence, misconduct or violation of laws on the part of the Owner or its other agents and contractors.

e) upon completion of the Work the Contractor shall execute an affidavit, indemnification, and release stating there are no unpaid debts for any work that has been done or materials that have been furnished to the Project prior to and as of the date of substantial completion and further stating that Contractor shall indemnify, save and protect Owner and Owner's lender, if any, harmless from and against any and all claims, liabilities, liens, losses, damages, causes of action, and expenses (including court costs and reasonable attorney's fees related thereto) arising out of, in connection with, or resulting from any such claims, liabilities, liens, losses, damages, causes of action, or expenses. Such affidavit, indemnification, and release shall be in a form and substance acceptable to Owner. By executing this Agreement Contractor acknowledges the receipt of adequate consideration in return for said release.

The Contractor further agrees to obtain, maintain, and pay for such liability insurance coverages and endorsements as will insure the provisions of this paragraph 5.4. Furthermore, the Contractor agrees to be liable for and to indemnify and reimburse the Owner for all legal fees and disbursements paid or incurred to enforce the provisions of this paragraph. The indemnification obligations under this paragraph shall not be limited in any way by the amount or type of damages, compensation or benefits payable under worker's compensation acts, disability benefit acts, other employment benefit acts, or the amount of insurance carried or recovered.

The Owner acknowledges that hazardous or toxic waste, material, chemicals, compounds or substances, or other environmental hazards, contamination or pollution, (referred to hereinafter as "environmental hazards") may be present at the Project site that were not created, generated, or released at the Project site by the Contractor or its Subcontractors, agents or employees, acting alone or in concert with others. Unless the remediation, abatement or handling of such environmental hazards is part of the scope of the Work under this Agreement, then upon the discovery of such environmental hazards, the Contractor shall immediately, and in no event more than three days later, give notice to the Owner of the environmental hazards before they are disturbed. The Owner and the Designer shall thereupon promptly investigate the environmental hazards, and make such changes in the Drawings and/or Specifications as they may find necessary to abate, remediate, isolate or handle the environmental hazards. Any increase or decrease in the Contract Price or the Contract Time resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. It is agreed that the Contractor shall have no liability under this Agreement for any environmental hazards existing prior to the date that Work commences under this Agreement unless the Contractor or its Subcontractors, agents or employees, acting alone or in concert with others, by their own negligence or misconduct, release or expose the Owner or third parties to the environmental hazards. The provisions of this paragraph shall survive the termination or cancellation or completion of this Agreement.

5.5 RISK MANAGEMENT POLICY

The Orange County Risk Management Policy shall not apply to construction contracts for amounts over $250,000. The terms of these General Conditions related to insurance shall be the sole authority governing insurance requirements for such contracts.

ARTICLE 6. OTHER RECORD DOCUMENTS AND SUBMITTALS

6.1 The Designer shall furnish to the Contractor the number of copies of Drawings and Specifications stated in the Contract Documents. Additional copies of Drawings and Specifications may be obtained at the cost of reproduction and handling.

6.2 The Contractor shall submit to the Designer all Submittals required by the Contract Documents. The Contractor shall submit at least three (3) reproducible prints of all shop drawings. The Contractor shall submit samples in quantities required by the Contract Documents. The Contractor shall submit product data in at least five (5) copies. All shop drawings shall be reviewed by the Contractor and shall bear the Contractor's stamp of approval before being forwarded to the Designer. Submittals shall be submitted in such time as to cause no delay to the Work or any part thereof and in accordance with the Contract Construction Schedule and Submittal Register. The Designer shall review the submittal with reasonable promptness, noting desired corrections, if any. The Designer shall retain two (2) copies of the submittal and shall return the balance of the reviewed submittal to the Contractor for action. The Contractor shall furnish any corrected submittal to the Designer. The Designer shall retain two (2) copies of the corrected submittal and will return the balance of the reviewed submittal to the Contractor. All substitutions prior to the receipt of bids shall be in accordance with the Contract Documents. Refer to Instructions to Bidders, Substitutions.

The Contractor acknowledges that the processing of shop drawings and other submittals is directly impacted by the clarity, completeness, and accuracy of said documents and that it is the Contractor’s responsibility to (i) review and coordinate each submittal with all other related or affected Work and (ii) approve each submittal before submitting same to the Designer for approval.

6.3 No substitutions and no deviations from any requirement of the Contract Documents shall be deemed allowed unless the Contractor has specifically informed the Designer and the Owner in writing of such deviations at the time of submittal and the Designer and the Owner have given written and specific approval to the substitutions or deviations. In proposing a deviation or substitution the Contractor warrants to the Owner, notwithstanding any review, allowance or approval by the Designer or the Owner that the deviation or substitution is at least equal to or better in quality and for the purpose intended, and that Contractor shall not by reason of any such review, allowance or approval be relieved from any obligation or responsibility contained in the Contract Documents.

6.4 Review of submittal by the Designer shall not be construed as relieving the Contractor from responsibility for compliance with terms or designs of the Contract Documents nor from responsibility for errors of any sort in the submittal.

6.5 The Contractor shall keep one record copy marked "As-Built" of all Specifications, Drawings, Addenda, Modifications, and Submittals at the Project in good order and annotated at least monthly to show all changes made during the construction process. Such monthly annotations

and their approval by the Designer shall be a condition precedent to approval by the Designer of each monthly Request for Payment. Said record copy shall be stored at the Project and fully protected from damage by fire or other hazard. This record copy shall be available to the Designer and Owner for inspection at all times and shall be delivered to the Designer for the Owner's purposes prior to the Designer's certifying Substantial Completion of the Work.

6.6 At completion of the Project and before Final Payment, the Contractor shall assemble and deliver to the Owner one complete set of all as-built drawings and one complete set of all approved submittals, product data, and samples which were reviewed by the Designer. These drawings and submittals shall be on paper, or in electronic or other media if required by the Supplementary Conditions. These drawings and submittals shall be categorized and packaged as directed by the Designer.

ARTICLE 7. CONTRACTOR

7.1 The Contractor shall supervise and direct the Work efficiently and with the Contractor’s best skill and attention. Except as may be set forth specifically in the Contract Documents, the Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, and for safety precautions and programs in connection with the Work. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

7.2 The Contractor shall appoint a Project Manager and shall keep on the Project at all times during its progress a competent Resident Superintendent and necessary assistants who shall not be replaced without prior written approval by the Owner except under extraordinary circumstances, in which event immediate written notice shall be given to the Designer and the Owner. The Project Manager and the Resident Superintendent may be the same person or different persons. At any time, the Owner, in its sole and absolute discretion, may require the Contractor to replace the Project Manager or Resident Superintendent with an experienced and competent person or persons upon seven (7) days written notice from the Owner to the Contractor. Such replacement shall be at the Contractor's expense and at no cost to the Owner. Both the Project Manager and the Resident Superintendent shall have authority to act on behalf of the Contractor, and instructions, directions or notices given to either of them shall be as binding as if given to the Contractor.

7.3 The Contractor shall provide sufficient competent and suitably qualified personnel, equipment, and supplies to lay out the Work and perform construction as required by the Contract Documents. The Contractor will at all times maintain good discipline and order at the site, and will comply with all applicable OSHA standards.

Any person employed by the Contractor, any Subcontractor, or any sub-subcontractor who, in the opinion of the Designer or the Owner, does not perform his Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Owner or Designer, be removed forthwith by the Contractor, Subcontractor, or sub-subcontractor employing such person without cost to the Owner, and shall not be employed again in any portion of the Work without the written approval of the Owner or Designer.

Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work within three (3) days after written

order, the Owner may withhold further payment by written notice until compliance with such order.

7.4 If, in the opinion of the Designer or the Owner, any Subcontractor on the Project is incompetent or otherwise unsatisfactory, he shall be replaced by the Contractor with no increase in the Contract Price if and when directed by the Designer or the Owner in writing.

7.5 The Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools appliances, fuel, light, heat, and all other facilities and incidentals necessary for the execution, maintenance, initial operation, and completion of the Work, other than those specifically excluded by the Contract Documents and to be furnished by the Owner or others. When use or storage of hazardous materials or equipment or methods of more than ordinary risk are necessary in accomplishing the Work, the Contractor shall give the Owner and Designer reasonable advance notice.

If any materials are to be furnished or installed by the Owner or others under the terms of the Contract Documents, said materials shall be made available to the Contractor at the location(s) specified in the Contract Documents. All costs of handling, transportation from the specified location to the Project, storage, and installing of Owner-furnished materials shall be included in the Contract Price. The Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies which may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner shall deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good any such damage, loss, or efficiency.

All equipment which is proposed to be used in the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed Work, adjacent property, or existing facilities shall result from its use.

When the methods and equipment to be used by the Contractor accomplishing the Work are not prescribed in the Contract Documents, the Contractor shall be free to use any methods or equipment that will accomplish the Work in conformity with the requirements of the Contract Documents.

When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Designer. If the Contractor desires to use a method or type of equipment other than specified in the Contract Documents, the Contractor may request authority from the Designer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it shall be on the condition that the Contractor shall be fully responsible for producing Work in conformity with the requirements of the Contract Documents. If, after trial use of the substituted methods or equipment, the Designer determines that the Work produced does not meet the requirements of the Contract Documents, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining Work with the specified methods and equipment at no additional cost to the Owner. The Contractor shall remove any deficient Work and replace it with Work of specified quality, or take such other corrective action as the Designer may direct. No change in the Contract Price or in Contract Time shall be made as a result of authorizing a change in methods or equipment under this paragraph.

7.6 All materials and equipment shall be new, except as otherwise provided in the Contract Documents. When special makes or grades of material which are normally packaged by the supplier or manufacturer are specified or approved, such materials shall be delivered to the Project site in their original packages or containers with seals unbroken and labels intact.

Materials shall be so stored as to assure the preservation of their quantity, quality and fitness for the Work. Stored materials, even though approved before storage, may again be inspected by the Designer or Owner prior to their use in the Work and shall meet the requirements of the Contract Documents at the time they are incorporated into the Work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the Designer and the Owner. Materials to be stored at the Project or on the Owner's property shall not create an obstruction to the Owner's or other contractor's reasonable activities. Private property shall not be used for storage purposes without written permission of the owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the Owner a copy of the property owner's permission. All storage sites on private or the Owner's property shall be restored to their original condition by the Contractor at his entire expense, except as otherwise agreed to (in writing) by the owner or lessee of the property.

7.7 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processor, except as otherwise provided in the Contract Documents.

7.8 The Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that the Contractor is responsible for the acts and omissions of the Contractor’s own employees. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor or supplier and the Owner or the Designer, or any obligation on the part of the Owner or the Designer to pay or see to the payment of any money due any such Subcontractor or material furnisher except as may otherwise be required by law. The Owner or the Designer may furnish to any Subcontractor or supplier, to the extent practicable, evidence of amounts paid to the Contractor on account of specific Work done.

7.9 The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors.

7.10 The Contractor agrees to bind specifically every Subcontractor to the terms and conditions of the Contract Documents for the benefit of the Owner and to furnish written evidence thereof to the Designer and the Owner within seven (7) days after written request by the Owner.

7.11 The Contractor shall attend job progress conferences and all other meetings or conferences as directed by the Designer. The Contractor shall be represented at these job progress conferences by a representative having the authority of the Project Manager and by such other representatives as the Designer may direct. Job progress conferences shall be open to Subcontractors, suppliers and any others who may contribute beneficially toward maintaining required job progress, and such personnel shall be encouraged by the Contractor to attend. It shall be the principal purpose of job progress conferences to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on

schedule and to complete the Work and the Project by the specified Completion Dates. The Contractor shall be prepared to assess progress of the Work as required in the Contract Documents and to recommend remedial measures for correction of progress as may be appropriate. The Designer shall preside as chairman and arrange for minutes to be taken and circulated.

In the event that the prosecution of the Work is discontinued for any reason, the Contractor shall notify the Designer and the Owner at least forty-eight (48) hours in advance of resuming operations.

Should the terms of the Contract Documents require completion of one or more portions of the Work for the Beneficial Occupancy of the Owner prior to completion of the entire Work, the Contractor shall complete such portion(s) of the Work on or before the date specified. Such completion shall include the obtaining of all government or other permits, permission, and/or approvals necessary to occupancy. The Contractor shall independently estimate the difficulties involved in arranging the Work to permit such Beneficial Occupancy and shall not claim any additional compensation or time extension by reason of any delay or increased cost due to completing such portion(s) of the Work. The Owner's possession and use of such portion(s) of the Work shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. The Owner shall be responsible for the security, maintenance, utilities, and insurance of all portions of the Work completed and beneficially occupied by the Owner.

7.12 The Contractor shall pay all license fees and royalties, and assume all costs incident to the use of any invention, design process, or device which is the subject of patent rights or copyrights held by others, except for inventions, design processes, or devices specified by the Designer in the Contract Documents. The Contractor shall indemnify and hold harmless the Owner, the Designer, and anyone directly employed by either of them, from and against all claims, damages, losses and expenses, including attorney's fees and costs of defense, arising out of any infringement or alleged infringement of such rights during or after completion of the Work, and shall defend all such claims in connection with any actual or alleged infringement of such rights.

7.13 The Contractor shall secure and pay for all permits, including without limitation construction permits and licenses, and will pay all governmental charges and inspection fees necessary for the prosecution of the Work.

7.14 The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work and shall protect and indemnify the Owner and the Owner’s officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or by the Contractor’s employees, Subcontractors, sub-subcontractors, or their employees.

7.15 The Contractor shall be responsible for the entire site of the Project (except those under the Beneficial Occupancy of the Owner) and for its reasonable and necessary protection and security, as required by laws or ordinances governing such conditions, or by custom or sound construction practices, and shall share such responsibilities as may be agreed upon among them, or in the absence of such agreement, as may be directed by the Contract Documents, Owner, or Designer. The Contractor shall be responsible for any damage to the Owner's property, or that of others, by the Contractor or the Contractor’s employees, Subcontractors,

sub-subcontractors, or their employees or agents, and shall make good such damages. The Contractor shall be responsible for and pay for any such claims against the Owner.

7.16 The Contractor shall protect all landscaping designated to remain in the vicinity of the operations and barricade all walks, roads, and areas as necessary to keep the public away from the construction.

7.17 The Contractor shall provide cover and/or protect all portions of the Work and provide all materials necessary to protect the Work whether performed by the Contractor or any of the Subcontractors or sub-subcontractors. Any Work damaged through the lack of proper protection, or from any other cause, shall be repaired or replaced without extra cost to the Owner or extension to the Contract Time.

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective effort prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times. All costs of maintenance shall be included in the Contract Price and the Contractor will not be paid an additional amount for such effort. Should the Owner or Designer observe that the Contractor at any time has failed to maintain the Work as provided herein, the Designer may immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. Should the Contractor fail to properly respond to the Designer's notification, the Owner may, at the Contractor's expense, take such action as it may deem appropriate to remedy the defective maintenance, including suspension of the Contractor's Work or any part thereof. Any such expense incurred by the Owner shall be deducted from monies due or to become due the Contractor.

Parking lots, streets, and walks connecting to the Project area shall be protected by the Contractor from deposits of mud, sand, stone, litter, or debris in any form. Pedestrian traffic areas around the construction limits must be maintained in a clean and safe condition at all times with required barricades and covered walkways. When excavation or other operations outside the Project limits is required, the Contractor shall, immediately following that work, return the area to its original condition.

All catch basins and storm drain lines in the vicinity of the Project site shall be protected at all times from entry of dirt, rubble and other debris. The residue from the cleaning of trucks, wheelbarrows, concrete buggies, etc. must be prevented from entering the drainage system, and if cleaning is done, the residue must be contained and removed from the Project site with other refuse.

7.18 No burning of refuse or debris shall be allowed inside or around the Project during the course of construction without written authority from authorities having jurisdiction and the Owner.

7.19 The Contractor shall provide for and maintain necessary safety measures and safety programs for the protection of all persons involved with the Work. Such measures and programs shall include the requirements of the most current edition of the CAGC Safety and Health Manual [or the AGC Accident Prevention Manual in Construction], or equivalent requirements, and shall fully comply with all Federal, State, and local laws, rules, regulations, and building

code requirements relating to the prevention of accidents or injuries to persons on or about the location of the Work.

All trenches, excavations, or other hazards in the vicinity of the Work shall be well barricaded, and properly lighted at night. When Work requires closing of an area normally used by the Owner or the public, the Contractor shall furnish, erect, and maintain temporary barricades, and properly light the area. The Contractor shall comply with any directions and public authorities in this respect.

7.20 The Contractor shall designate a responsible officer or employee as safety inspector, whose duties shall include accident prevention on the Project as well as implementation of the Contractor's safety measures and safety programs on the Project. The name of the safety inspector shall be made known to the Designer and the Owner at the preconstruction conference.

7.21 In emergencies affecting the safety of persons, the Work, or property at the Project site or adjacent thereto, the Contractor is obligated to act in the Contractor's discretion to prevent threatened damage, injury, or loss. As soon as practicable, the Contractor shall notify the Designer and Owner of such emergency. The Contractor shall give the Designer and the Owner prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused by such emergency. If the Contractor believes that additional work done in an emergency entitles the Contractor to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided in Articles 14 and/or 15.

7.22 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Work. At least weekly and at the completion of the Work, the Contractor shall remove all waste materials and rubbish from and about the Project. At the completion of the Work, the Contractor shall remove all tools, construction equipment, machinery, and surplus materials. The Contractor shall leave the Work in condition for occupancy by the Owner such that no cleaning or other operations are required. Material cleared from the Project and deposited on adjacent property shall not be considered as having been disposed of satisfactorily. If the Contractor fails to keep the Project clean of waste materials or rubbish, fails to satisfactorily clean-up weekly or at the completion of the Work, the Owner may do so and the costs thereof may be deducted from any amounts due the Contractor.

7.23 Utilities, temporary facilities, and signs shall be provided as described in the Contract Documents. Absent a contrary direction in the Supplementary Conditions, the Contractor shall pay all bills for water, electricity, or other public utility service to the Project site.

7.24 The Contractor shall indemnify and hold the Owner, the Designer, the Designer's consultants, and their officers, agents, and employees harmless against all costs, damages, and expenses, including attorney's fees and costs of defense, arising out of claims by any separate contractor or by any Subcontractor, sub-subcontractor, or supplier engaged by or employed by the Contractor or employed by any of the Subcontractors claiming through him, including without limitation damages, losses, and expenses arising out of or relating to any inconvenience, delay, interference, or other action or non-action of the Contractor or the Contractor's Subcontractors on the Project.

The Contractor acknowledges that should the Contractor or any of the Contractor's Subcontractors be damaged by any breach of contract by any other separate prime contractor on the Project, the Contractor may invoke applicable dispute resolution procedures with said other separate prime contractor or bring a direct civil action against said other separate prime contractor. The Contractor hereby expressly agrees that neither the Owner nor its officers, agents, or employees shall have any liability of any kind or nature whatsoever to the Contractor, its Subcontractors, sub-subcontractors, or suppliers arising out of or relating to any breach, inconvenience, delay, interference, or other action or non-action by any other separate prime contractor. The Contractor covenants not to sue the Owner for any loss or damage caused by any breach, inconvenience, delay, interference, or other action or non-action by any other separate prime contractor, notwithstanding whatever rights at law the Contractor might have to bring a civil action against the Owner for any breach, inconvenience, delay, interference, or other action or non-action of any other separate prime contractor. The Contractor agrees to look exclusively to the other prime contractor for relief or remedy.

Nothing contained herein or appearing anywhere in the Contract Documents shall obligate or require the Owner to exercise any right or privilege, or to take any action or to refrain from taking any action under any contract it may have with any other prime contractor or party to the Project for the benefit of the Contractor or any Subcontractor, subSubcontractor, or supplier claiming through the Contractor.

7.25 Prior to completion of the Work and Final Payment of the Contract Price, excepting only those portions of the Work deemed accepted in accordance with the Contract Documents, the Contractor shall have charge and care of the Work, and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall as required by the Owner replace, rebuild, repair, restore, and make good all injury or damage to any portion of the Work occasioned by any of the above causes before Final Completion and shall bear the expenses thereof.

7.26 In the event that the Work, or any portion thereof, is suspended at any time pursuant to an order of the Owner, the Contractor shall obey all instructions of the Owner regarding storage of materials, drainage, protection of the Work, and erection of temporary structures during the suspension period.

7.27 The Project Expediter for the Project shall be responsible for the coordination of the Work of itself and any other separate contractors, both as to space and time. The Project Expediter shall coordinate the implementation of the Contract Construction Schedule, all construction activities and close-out of the Project, including but not limited to all testing, inspection, certifications, and approvals required by public agencies.

The Contractor and the Project Expediter shall each be required to notify the Designer and the Owner promptly of any event or condition which could affect the conduct or progress of the Work and shall cooperate fully with all other contractors on the Project site.

7.28 The Owner hereby delegates to the Project Expediter all of its duties to coordinate and to expedite the Work not expressly reserved to the Owner by other provisions of the Contract Documents.

7.29 All Work performed pursuant to the Contract Documents shall conform in all respects to the North Carolina State Building Code and all other state, local, and national codes in effect at the time of and applicable to this Work.

7.30 The Contractor shall provide for and maintain necessary safety measures and safety programs for the protection of all persons at the Project site, and shall comply at all times with the requirements of the most current edition of the CAGC Safety and Health Manual [or the AGC Accident Prevention Manual in Construction], or the equivalent requirements of the Contractor's safety program, and shall fully comply with all Federal, State, and local laws, rules, regulations, and building code requirements so as to prevent accidents or injuries to persons on or about the Project site. The Contractor shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairways, and similar hazards. The Contractor shall protect against damage or injury resulting from falling materials, and shall maintain all protective devices and signs throughout the progress of the Work.

7.31 The Contractor shall adhere to the rules, regulations, and interpretations of the North Carolina Department of Labor's Occupational Safety and Health Standards for the Construction Industry (29 CFR Part 1926 as adopted in 13 NCAC 07F.0201, including 29 CFR Part 1910 General Industry Safety and Health Standards applicable to construction) and N.C. Gen. Stat. §95-126 through 155 (Occupational Safety and Health) as well as all revisions and amendments to such standards or statutes as may occur throughout the performance of the Work.

7.32 Any land disturbing activity performed by the Contractor in connection with the Project shall comply with all erosion control measures set forth in the Contract Documents and any additional measures which may be required in order to ensure that the Project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15 North Carolina administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 NCAC 4A, 4B, and 4C), and as may be revised or amended in the future. Upon receipt of notice that a land-disturbing activity is in violation of said Act, the Contractor shall be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said Act are promptly taken. The Contractor shall be responsible for all penalties assessed pursuant to N.C. Gen. Stat. 113A-64 with respect to its Work, and shall indemnify and hold harmless the Owner from all costs and expenses, including attorney's fees and costs of defense arising out of or related to the enforcement of the Act against any party or person described in this Article.

7.33 Any mechanical or electrical work such as sleeves, inserts, chases, etc. located in the Work of the Contractor for general work shall be built in by that Contractor. On multiple prime projects, the mechanical and electrical contractors shall set all sleeves, inserts, and other devices built into the structure in cooperation and under the supervision of the Contractor for general work. The responsibility for exact location of such items shall be that of the mechanical, plumbing, or electrical prime contractor.

7.34 The Contractor shall be responsible for permanently fixed service facilities and systems in use during progress of the Work and shall strictly adhere to the following procedures:

a) Prior to acceptance of the Work by the Owner, the Contractor shall remove and replace any part of the permanent building systems damaged through use during construction.

b) Temporary filters shall be installed in each of the heating and air conditioning units, return air grilles, and other locations to prevent intrusion of dust, dirt, and debris during construction. Temporary filters shall be removed and replaced with new filters immediately prior to Substantial Completion.

c) Extra effort shall be maintained to keep the building clean and under no circumstances shall air systems be operated if finishing operations are creating dust in excess of what would be considered normal if the building were occupied.

d) When the permanent lighting system is used during construction, lamps shall be replaced and shall be new on the date of Substantial Completion.

ARTICLE 8. OWNER

8.1 The Owner shall issue communications and notices to the Contractor through the Designer to the extent contemplated by the Contract Documents.

8.2 In case of termination of the employment of the Designer, the Owner shall appoint as Designer a qualified person who shall have and assume all rights and duties held by the original Designer.

8.3 The Owner shall have the right to take possession of and use any portion of the Work notwithstanding the fact that the time for completion of such portion of the Work may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents.

8.4 A waiver on the part of the Owner of any breach of any part of the Contractor shall not be held to be a waiver of any other or subsequent breach.

8.5 The Owner shall pay all permanent acreage fees, governmental impact fees, and meter deposits for permanent utilities.

ARTICLE 9. CONSTRUCTION MANAGER

9.1 The Owner may employ one or more Construction Managers for the purpose of assisting the Owner, Designer, and Contractor in developing and administering budgets and cost controls, in evaluating constructability and value engineering proposals, in establishing and maintaining a critical path method (CPM) schedule, in coordinating and/or expediting the Work with other projects being constructed by the Owner or others adjacent or near the Work, or for such other purposes as the Owner may deem appropriate. From time to time the Owner may identify such Construction Managers(s) to the Contractor in writing identifying any tasks assigned to such Construction Managers(s).

ARTICLE 10. DESIGNER

10.1 The Designer is charged with the responsibility of interpretation of the Contract Documents. The Designer’s decisions relating to aesthetic matters shall be final.

10.2 All Work completed under the Contract Documents shall be subject to review by the Designer. No Work is to be covered without the Designer's review or prior authorization. Any Work so covered without the Designer's review or prior authorization shall be uncovered at the Contractor's expense. The Contractor shall notify the Designer in writing at least twenty-four (24) hours in advance of covering any Work.

10.3 The Designer shall not be responsible for the construction means, methods, techniques, sequences, procedures, or the safety precautions and programs incident thereto, and shall not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents, but shall be entitled to enforce any requirements in the Contract Documents specifying particular means, methods, techniques, sequences, or procedures.

10.4 The Designer shall be an Owner's representative during the construction period. The duties, responsibilities and authority of the Designer as the Owner's representative during construction are as set forth in the Contract Documents.

ARTICLE 11. TESTING AND SURVEYING

11.1 Laboratory and field tests to determine compliance of construction with the Contract Documents shall be made by the Owner or testing consultants employed by the Owner except those required elsewhere in the Contract Documents to be paid for by the Contractor. The costs and expenses of providing samples for and assistance in any testing shall be borne by the Contractor and are included in the Contract Price. Any Work in which untested materials are used without approval or written permission of the Designer shall be removed and replaced at the Contractor's expense. Work found to be unacceptable or unauthorized will not be paid for and, if directed by the Designer shall be removed and replaced at the Contractor's expense. Unless otherwise designated, tests in accordance with the cited standard methods of ASTM or other generally recognized or specifically authorized methods which are current on the date of advertisement for bids shall be made at the expense of the Owner; provided, however, in the event that after such testing any Work is found to be defective or does not meet the requirements of the Contract Documents, the costs of retesting such Work and the costs of inspection services shall be paid by the Contractor. Samples shall be taken by a testing laboratory employed by the Owner. All materials being used are subject to inspection, tests, or rejection at any time prior to or during incorporation into the Work. Copies of all Owner test reports will be furnished to the Contractor at his written request. Copies of Contractor test reports shall be furnished to the Designer upon written request.

11.2 The Owner shall have the right to deduct the costs of additional testing as described in paragraph 11.1 from any money due the Contractor; or if no money is due the Contractor, the Owner shall have the right to recover these costs from the Contractor, from its sureties, or from both.

11.3 All layouts and surveying shall be accomplished by properly qualified personnel duly licensed in the State of North Carolina.

ARTICLE 12. SEPARATE CONTRACTS

12.1 It is expressly understood that the Owner may deploy the Owner’s own employees or engage other separate prime contractors to perform Work as a part of the Project whose work

will be performed simultaneously and sequentially with the performance of the Work by the Contractor. It shall be necessary for the Contractor to coordinate construction activities with such other contractors, particularly with respect to access to work areas, storage of materials, and use of elevators and other common facilities. The Contractor shall diligently and in good faith cooperate with the Owner, the Designer, and all other contractors with respect to such matters and shall regularly and faithfully attend any and all meetings called by the Owner or the Designer with respect to such matters. Any disputes between the Contractor and any other separate prime contractor with respect to such matters shall be resolved in accordance with the claim and dispute resolution procedures in the Agreement.

ARTICLE 13. CONTRACT TIME

13.1 Within fourteen (14) days after receipt of the Construction Contract by the Contractor for signatures, the Project Expediter shall prepare and submit to the Designer and Owner for review and approval a preliminary progress schedule for the Work pursuant to the requirements stated in the Contract Documents.

13.2 Within fourteen (14) days after initial receipt of the Construction Contract for signatures the Contractor shall submit to the Designer a Submittal Register listing all Submittals the Contractor is required to make or proposes to make under the Contract Documents, the dates on which the Contractor proposes to make such Submittals and the dates by which the Contractor reasonably requires a response from the Designer with respect to each Submittal. The dates submitted shall be incorporated into the Contract Construction Schedule as Completion Dates when they have been approved or modified by the Owner. The Designer shall not be required to review any Submittal from the Contractor until a Submittal Register acceptable to and approved by the Owner has been submitted by the Contractor.

13.3 Not later than thirty (30) days following execution and delivery of the Construction Agreement by Owner to Contractor, the Owner shall deliver to the Contractor a Notice to Proceed. The Notice to Proceed shall state a commencement date on which it is expected that the Contractor will begin the Work to be performed under the Agreement. The Contract Time shall be measured from said specified commencement date. The commencement date stated in the Notice to Proceed shall not be earlier than three (3) days after the Notice to Proceed is served on the Contractor.

If, other than by mutual agreement, said specified commencement date is more than thirty (30) days after the date of execution and delivery of the Agreement from Owner to Contractor and the Contractor believes said delay justifies an increase in Contract Price and/or an extension of Contract Time, the Contractor may make a claim therefore as provided in Article 14 and/or Article 15. No Work shall be done prior to the date specified in the Notice to Proceed. A final Contract Construction Schedule shall be submitted for approval by the Contractor, Designer, and Owner no later than fourteen (14) days after Notice to Proceed. No payments shall be due the Contractor until this schedule is approved by all parties.

13.4 The Contract Construction Schedule is a Contract Document. The Contractor represents that the Contract Construction Schedule has been reviewed in detail, that the Contractor participated in its preparation, that all of the activities which impact, limit, or otherwise affect the time of completion of the Work are shown in the Contract Construction Schedule and that all of the activities of others which impact, limit, or otherwise affect the start, duration, or completion of

the Contractor's activities are also shown. The Contractor further represents that the Contractor can and will complete each activity within the time shown for that activity. **Time is of the essence with respect to each such activity and Completion Date.**

13.5 If the Contractor submits a construction schedule, progress report, or any other document that indicates or otherwise expresses an intention to achieve completion of the Work prior to any Completion Date required by the Contract Documents or prior to expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

13.6 If the Contractor, for reasons beyond the Contractor's control, is delayed in beginning any activity, the Contractor shall, nevertheless, have the same number of days as is shown in the Contract Construction Schedule for the activity, and the affected activity and any succeeding activity that is dependent upon that activity shall be adjusted accordingly; provided that at any time the Owner, by means of a Change Order, may require the Contractor to work overtime, to increase labor forces or to take any necessary or appropriate action to decrease the time required for any activity, and the Contractor shall be entitled to an adjustment in the Contract Price computed in accordance with Article 15 of these General Conditions.

13.7 At any time, the Owner may order the Contractor, on seven (7) days written notice, to begin any activity earlier than the starting date shown on the Contract Construction Schedule.

13.8 Should the Contractor fail to start any activity on the start date shown in the Contract Construction Schedule or as it may have been adjusted in accordance with paragraphs 13.5 or 13.6 above, or become delayed, the Contractor shall, without being entitled to any increase in the Contract Price or other compensation, work overtime, increase labor forces or take such other action as may be necessary or appropriate to complete the activity by the Completion Date shown on the Contract Construction Schedule, or as such Completion Date may have been adjusted.

13.9 The Designer and Owner or his Construction Consultant shall monitor progress of the work at all times and the Contractor shall cooperate with such monitoring and provide any and all information with respect to the progress of the Work and scheduling as the Owner may reasonably require.

13.10 On a monthly basis, the Contractor shall revise the Contract Construction Schedule, showing any adjustments made in accordance with paragraphs 13.5 or 13.6, above, by any Change Order, the progress of the Work, and any days gained or days lost with respect to any activity, and shall furnish copies thereof to the Owner and Designer.

13.11 Should any monthly revision of any Contract Construction Schedule show that the Contractor is behind on any activity, the late completion of which could delay Substantial Completion of the Work, the Owner shall be entitled to withhold from the next Progress Payment due the Contractor an amount not exceeding the amount the Owner would be entitled to in Liquidated Damages, should Substantial Completion be delayed by the same number of days that the Contractor is currently behind schedule. If, subsequently, the Contractor's progress, as shown by any succeeding monthly revision to the Contract Construction Schedule, is such that the anticipated delay no longer exists, the Owner shall pay with the Progress Payment next due to the Contractor such amounts as have been withheld in accordance with this paragraph.

13.12 The Owner shall have the right to perform Work, hire and employ labor and craftsmen, rent equipment, subcontract with other parties, or do anything that the Owner deems necessary or appropriate to remedy or cure any delay by the Contractor in the progress of the Work. Such action by the Owner shall not, in any way, affect, void or limit any warranty, guaranty or other responsibility of the Contractor under the Contract Documents. Such action may be taken by the Owner only after three (3) days written notice to the Contractor. All costs incurred by the Owner in taking any such action shall be charged to the Contractor and deducted from any amounts remaining due under the Agreement.

13.13 The Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Sum) for delays arising from unforeseen causes beyond the control and without the fault or negligence of the Owner, the Contractor or the Contractor's Subcontractors as follows:

a) Labor disputes and strikes that directly impact the critical path activities of the Contract Construction Schedule;

b) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damage completed Work or stored materials.

c) Acts of the public enemy; acts of the State, Federal, or local government in their sovereign capacities.

d) Abnormal inclement weather as defined in Article 13.14.

13.14 On any day that the Contractor considers that the Project is delayed by adverse weather conditions, the Contractor shall identify in writing to the Designer and the Owner the adverse weather conditions affecting each activity, the specific nature of the activity affected, the number of hours lost, and the number of and identity (by responsibility or trade) of workers affected and shall obtain from the Designer written recognition of the delay. The time for performance of this Contract includes an allowance for a number of calendar days which may not be suitable for construction Work by reason of adverse weather. The Contract Time will be extended only if the number of calendar days of adverse weather recognized by the Designer exceeds the number of inclement weather days set forth below, and the Contractor demonstrates how this adverse weather impacts activities on the critical path of the Contract Construction Schedule. Month Number of Inclement Weather Days

January	10
February	10
March	10
April	9
May	10
June	9
July	11
August	10
September	8
October	7
November	8
December	9

13.15 If the Contractor believes that the progress of the Work has been adversely affected by adverse weather recognized by the Designer during a particular month, the Contractor shall submit a written request for extension of time to the Designer. Such a request for time extension of the Contract Time shall be submitted by the tenth (10th) day of the month following that month in which the adverse weather is encountered. The request shall include, but is not limited to, the following information: a) Detailed description of weather's effect on scheduled activities and its net effect on the critical path of the Project, and b) Weather records from the official weather station nearest the Project site and records of actual observation as contained in daily reports, correspondence, or other documentation.

13.16 The Contractor specifically recognizes that a delay by the Contractor in achieving any Completion Date can have the effect of delaying the Substantial Completion of the Project, that such delay in Substantial Completion of the Project will necessarily cause damages, losses, and expenses to the Owner, including, but not limited to and by way of illustration only, increased capitalized costs and interests for the Project, increased and extended Project overhead, Designer's and Consultant's fees, increased costs of construction, increased and extended operation costs of other facilities, and inefficiency and loss of productivity, and that such damages, losses, and expenses may not be readily identifiable or ascertainable at the time they are incurred or at any time. Therefore, and in recognition of these factors and the likelihood that actual damages from his delay will not be readily ascertainable, the Contractor agrees to pay to the Owner, as Liquidated Damages and not as a penalty, the sum identified in the Contract Documents hereto as the Liquidated Damages per Day, for each day by which the failure to meet any Completion Date shown in the Contract Construction Schedule, adjusted in accordance with this Article, delays the Substantial Completion of the Project.

13.17 The Contractor shall not be entitled to any adjustment in the Contract Price or other compensation from the Owner for any delay in the completion of or progress on the Work that is caused by a force majeure condition or is otherwise not caused by the sole and direct act or omission of the Owner and the Owner’s employees or agents.

13.18 The sum for Liquidated Damages is the amount stated in the Contract Documents as Liquidated Damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of said Contractor(s) to complete the Work within the time specified, such time being in the essence of this contract and a material consideration thereof.

ARTICLE 14. CHANGES IN THE WORK

14.1 Without invalidating the Contract Documents, the Owner may, at any time, or from time to time order additions, deletions, or revisions in the Work. Said additions, deletions, or revisions shall be authorized only by written Change Orders, Construction Change Directives or Field Orders. Upon receipt of a Change Order, Construction Change Directive or Field Order, the Contractor shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any change causes an increase or decrease in the Contract Price and/or an extension or shortening of the Contract Time, adjustments shall be made as provided in Article 14 and/or Article 15. In order to expedite the Work and avoid or minimize delay in the Work that might affect the Contract Price or Contract Time, the Designer may issue a Change Order in the form of a Construction Change Directive which when signed by the Owner and Designer, directs the Contractor to proceed promptly with the Work involved. Any claim for an adjustment in Contract Price or Time, if not defined in the Construction Change

Directive, shall be promptly made in writing in accordance with the procedures defined in Article 15.2.

14.2 The Designer may authorize minor changes or alterations in the Work not involving change in the Contract Price or in the Contract Time and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. Such alterations shall not invalidate the Contract Documents nor release the surety. If the Contractor believes that any minor change or alteration authorized by the Designer entitles him to an increase in the Contract Price and/or an extension of Contract Time, he may make a claim therefore as provided in Article 14 and/or Article 15.

14.3 Except in an emergency endangering life or property, no change shall be made by the Contractor except upon prior written Change Order, Directive or Field Order authorizing such Change.

14.4 Increases in the Contract Price and/or extensions of the Contract Time for additional Work performed by the Contractor shall only be in accordance with a written Change Order signed by the Owner and Designer. The Contractor shall not be entitled to additional time or to additional compensation for any Work performed or material supplied which is claimed to have been authorized or settled by an "oral" change, or by a "constructive" or "implied" change, or by a course of conduct, or by any action or non-action by the Owner, Designer, or any other persons, or by any means whatsoever other than by a written Change Order for such Work or material signed by the Owner and the Designer.

14.5 Changes in the Work resulting from emergency shall not invalidate the Contract Documents nor release the surety.

14.6 Neither the Owner nor the Designer shall be responsible for verbal instructions which have not been confirmed in writing, and in no case shall such instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a proper Change Order, Construction Change Directive or Field Order, whether or not the cost is affected.

14.7 The Owner, in its sole discretion, may require that the Contractor notify the Contractor’s sureties of any changes affecting the general scope of the Work or change in the Contract Price, and that the amount of applicable bonds shall be adjusted accordingly. If this requirement is exercised, the Contractor shall furnish proof of such adjustment to the Designer and the Owner.

If this requirement is exercised, the Change Orders shall require written consent of the Contractor's surety. At the time of signing a Change Order, the Contractor shall be required to certify as follows: "I certify that all sureties have been notified that my contract has been altered by the amount of this Change Order, and that a copy of the approved Change Order will be mailed to all sureties upon its receipt by me." If this requirement is exercised, no payment to the Contractor on account of any Change Order shall become due or payable until written evidence of the surety's consent to the Change Order has been furnished to the Designer and to the Owner, and the furnishing of such written consent is a condition precedent to such payment.

14.8 The Contractor shall support all requests for Change Orders with a detailed cost breakdown showing cost of materials, labor, equipment, transportation, other items, Contractor's overhead and profit, and total cost, in accordance with methods defined in this Article, and, if the request seeks an extension of the Contract Time, with a time-related diagram which demonstrates specifically why an increase in construction time is needed.

14.9 When a request for a Change Order involves a Subcontractor, the Contractor shall provide quotation from same on Subcontractor's letterhead. The Subcontractor's quote shall list materials, equipment, and labor separately, and show overhead and profit in the manner provided in paragraph 14.8.

ARTICLE 15. CHANGE OF THE CONTRACT PRICE

15.1 The Contract Price constitutes the total compensation payable to the Contractor for performing all Work under the Contract Documents. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order.

15.2 Any claim for an adjustment in the Contract Price shall be in writing and written notice of any event, action, or non-action which may become the basis of a claim shall be delivered to the Owner and the Designer within three (3) days of the occurrence of any such event, action or non-action giving rise to the claim. Such written notice is a condition precedent to the making of a claim, and such notice shall describe the basis of the potential claim with reasonable detail and clarity.

A claim shall be made in writing and shall be delivered to the Designer and the Owner no later than fourteen (14) days after such notice. The claim shall describe in detail the basis for the claim, with specific reference to any provisions of the Contract Documents, by paragraph, drawing number, or other specific identification, and shall state the amount claimed and how it is calculated. If the Contractor, at the time the claim is made, is unable to state the amount claimed with accuracy, the Contractor shall so state and provide the estimated amount and the basis on which the amount is to be calculated. At the earliest date practicable, but in no event more than thirty (30) days after Contractor's notice of claim, the Contractor shall supplement the claim with an accurate statement of the amount claimed and how it has been calculated. The Contractor shall provide, in writing, in support of the claim all such explanations, arguments, data, receipts, expert opinions, or other documents or information as the Contractor deems appropriate to be considered in support of the claim.

A claim may properly be rejected by the Owner by reason of the Contractor's failure to submit adequate or accurate documentation or information, except that within seven (7) days after being given notice that the claim has been rejected on this basis, the Contractor may submit additional documentation or information. No claim for a change of the Contract Price shall be considered or granted (except solely at the discretion of the Owner) unless a claim is so made, nor shall the Contractor be entitled to any increase in the Contract Price unless the Contractor has given notice and made such a written claim within the times required. The Owner shall decide, after obtaining the advice of the
Designer, whether an increase in Contract Price is warranted, and the amount of such increase shall be determined as provided in paragraph 15.4 through 15.5, below. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The Owner shall advise the Contractor of its decision with respect to the claim within fourteen (14) days of its receipt, or of the receipt of additional documentation or information if the absence of such has previously been the basis of rejection of the claim; provided, however, that if, in its sole discretion, the Owner deems that review or consideration of any part of the claim or any matter related thereto by its governing Board is necessary or appropriate, it shall so advise the Contractor and shall provide its decision to the Contractor within seven (7) days after such Board consideration, review or action. Any claim on which the Owner has not provided its decision to the Contractor within the applicable time period shall be deemed denied. If the Contractor is not satisfied with the decision of the Owner, the Contractor may within seven (7) days of receipt of the Owner's decision initiate the mediation process as described in Appendix A to the General Conditions of the Contract for Construction.

15.3 In determining the amount of a Contract Price adjustment, the parties shall apply the following methods, as appropriate:

(A) Change in Work: The Owner and Contractor shall negotiate in good faith and attempt to agree upon the value of any change (extra or decrease) in Work prior to the issuance of a Change Order covering said Work. Such Change Order shall set forth the corresponding adjustment to the Contract Price. In the event the Owner and the Contractor are unable to agree, the Owner shall grant an equitable adjustment in the Contract Price.

(B) Emergency Work: In the event of emergency endangering life or property, the Contractor may be directed by the Designer to proceed on a time and material basis, whereupon the Contractor shall so proceed and keep accurately, in such form as may be required by the Designer, a correct account of costs together with all proper invoices, payrolls, and supporting data therefore.

15.4 Where the Contract Price is to be adjusted, the following limitations shall apply in determining the amount of adjustment:

(A) In the case of extra or emergency work, the Contract Price shall not be increased by more than the reasonable, actual, and documented net cost of the extra or emergency work plus ten percent (10%) of such net cost on Work performed by the Contractor and five percent (5%) thereof on any subcontracted Work for overhead and profit combined.

(B) In the case of a decrease in Work, the Contract Price shall not be decreased by less than the net cost of the deleted Work plus five percent (5%) of such direct net cost for profit and overhead.

The term 'net cost' as used herein shall include, as applicable, and shall be limited to, all direct labor, direct material, direct equipment, labor burden, sales taxes, shipping and handling charges, permits and fees, and insurance and bond premium adjustments, if any, attributable to the change. All other items of cost shall be considered as overhead and covered by the percentages allowed in sections A and B of this paragraph.

The Contractor shall provide worksheets or tabulations describing the method by which the direct net cost was calculated, and shall provide all data needed to support the calculation of the direct net cost, all in a form acceptable to the Owner.

15.5 Where the Contract Price is to be adjusted by negotiation, the Owner may authorize and designate the Designer to negotiate with the Contractor on behalf of the Owner; provided, however, any agreement reached between the Contractor and Designer shall be subject to approval by the Owner.

ARTICLE 16. UNFORESEEN CONDITIONS

16.1 Should the Contractor encounter unforeseen conditions at the Project site materially differing from those shown on the Drawings or indicated in the Specifications or differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, the Contractor shall immediately, and in no event more than three days later, give notice to the Owner of such conditions before they are disturbed. The Owner and the Designer shall thereupon promptly investigate the conditions and if they find that they materially differ from those shown on the Drawings or indicated in the Specifications, they shall at once make such changes in the Drawings and/or Specifications as they may find necessary. Any increase or decrease in the Contract Price resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes. However, neither the Owner nor the Designer shall be liable or responsible for additional work, costs, or changes to the Work that could have been reasonably determined from any reports, surveys, and analyses made available for the Contractor's review or that could have been discovered by the Contractor through the performance of its obligations pursuant to the Contract Documents.

ARTICLE 17. CORRECTION OF WORK BEFORE FINAL PAYMENT

17.1 The Owner has the authority to stop or suspend work, and the Designer has the authority to order Work removed or to order corrections of defective Work or Work not in compliance with the Contract Documents where such action may be necessary to ensure successful completion of the Work.

Any work, materials, fabricated items, or other parts of the Work which have been found by the Designer to be defective or not in accordance with the Contract Documents shall be condemned and shall be removed from the Project by the Contractor, and immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Owner. Work or property of the Owner or others damaged or destroyed by virtue of such condemned Work shall be made good at the expense of the Contractor. Correction of condemned Work described above shall be commenced by the Contractor within twenty-four (24) hours after notice from the Designer or the Owner and shall be pursued to completion. Should the Contractor fail to proceed reasonably with the abovementioned corrections, the Owner may, three (3) days after the notice specified in the preceding sentence, proceed with correction, paying the cost, including costs of uncovering such condemned Work, of such corrections from amounts due or to become due to the Contractor.

Condemned Work removed shall be the property of the Contractor and shall be removed from the Project by him within ten (10) days after notice to remove it, and if not then removed, thereafter may be disposed of by the Owner without compensation to the Contractor and the

cost of such disposal shall be deducted from amounts due or to become due to the Contractor. Should the cost of correction of the Work and, if applicable, disposal of the condemned Work by the Owner exceed amounts due or to become due the Contractor, then the Contractor and the Contractor's sureties shall be liable for and shall pay to the Owner the amount of such excess.

ARTICLE 18. CORRECTION OF WORK AFTER SUBSTANTIAL COMPLETION; WARRANTIES AND GUARANTIES

18.1 Neither the final certificate, Final Payment, occupation of the premises by the Owner, nor any provision of the Contract Documents, nor any other act or instrument of the Owner or the Designer shall relieve the Contractor from responsibility for negligence, defective material or workmanship, or failure to comply with the Contract Documents.

18.2 The Contractor shall, at the Contractor's sole cost and expense, make all necessary repairs, replacements, and corrections of any nature or description, interior or exterior, structural or non-structural, that shall become necessary by reason of defective workmanship or materials which appear within a period of one (1) year from the date of Substantial Completion; provided, however that notwithstanding the preceding, if any longer guarantee period is specified for any particular materials or workmanship under the Contract Documents, or under any subcontract, or in connection with any manufactured unit which is installed in the Project, or under the laws of the State of North Carolina, the longer guarantee period shall govern.

18.3 If, within any guarantee period, repairs or changes are required in connection with the Work, which are rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract Documents, the Contractor shall, promptly upon receipt of notice from the Designer and without expense to the Owner:

a) Completely repair or replace the Work so that it conforms to the Contract Documents;

b) Correct all defects therein;

c) Make good all damage which, in the opinion of the Designer, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract Documents; and

d) Make good any Work or material, or any equipment or contents disturbed in fulfilling any such guarantee.

If, in fulfilling the requirements of the Contract Documents or of any guarantee embraced therein or required thereby, the Contractor disturbs any work, facility, premises, or construction belonging to the Owner, the Contractor shall restore such disturbed work to a condition satisfactory to the Owner, and shall guarantee such restored work to the same extent as if it were Work under the Contract Documents.

If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected, and the Contractor and the Contractor's

ureties shall be liable for all expenses incurred. "Promptly" is defined as within twenty-four (24) hours for systems necessary to normal operation of the building and within seventy-two (72) hours for all other items. All special guarantees applicable to definite parts of the Work that may be shown in or required by Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee. Manufacturer's standard guarantees or warranties which do not comply with the time limit specified herein shall be extended by the Contractor automatically without further action on the part of the Owner or the Designer.

18.4 In the eleventh calendar month after the date of Substantial Completion, and at the request of the Owner, the Contractor, the Owner and the Designer shall make an inspection of the Work for the purpose of identifying defective workmanship and/or materials. If the Contractor, having been requested to do so by the Owner, fails to participate in such inspection, the Contractor shall be conclusively bound by any decision or ruling by the Designer as to any defective workmanship or material and as to the Contractor's responsibility for its repair or replacement.

ARTICLE 19. OWNER'S RIGHT TO DO WORK

19.1 If, during the progress of the Work or during any period of guarantee, the Contractor fails to prosecute the Work properly or to perform any provision of the Contract Documents, the Owner, after three (3) days written notice to the Contractor from the Designer, or from the Owner after Final Payment, may perform or have performed that portion of the Work and may deduct the cost thereof from any amounts due or to become due the Contractor. Notwithstanding any action by the Owner under this paragraph, all warranties and bonds given or to be given by the Contractor shall remain in effect or shall be given by the Contractor.

19.2 Should the cost of such action by the Owner exceed the amount due or to become due the Contractor, the Contractor and his sureties shall be liable for and shall pay to the Owner the amount of such excess.

ARTICLE 20. PARTIAL PAYMENTS

20.1 Within thirty (30) days after his initial receipt of the Construction Contract for signatures, the Contractor shall submit to the Designer a Schedule of Values. The Schedule of Values shall indicate the value of the Work, including applicable overhead and profit, for each Division and section of the Project Specifications. The Designer and Owner shall be provided with the Contractor's estimate papers, Subcontractor agreements, supplier quotes, or other documents substantiating these values if so requested in writing by the Designer. The Contractor shall provide the requested documentation within seven (7) days after receipt of the Designer's written request. The Schedule of Values shall be subject to approval by the Owner, and if the Owner and the Contractor cannot agree upon the Schedule of Values, the Designer shall prepare it, and the Schedule of Values as prepared by the Designer shall be binding on the Owner and the Contractor. No Request for Payment shall be certified by the Designer until the Designer has issued approval of said Schedule of Values.

20.2 Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the Designer a Request for Payment for Work done during the previous calendar month. The Request for Payment shall be in form of AIA Document G702 (latest edition) and shall show substantially the value of Work done (including the value of material delivered to the Project or stored by the Contractor at another site, subject to the conditions hereinafter set forth) during

the previous calendar month, and shall sum up the financial status of the Work with the following information:

a) Total Contract Price, including any adjustment thereto made pursuant to the Contract Documents.

b) Value of Work completed and materials properly stored to date.

c) Less amount retained.

d) Less previous payments.

e) Current amount due.

f) Balance remaining.

The Contractor, upon request of the Designer, shall substantiate the request with invoices, vouchers, payrolls, or other evidence.

20.3 When payment is requested or made on an account of stored materials, such materials must be stored on the Owner's property at such places and in such a manner as may be designated by the Designer. However, in the sole discretion of the Owner, with permission in writing from the Designer and Owner and under such circumstances as may be determined by the Owner, such materials may be stored in a bonded warehouse. The location and conditions for storage of such materials away from the Owner's property in a bonded warehouse shall be within the sole discretion of the Owner. Requests for Payment on account of stored materials shall be accompanied by paid invoices, bills of sale, warehouse receipts, or other documentary evidence establishing Owner's title to such materials, evidence that the stored materials are insured against loss and damage, and such other documentation as required by the Designer. Responsibility for the quantity, quality, and condition of such stored materials, whether stored on the Owner's property or away from the Owner's property, shall remain with the Contractor regardless of ownership or title. No payment shall be made on account of materials stored in a bonded warehouse unless the Contractor has acquired written permission from the Designer for such storage of materials and has complied with all conditions set forth in such permission regarding such storage of materials in a bonded warehouse.

20.4 Any Request for Payment received by the Designer on or before the fifth (5th) of the calendar month shall be certified for payment or returned for re-submission to the Contractor on or before the fifteenth (15th) of the calendar month. The Designer's certification shall be for the amount which was requested or that which the Designer has decided was justly due, and shall state in writing to the Contractor and Owner the reasons for withholding payment of any or all of the amount requested.

20.5 The Designer may fail to certify all or part of any payment requested for any of the following reasons:

a) Defective Work not corrected.

b) Suits, actions, or claims of any character filed against the Contractor, or due to the operations of the Contractor, or information or notice that a suit, action, or claim will be filed or has been made.

c) Information or notice that a Subcontractor or a supplier has not received payment.

d) The balance unpaid of the Contract Price is insufficient to complete the Work in the judgment of the Designer or Owner.

e) Damage to the Owner or another contractor.

f) Inability of the Contractor to meet a Completion Date, including an anticipated failure to meet a Completion Date entitling the Owner to withhold anticipated Liquidated Damages in accordance with paragraphs 13.15 and 13.17 hereof.

g) Failure to furnish Submittal as required by the Contract Documents on a timely basis in accordance with the Submittal Register.

h) Such other reason as to the Designer may appear prudent, proper, or equitable. When grounds for withholding certification have been corrected, the Designer shall so certify to the Owner and the Owner shall make any payment due with respect to such certification as a part of his next payment after such certification.

20.6 No certificate issued or progress payment made shall constitute an acceptance of the Work or any part thereof.

20.7 The amount certified by the Designer for payment shall be ninety-five percent (95%) of the value of Work completed and materials stored since the Designer's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraph 20.4, and this amount shall be paid by the Owner on or before the last business day of the month, but payment shall not be past due until not paid within fifteen (15) days thereafter.

20.8 After certification by the Designer that the Work is fifty percent (50%) complete, based on a determination that the Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Contract, (except the value of materials stored on-site shall not exceed twenty percent (20%) of the Contractor's gross project invoices for the purpose of determining whether the Project is fifty percent (50%) complete) and the Contractor has provided to the Owner the written consent of its sureties to the cessation of further percentage retention, the amount certified for payment with respect to subsequent Requests for Payment shall be one hundred percent (100%) of the value of Work completed and materials stored since the Designer's last certification as shown on the Request for Payment, less any amounts not certified in accordance with paragraphs 20.4 and 20.5; provided, however, that the aggregate of periodic payments shall not exceed ninety-seven and one half percent (97.5%) of the Contract Price. If the Owner determines that the Contractor's performance under the Contract is unsatisfactory, the Owner may resume withholding percentage retention from each subsequent periodic payment application up to the maximum amount of five percent (5%) of the Contract Price.

ARTICLE 21. FINAL PAYMENT

21.1 If the Work of the Contractor is limited to demolition, pilings, caissons and/or structural steel, the remaining unpaid balance of the Contractor's Contract Price, less a sum equal to five-tenths percent (0.5%) of the Contract Price, shall be paid within sixty days following receipt of the following documents, all of which must be received before payment shall become due: (i) request for payment from the Contractor; (ii) receipt of consent from the Contractor's surety to the payment; and (iii) approval or certification from the Designer that the work performed by the Contractor is acceptable and in accordance with the Contract Documents.

21.2 Except as set forth in paragraph 21.1, within forty five days after Substantial Completion of the Project, the remaining unpaid balance of the Contract Price shall be paid to the Contractor, less an amount equal to two and one-half times the value of punch list work or other work remaining to be completed or corrected, as reasonably estimated by the Owner.

21.3 Upon Substantial Completion, the Designer shall prepare and submit to the Contractor a deficiency list identifying all portions of the Work which are known by the Designer at that time to be incomplete or defective. Within thirty (30) days of receipt of this deficiency list, the Contractor shall complete and correct all items on that list along with all other Work required to achieve Final Completion of the Work. At any time prior to completion of the period of warranty, the Designer may submit to the Contractor a supplemental deficiency list, in which case the Contractor shall complete or correct any and all new items identified on the supplemental deficiency list within the time period stipulated in paragraph 18.3.

21.4 Final Payment of any remaining balance of the Contract Price shall not be due to the Contractor until the Contractor achieves Final Completion of the Project.

21.5 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Owner except:

a) Claims arising from unsettled liens or claims against the Contractor.

b) Defective Work or materials appearing after Final Payment.

c) Failure of the Contractor to perform the Work in accordance with the Contract Documents.

d) As conditioned in the Performance Bond.

e) Claims made prior to Final Payment which remain unsettled.

f) Amounts due arising under Articles 18 and 28.

g) Claims for recovery of overpayment based upon incorrect measurement, estimate, or certificate.

21.6 The making and acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those claims previously made in writing pursuant to paragraph 15.2 and not finally resolved.

21.7 The Designer shall not authorize Final Payment until all of the Work under the Contract Documents has been certified by the Designer as completed, proper and suitable for occupancy and use, and has been approved by all federal, state and local agencies having jurisdiction.

21.8 The final Request for Payment shall be identified on its face as such and shall be presented by the Contractor to the Designer within thirty (30) days of completion of the Work. Final payment of the retained amount due the Contractor shall be made by the Owner within thirty (30) days after the later of (i) full and Final Completion of all Work required by the Contract Documents, and certification of such Work in accordance with paragraph 20.4; (ii) submission of the affidavits of other documentation required by Article 22; (iii) submission by the Contractor of a Request for Payment identified on its face as final and including the Designer's certification.

ARTICLE 22. CONTRACTOR, SUBCONTRACTOR AND SUPPLIER AFFIDAVIT

22.1 The Final Payment due the Contractor on account of the Contract Documents shall not become due until the Contractor has furnished to the Owner through the Designer: (A) an affidavit by the Contractor signed, sworn, and notarized to the effect that all payments for materials, services, or for any other reason in connection with the Work or performance of the Contract Documents have been satisfied and that no claims or liens exist against the Contractor in connection with the same; (B) affidavits from each Subcontractor and supplier signed, sworn, and notarized to the effect that (i) each such Subcontractor or supplier has been paid in full by the Contractor for all Work performed and/or materials supplied by him in connection with the Project, and (ii) that all payments for materials, services, and for any other reason in connection with the subcontract or supply contract have been satisfied and that no claims or liens exist against the Subcontractor or supplier in connection therewith; and (C) the written consent of the Contractor’s sureties to Final Payment. In the event that the Contractor cannot obtain an affidavit, as required above, from any Subcontractor or supplier, the Contractor shall state in the Contractor’s affidavit that no claims or liens exist against such Subcontractor or supplier to the best of the Contractor's knowledge, and that if any appear afterwards, the Contractor shall save the Owner harmless for all costs and expenses, including attorneys’ fees, on account thereof.

ARTICLE 23. ASSIGNMENTS AND SUBCONTRACTS

23.1 The Contractor shall not assign any portion of this Agreement nor subcontract the Work in its entirety without the prior written consent of the Owner. Except as may be required under terms of the bonds required by the Contract Documents, no funds or sums of money due or to become due to the Contractor under the Contract Documents may be assigned.

ARTICLE 24. MEASUREMENTS

24.1 Before ordering material or doing Work which is dependent for proper size or installation upon coordination with building conditions, the Contractor shall verify all dimensions and shall be responsible for the correctness of same. No consideration will be given for any claim based on differences between the actual dimensions and those indicated in the Contract Documents. Any discrepancies between the Contract Documents and the existing conditions shall be referred to the Designer for adjustment before any Work affected thereby is begun.

ARTICLE 25. CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

25.1 Within thirty (30) days after initial receipt of the Construction Contract for signatures the Contractor shall submit to the Designer and Owner for acceptance a current list of the names of Subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) proposed for any and all portions of the Work. The Contractor shall provide this list at this time even if the Contractor was required to submit a list of proposed Subcontractors with the Contractor's bid. The Designer shall promptly reply to the Contractor in writing stating whether or not the Owner or the Designer, after due investigation, has objection to any such proposed person or entity or if it needs additional information to evaluate the persons on the list. Failure of the Designer to reply within ten (10) days after the Contractor has furnished all required information shall constitute notice of no objection.

The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Designer has made reasonable objection. If the Designer or Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner and the Designer have no reasonable objection. The Contractor shall make no substitution for any Subcontractor, person, or entity previously allowed without first notifying the Designer and Owner in writing and no substitution may be made if the Owner or Designer makes a reasonable objection to such substitution.

25.2 The Contractor agrees that the terms of the Contract Documents, including all portions thereof, shall apply to all Subcontractors of the Contractor as if they were the Contractor, and that the Subcontractors of the Contractor shall, by means of their subcontracts, be bound by all the terms of the Contract Documents including, but not limited to, Article 26 of these General Conditions.

25.3 Payments to Subcontractors shall be made in accordance with the provisions of N.C. Gen. Stat. §143-134.1.

ARTICLE 26. USE OF PREMISES

26.1 The Contractor shall confine apparatus, the storage of materials, the operations of workers, and the disposal of material to limits indicated by law, ordinances, permits, and directions of the Designer, if any.

26.2 The Contractor shall not load or permit any part of the Work to be loaded with a weight that will endanger its safety, intended performance, or configuration.

26.3 The Contractor shall enforce all of the Designer's instructions, including, but not limited to, those regarding signs, advertisements, fires, and smoking.

ARTICLE 27. CUTTING, PATCHING AND FITTING

27.1 The Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and fit it to receive or to be received by Work shown in or which can be reasonably implied from the Contract Documents.

ARTICLE 28. DISPUTE RESOLUTION

28.1 The laws of the State of North Carolina shall apply to the interpretation and enforcement of this Agreement. Any and all suits or actions to enforce, interpret, or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Orange County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions. Prior to initiating an action under this Article, any Party to this Agreement shall notify the other Party of its intent to initiate a mediation process. In any such mediation process the Parties should agree upon a North Carolina certified mediator. Should the Parties be unable to agree upon a mediator within fifteen (15) days of the notice of intent to initiate a mediation process Orange County may select such mediator. The Parties shall be jointly responsible for the costs of any such mediation. In the event the Parties are unable to resolve any dispute resulting in mediation pursuant to this Article then either Party to the mediation may initiate action in the General Court of Justice. Regardless of the outcome of any dispute each Party shall be responsible for its own legal costs including reasonable attorneys' fees.

28.2 Any person or firm that expressly or impliedly agrees to perform labor or services or to provide material, supplies, equipment, work, performance or payment bonds, insurance or indemnification for the construction of the Project or the Work shall be deemed a party to this Agreement solely for the purpose of this Article 28. The Contractor, by means of its subcontracts, shall specifically require its Subcontractors to be bound by this Article.

ARTICLE 29. TAXES

29.1 The Contractor has included in the Contract Price and shall pay all taxes assessed by any authority on the Work or the labor and materials used therein. The Contractor shall maintain all tax records during the life of the Project and furnish the Owner with a complete listing of all taxes paid by taxing authority, invoice number, date, amount, etc. in a form acceptable to the Owner. The Contractor is required to maintain a file showing taxes paid on the Project for three (3) years after Final Payment or turn said documents over to the Owner for his files.

29.2 The following is a list of requirements to be followed by the Contractor in maintaining proper records and reporting the North Carolina Sales and Use Tax and Local Sales and Use Tax. The Contractor shall comply fully with the requirements outlined below, in order that the Owner may recover the amount of the tax permitted under the law.

a) It shall be the Contractor's responsibility to furnish the Owner documentary evidence showing the materials used and sales and use tax paid by the Contractor and each of his Subcontractors. Such evidence shall be transmitted to the Owner with each pay request regardless of whether taxes were paid in that period.

b) The documentary evidence shall consist of a certified statement by the Contractor and each of the Contractor's Subcontractors individually, showing total purchases of materials from each separate vendor and total sales and use taxes paid to each vendor. Certified statements must show the invoice number, or numbers, covered, and inclusive dates of such invoices.

c) Materials used from Contractor's or Subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.

d) The Contractor shall not be required to certify the Subcontractor's statements.

ARTICLE 30. OPERATION OF OWNER'S FACILITIES

30.1 The Contractor agrees that all Work done under the Contract Documents shall be carried on in such a manner so as to ensure the regular and continuous operation of the adjoining or adjacent facilities. The Contractor further agrees that the sequence of operations under the Contract Documents shall be scheduled and carried out so as to ensure said regular and continuous operation. The Contractor shall not close any areas of construction until so authorized by the Designer. The Contractor shall control operations to assure the least inconvenience to the public. Under all circumstances, safety shall be the most important consideration.

ARTICLE 31. THIRD PARTY BENEFICIARY CLAUSE

31.1 It is specifically agreed between the parties executing the Agreement that, with the specific exception set forth paragraph 7.24 hereof, and that exception only, the Contract Documents and the provisions therein are not intended to make the public, or any member thereof, a third-party beneficiary of the Agreement, or to authorize anyone not a party to the Contract Documents to maintain a suit for personal injuries or property damage pursuant to the terms of provisions of the Contract Documents.

ARTICLE 32. MEASUREMENT OF QUANTITIES

32.1 All Work completed under the Contract Documents shall be measured by the Contractor using United States customary units of measurement. The method of measurement and computations to be used in determination of quantities of material furnished and of Work performed under the Contract Documents shall be those methods set forth in the Contract Documents or, if not specifically set forth therein, the method generally recognized as conforming to good engineering practice.

ARTICLE 33. TERMINATION BY THE OWNER FOR CAUSE

33.1 If the Contractor fails to begin or complete the Work under the Contract Documents within the time specified, or fails to perform the Work with sufficient labor and equipment or with sufficient materials to insure the prompt completion of said Work, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work for three (3) days, or if the Contractor shall become insolvent, be declared bankrupt, commit any act of bankruptcy or insolvency, allow any final judgment to stand against the Contractor or its affiliated companies unsatisfied for a period of forty-eight (48) hours, make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner, the Owner may give notice in writing to the Contractor and the Contractor’s sureties of such delay, neglect, or default, specifying the same, and if the Contractor within a period of three (3) days after such notice shall not proceed in good faith and with reasonable speed to correct such delay, neglect, or default in accordance with such notice, the Owner shall have full power and authority, to the extent permitted by law, without violating the Contract Documents, to take the prosecution of the Work out of the hands of the Contractor, to appropriate or use any or all materials and equipment at the Project as may be suitable and acceptable, and may enter into an agreement for the completion of the Work or pursue such other methods as in the Owner's opinion shall be necessary or appropriate for the completion of the Work in an acceptable

manner. All costs and charges incurred by the Owner in proceeding in accordance with the preceding sentence, including attorney's fees, and all costs incurred by the Owner in completing the Work shall be deducted from any money due or which becomes due the Contractor. If such costs and expenses incurred by the Owner shall be less than the sum which would have been payable under Contract Documents if it had been completed by the Contractor, then the Contractor shall be entitled to receive the difference, but if such costs and expenses shall exceed the sum which would have been payable under the Contract Documents, the Contractor and the Contractor’s surety shall be liable to the Owner for and shall pay to the Owner the amount of such excess.

ARTICLE 34. TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

34.1 The Owner may, without cause, order the Contractor to terminate, suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

34.2 If the Contractor is subsequently ordered by the Owner to resume the Work, any cost or expenses to which the Contractor may be entitled by reason of the suspension, delay, or interruption shall be recovered by means of a Change Order in accordance with Articles 13 and 14 hereof and the Contract Construction Schedule shall be adjusted in accordance with Article 13 hereof.

34.3 In the event of termination by the Owner under this Article, the Contractor shall be entitled to receive the reasonable and documented direct costs incurred prior to termination, including the cost of materials purchased for the Work which purchases cannot be canceled or which material cannot reasonably be used by the Contractor on other work, and the cost of closing down the Project in a safe and efficient manner, plus ten percent (10%) thereof for overhead and profit, subject to the following conditions:

a) When the Contract is terminated before completion of all items of Work, payment shall be made for the actual number of units or items of Work completed at the applicable contract prices, or as mutually agreed for items of Work partially complete. If a mutual agreement cannot be reached, the Owner shall have the authority to make such equitable adjustment as it deems warranted and the Final Payment shall be made accordingly.

b) Reimbursement for organization of any Work and moving equipment to and from the job shall be considered when not otherwise provided for in the Contract Documents where the volume of completed Work is too small to compensate the Contractor for those expenses under unit prices. If a mutual agreement cannot be reached, the Owner will have the authority to make such equitable adjustments as it deems warranted and the Final Payment will be made accordingly.

c) Materials obtained by the Contractor for the Work that have been inspected and accepted by the Designer and that are not incorporated in the Work shall, at the request of the Contractor, be purchased from the Contractor at the Contractor's actual cost as shown by receipted bills and actual costs records at such points of delivery as may be determined by the Owner.

d) No payment shall be made by Owner to Contractor except as herein above provided. No claim for loss of anticipated profits shall be considered or allowed.

e) Termination of the Contract shall not relieve the Contractor of his responsibilities for any completed portion of the Work nor shall it relieve his sureties of their obligation for and concerning any just claims arising out of the Work performed. The Contractor shall not be entitled to any other compensation, including compensation for lost profit, lost opportunity, or any other direct or consequential cost, loss, or damage.

ARTICLE 35 MINORITY BUSINESS ENTERPRISE PROGRAM

35.1 The Contractor shall at all times comply with the Orange County Minority Business Enterprise Policy. All documentation substantiating compliance with the requirements of this program shall be delivered to the Owner as stipulated in the Contract Documents. A copy of the Orange County Minority Business Enterprise Policy is included in the Project Manual.

ARTICLE 36 E-VERIFY

36.1 Pursuant to the terms of North Carolina General Statute 153A-449(b) no county may enter into a contract with a contractor unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Where applicable, failure to maintain compliance with the requirements of Article 2 of Chapter 64 of the General Statutes constitutes Contractor's breach of this Agreement. Contractor affirms Contractor is in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes.

ARTICLE 37 GENERAL

37.1 If any provision of the Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

37.2 The titles to Articles herein are for convenience only, are not substantive parts of the General Conditions, and are not to be considered in interpreting the Contract Documents.

END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 7-b

SUBJECT: Solid Waste Service Tax District for Recycling

DEPARTMENT: Solid Waste Management **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):

Letter to Property Owners
Report Filed in Clerk to Board's Office Including Map
Frequently Asked Questions – Revised April 4, 2014
Resolution to Establish a Solid Waste Service District

INFORMATION CONTACT:
Michael Talbert, 919-245-2308
Gayle Wilson, 919-968-2885
John Roberts, 919-245-2318

PURPOSE: To discuss issues surrounding the establishment of a Solid Waste Service Tax District to fund the rural curbside/roadside recycling collection service, including information received during two Public Hearings, and to decide the method of funding for this County-provided program.

BACKGROUND: In 2004 the Board of Commissioners approved a new method of funding for the every other week curbside/roadside recycling collection program for about 13,000 residences in unincorporated Orange County. At that time the Board adopted a fee to fund the program, called a Rural 3-R Fee, that all eligible residences were billed annually on their tax bills. The fee was assessed to all eligible for the service, regardless of whether or how often a resident used the service.

In 2012 the County Manager and the County Attorney advised the Board that they had concerns regarding the statutory justification for assessing this fee and recommended that the Board eliminate the fee and consider other ways to fund that program. The 2012 tax bill was the last time the fee was assessed. The fee was $38/year. In 2013 the Board provided interim funding for the program from landfill reserves.

Over the next several months, the Board discussed various options on how to address this funding problem. Elimination of the program was even considered, but unanimously abandoned due to measured participation of the rural community of about 57%. Some residents eligible for this service chose not to recycle. Others delivered their recycling to convenience centers, and a very few employed private haulers. It was also considered that the service was important in order to meet the County's aggressive waste reduction goal of 61%.

After considering and rejecting numerous funding alternatives, in December 2013, the Board indicated intent to implement a solid waste service district tax as the means to replace the

funding lost when the fee was eliminated. One of the services discussed in March 2013 was a proposal to franchise waste and recyclables collection in unincorporated Orange County. The Board, following vigorous public opposition, eliminated that option from further consideration. The Board also recently discussed a subscription service option whereby those residents who wanted to retain the service could pay and those who wished not to pay could voluntarily opt-out. This opt-out or subscription based service is also still under consideration.

State statutes require a public hearing to be held prior to a Board adopting a service district, and the property owners of all parcels to be included in the district must be notified by letter of the hearing. The Board conducted two public hearings:

- March 18 at 6:00 PM at the Southern Human Services Center, 2501 Homestead Road in Chapel Hill; and
- April 1, 2014 at 6:00 PM at the Orange County Social Services Center, Hillsborough Commons, 113 Mayo Street in Hillsborough

A funding decision with regard to the every other week curbside/roadside recycling collection program must be made and adopted prior to July 1, 2014 in order for this recycling service to continue. In order not to delay delivery of 2014 property tax notices, the Board has been advised to pursue a final decision at the April 15 regular meeting, or the earliest possible opportunity.

Considerable input has been received by the Board and the distinctions (advantages and disadvantages) between a Solid Waste Service District and an opt-out type service have been provided. The key elements from a staff perspective, including those gleaned from public input and Board discussions, include:

- Stable, predictable and sufficient source of funding to support a quality, high performing rural recycling program
- Fairness and equity
- Ability to maintain or advance county environmental and waste reduction goals
- Administrative and operational efficiency of program

A service district could be implemented by July 2014, with the expanded 1,650 residences and the distribution of roll carts to those who request them could be implemented in November/December of 2014. The opt-out funding option would require about six months of administrative and operational planning and resident communication to establish, requiring an interim funding source of about $350,000.

FINANCIAL IMPACT: If the solid waste service district is adopted, it is estimated that the district tax rate would be about 1.5 cents per $100 dollars of assessed value of the property. For example, property with an assessed value of $100,000 would pay about $15/year in service district tax. An opt-out (subscription) program is less predictable and could be expected to initially result in a fee of between $90-$100/year per subscriber, but it is likely that this rate would increase over time if participation approaches that experienced elsewhere in North Carolina.

RECOMMENDATION(S): The Manager recommends that the Board consider approving and authorizing the Chair to sign the attached resolution to establish a Solid Waste Service Tax District and direct staff to proceed with implementation of the district, or provide alternative direction to staff on next steps and funding options.

February 14, 2014

Re: Public Hearing to discuss Solid Waste Service Tax District

Dear Property Owner

On February 4, 2014 the Orange County Board of Commissioners voted to hold two Public Hearings to consider the establishment of a Solid Waste Service Tax District effective July 1, 2014. You are receiving this letter because your property is located in the proposed Solid Waste Service Tax District. A Notice of the Public Hearing and a map of the proposed new Solid Waste Service Tax District are attached.

The Solid Waste Service Tax District is being considered as a means to improve curbside recycling services in the county's unincorporated area. For those residents currently located within the rural curbside recycling service area and eligible for curbside recycling services, the tax district will replace the annual $38/household Rural 3-R Fee, which was assessed on the property tax bill from 2004 to 2012. A report, as required by North Carolina General Statute 153A-302(b), containing additional information related to the proposed Solid Waste Service Tax District is available for public inspection in the office of the Clerk to the Board – 200 South Cameron Street, Hillsborough (open 8:00AM to 5:00PM), beginning February 14, 2014.

The first Public Hearing will take place on March 18, 2014 at 6:00PM at the Southern Human Services Center, 2501 Homestead Road, Chapel Hill, 27516. A second Public Hearing will take place on April 1, 2014 at 6:00PM at the Social Services Center, Hillsborough Commons, 113 Mayo Street, Hillsborough, 27278. A brief presentation will be made at 6:00PM to be followed by public comments.

Please feel free to contact Gayle Wilson in the Solid Waste Management Department Office if you need additional information at 919-968-2885 or gwilson@orangecountync.gov

NOTICE OF PUBLIC HEARINGS
ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

Pursuant to the requirement of the General Statutes of North Carolina, Chapter 153A-302(c) notice is hereby given that the Board of County Commissioners will hold a Public Hearing at the Southern Human Services Center located at 2501 Homestead Road, Chapel Hill, North Carolina 27516, on Tuesday March 18, 2014 at 6:00 p.m.; and a second Public Hearing at the Social Services Center, Hillsborough Commons, 113 Mayo Street, Hillsborough, North Carolina, 27278, on Tuesday April 1, 2014 at 6:00 p.m. for the purpose of taking specific action on the following item:

Creation of a Solid Waste Service District

1. A report prepared on the proposed district as required by N.C.G.S. 153A-302(b) may be inspected in the Office of the Clerk to the Board of County Commissioners located in the John Link Government Services Building located at 200 South Cameron Street, Hillsborough, North Carolina between 8:00 a.m. and 5:00 p.m., Monday through Friday.
2. A map of the proposed Solid Waste Service District is attached.

Questions regarding the proposed solid waste service district may be directed to the office of Gayle Wilson located in the Solid Waste Management Department administrative offices at 1207 Eubanks Road, Chapel Hill, North Carolina, 27516. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday. You may also call (919) 968-2885.

Solid Waste Service District Report
February 13, 2014

Consistent with General Statute 153A-302 Orange County Commissioners provide this report regarding the proposed Solid Waste Service District that would be established to provide recycling services.

1) **Map of proposed district – Attached**

2) **The Board of Commissioners will consider the following prior to making a final decision with regard to the district:**

   a. **The resident population of the proposed district is estimated at 35,992. The estimated population density of the proposed district is 211 people per square mile.**

   b. **The total appraised value of the properties subject to taxation in the proposed district is $4,478,900,424.**

   c. **2013 County Tax Rates are:**

RC	Total Rate	Combination
00	0.009316	County Tax + Orange Fire Tax
01	0.00946	County Tax + White Cross Fire
02	0.011544	County Tax + C.H. Sch. Dst. +White Cross Fire Tax
03	0.00928	County Tax + Efland Fire Tax
04	0.011664	County Tax + C.H. Sch.Dst. + South Orange Fire Tax
06	0.00958	County Tax + South Orange Fire
07	0.011609	County Tax + C.H. Sch. Dst. + New Hope Fire Tax
08	0.009525	County Tax + New Hope Fire Tax
09	0.009379	County Tax + Eno Fire Tax
10	0.00918	County Tax + Orange Grove Fire
11	0.011264	County Tax + C.H. Sch. Dst. + Orange Grove Fire Tax
14	0.012164	County Tax + C.H. Sch. Dst. + Chapel Hill Fire Tax
15	0.008986	County Tax + Little River Fire
16	0.009316	County Tax + Cedar Grove Fire
17	0.011544	County Tax + C.H. Sch. Dst. + Southern Triangle Fire Tax
19	0.011544	County Tax + C.H. Sch. Dst. + Damascus Fire Tax

d. **According to the U.S. Census Bureau, median household income for the zip codes comprising the proposed district is as follows:**

Zip code	Income
27231	35,962
27278	61,654
27312	60,409
27510	38,576
27541	59,036
27572	68,610
27712	79,611
27514	54,759
27243	61,420
27516	72,171
27302	51,675
27517	83,619
27705	45,535
27707	45,538

The anticipated tax rate of 1.5 cents is equal to $ 37.50 for a residence with a value of $250,000. The recently eliminated Rural 3-R fee for FY-12/13 was $38 per residential unit; 12,547 parcels that received that fee. Therefore, about 60% the 20,545 residential properties included in the proposed district were already paying a similar fee.

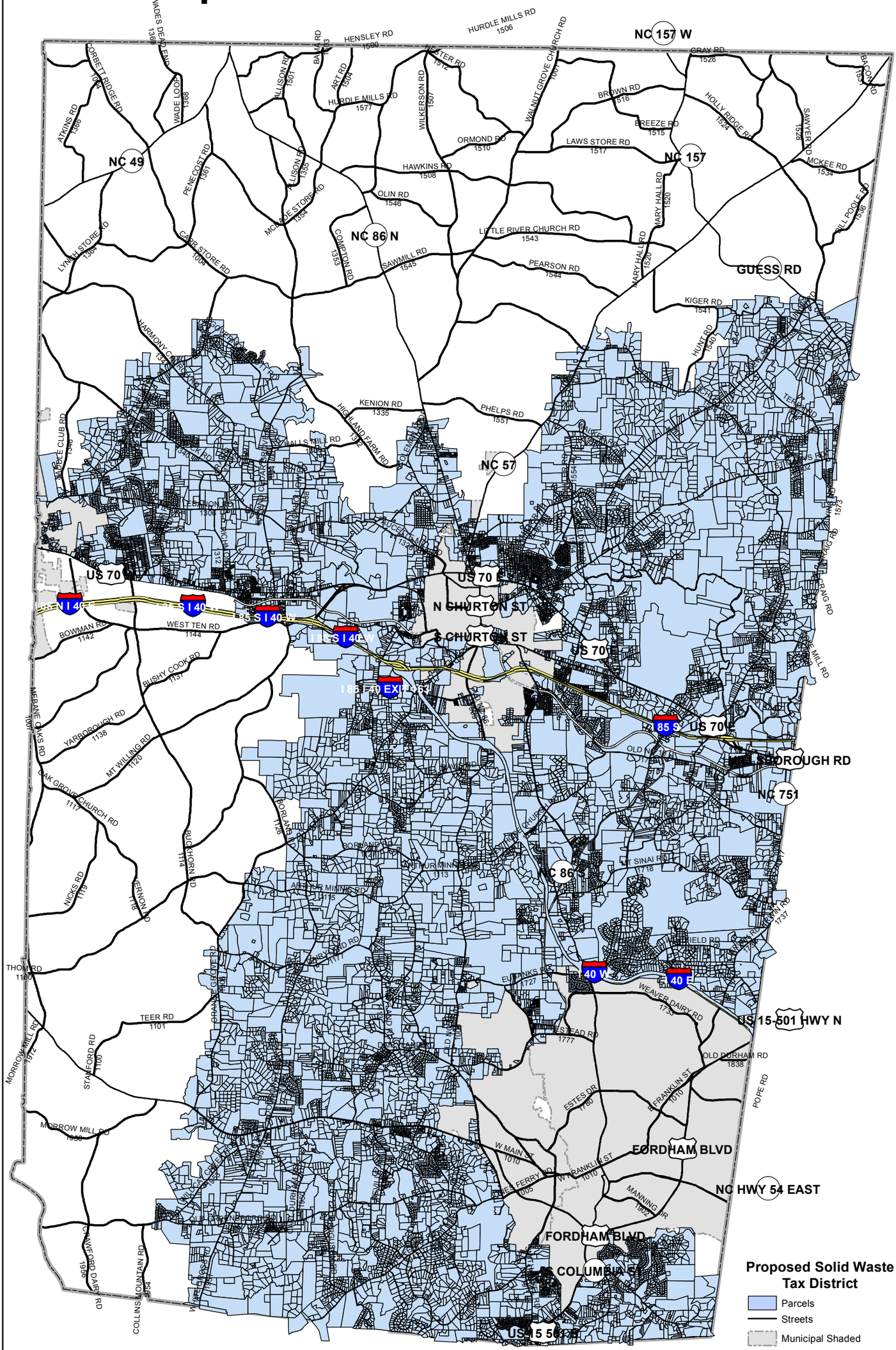
Based on the median family income of the proposed district zip code areas and the comparability of the proposed tax rate of the previously paid recycling fee, it is believed that the majority of property owners within the proposed district would have the ability to sustain the new district taxes.

e. **Current preliminary estimates of revenue generated to finance the recycling services are $630,000. It is intended that the proposed recycling services be fully funded through the service district.**

3) **The following summarizes the plan for providing recycling services within the district:**

The bi-weekly (every other week) recyclables collection service for the proposed district will be provided by Orange County staff and equipment as is the current service. Roll carts and/or recycling bins will be distributed to all residences within the district, and those few smaller commercial establishments that generate residential quantities of recyclables, in two phases over the next approximately 18-20 months. The service is envisioned to be provided as a combination of automated with roll carts, semi-automated with roll carts or manual with recycling bins depending on specific service situations. Special services for the elderly or handicapped will continue to be provided. While the district tax would not be voluntary, participation in the recycling program is not mandatory.

Proposed Solid Waste Tax District



This map contains parcels prepared for the inventory of real property within Orange County, and is compiled from recorded deed, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The county and its mapping companies assume no legal responsibility for the information on this map.

Date: 2/6/2014
1 inch = 12,000 feet

Orange County Tax Administration
Land Records/GIS

Layer	Parcel Count	Total Evaluation(Excludes Exempt)
Solid Waste Tax District	20,545(Includes 694 Exempt)	$4,478,900,424

Frequently Asked Questions

Proposed Solid Waste Service Tax District
Revised April 4, 2014

1. What is a Solid Waste Service Tax District?

It is a defined geographic area of a county where specific solid waste related services are provided and whose property owners fund the service through a tax that is set at a rate that will finance those defined services.

2. What is the Solid Waste Service Tax District that is being proposed by the Board of County Commissioners?

The Board of Commissioners is proposing a service district that would provide for every other week curbside/roadside recycling collection. The proposed district does not include waste/trash collection, only recycling. This service was previously funded by a $38 annual Rural 3-R Fee that was billed on the annual tax bill, but that fee was eliminated following the 2012 Tax Billing. The service district is being proposed to replace the rural recycling program funding previously provided from that fee. The proposed service district will expand this recycling service to about 1,600 additional residents beyond the 13,750 households who are currently eligible for this service. The district would not include municipalities.

3. What if I don't recycle or take my materials to a Solid Waste Convenience Center? Is there an option whereby a property owner can opt-out of this service?

The Solid Waste Service Tax District, as with the previous Rural 3-R Fee, does not provide an exemption or opt-out option for those residents who choose not to use the service. All taxable property that is included within the district would be assessed the district tax. As with property taxes in general, there would be no opt-out option.

4. Since I received a notice of a Public Hearing does this mean that my property will be included in the proposed district?

Yes. If you received this notice your property, or if you own multiple properties, at least one property you own is proposed to be located within the district. If more than one property is owned only those located within the proposed district would be subject to the district tax.

5. How much will I have to pay through a district tax?

The district tax rate will be set to generate funding for the every other week recycling service. It is currently estimated that the tax rate would be set at approximately 1.5 cents per $100 of assessed value. This would mean a property with an assessed value of $100,000 would pay $15 per year.

6. Why not continue charging the Rural 3-R Fee of $38/year?

The County Attorney and the County Manager recommended to the Board of County Commissioners last year that the Board abolish the Rural 3-R Fee due to some uncertainty with regard to the fee being wholly consistent with state law authorizing counties to assess these

type of fees. Following that recommendation, the Board agreed it did not wish to risk continuing a practice that was not unmistakably consistent with state law, so the annual rural recycling fee was eliminated and consideration of alternative financing of the rural recycling service was initiated. After several months of examining numerous funding alternatives the Board is proposing the Solid Waste Service Tax District to generate the replacement program funding. About 13,750 residents who were eligible for the service were previously assessed the fee.

7. Will the Solid Waste Service District apply to vacant (undeveloped) land?

Yes, the district tax would apply to all taxable property located within the proposed district without regard to whether structures or homes exist on the property.

8. If the Board chooses **not** to adopt a Solid Waste Service District and wishes to establish a service opt-out program what would the estimated cost be for annual curbside recycling service? What is the scientific basis for the 60 percent estimate of participants in an opt-out scenario? Is there data or information relating to performance of opt-out programs? Are any of these participation assumptions based on fact?

Key to estimation of the cost for opt-out service is the assumption made regarding how many paying customers will remain in the program. If the assumption is that of the current approximate 13,750 customers only about 60% currently participate, and that of that 8,250 monthly users 20% (1,650) choose to opt-out as not wishing to pay a service fee, the estimated annual fee for service would be about $95.45 (based on an estimated annual program cost of $630,000). And if, after a few months, due to the rather high cost of service (compared to the previous $38/year) another 10% of the 6,600 choose to cancel service, the estimated annual cost would increase to about $106.00 per year or almost $13/month. Of course there could be a small number of additional subscribers from current non-participants that could moderate any fee increases. The 60% basis results from the current participation rate of 57% rounded.

The assumption that 20% of the currently participating 7800 households will leave the system under voluntary subscription would seem to be an optimistic estimate of how many customers the program would lose once the fees increased and it was voluntary. When fees in Forsyth County's voluntary program rose from $2.65 a month to $8.65 a month the subscription declined by 11% from approximately 3,000 users out of 22,000 households (14%) to 2,700 (12%). Forsythe County most recently implemented a subscription type rural curbside/roadside recycling program and the Director of the County Office of Environmental Assistance and Protection stated "I would definitely expect and predict that if recycling collection service is made available on a voluntary subscription basis as a stand-alone service, you will be lucky to have a 25% participation rate."

Experience in other governmental jurisdictions (states and NC county's) provides convincing evidence that many property owners will choose not to participate, which will result in increased costs for those who do participate. Economies of scale exist in recycling collection services like most other programs and services, meaning that the more property owners that join in funding a given service results in a reduced cost per each service unit. Alternatively, as the number of fee payers is reduced, costs increase for each remaining participant. A NCDENR Environmental Specialist has spoken previously to the BOCC, as well as other recycling professionals, who have indicated the weaknesses of the so called "opt-out" or subscription (fee for service) type recycling program. According to the DENR Environmental Specialist the eight

counties that operate a subscription-type curbside recycling program have an average participation rate of 14.8%.

Please note that it will take 5-6 months to establish an opt-out or subscription type service for rural curbside/roadside recycling. Therefore, some partial year (6 months) funding source may be required until the new subscription can be established and enrolling subscribers. Additionally, it will be necessary for county staff to evaluate the impact of a possible shift of recyclable materials from the existing curbside program to convenience centers as residents try to avoid the subscription fee. The impact on the centers could be significant and additional resources will likely be necessary to collect and haul these additional materials. Staff has not conducted a detailed analysis of these additional costs.

The current emphasis of staff on public education programs may have to shift to a marketing effort to keep the subscription and participation level up rather than primarily provision of public outreach and education on the County's wide variety of public recycling and waste reduction programs.

9. Would a Solid Waste Service District funding option or an opt-out (or subscription) fee for service option result in the most recyclable materials being recovered and move Orange County the furthest toward its 61% waste reduction goal? Which would cost the least per unit served?

Based on evidence from other jurisdictions (both North Carolina and out of state) a subscription fee for service option of funding the recycling collection service would yield the least quantity of recovered recyclables and result in the greatest unit cost for users of the program. The Solid Waste Service District would be the least costly per parcel served.

10. What does it mean that handicap service will continue?

Both the Urban and Rural Curbside Recycling programs maintain a special services option for handicapped and elderly residents. This service requires the collector to go to the resident's home at an agreed upon location and collect their receptacle, empty it into the truck and return the empty container to the home.

11. Has the value of the property within the proposed district been analyzed?

The total valuation of the district is located at the bottom of the map and is calculated at $4,478,900,424.

12. Is the current participation rate for the rural program 57%? If so, how many are estimated as not using the service?

Yes, according to the latest survey of four rural routes. About 5,800 are estimated to be using the convenience centers, not recycling or recycling through alternative means.

13. How many parcels in the proposed district are not going to be paying the tax (are tax exempt) but will be receiving the service?

There are 694 tax exempt properties located in the proposed district that will not be paying the district tax. It is understood that any of those parcels that contain buildings that generate recyclables we would be required by statute to provide the service. We estimate that less than half of these properties contain structures that could utilize the service.

14. If the Rural Program participation rate is 57%, what would be the participation rate in the Urban Program for comparison?

The participation rate in the Urban Program is estimated to be 90%. Utilization of the new roll carts fitted with RFID tags will allow much more accurate calculations of set out and participation rates.

15. When roll carts are implemented will people be required to use them?

Due to the variability in the county such as geography and other differences consistent with rural living, accommodations will have to be made. When a resident expresses a desire to continue using a bin and does not wish to use a roll cart, they will be allowed to use what they think best suits their situation. They will be allowed to choose, although in many instances they will be encouraged to try a roll cart.

16. If residents will be allowed to continue to use bins if they choose rather than be required to use roll carts, and if only 57% of residents will be participating, how many roll carts will be purchased?

It is estimated that 7,000 carts would be purchased initially. Prior to implementation a more thorough assessment will be performed to match the type of recycling receptacle with resident needs and requests.

17. Do residents owning property valued at $250,000 pay the same as a resident owning property valued at $500,000 for the same service? Can the property tax amount be capped?

A tax rate of $.015 per $100 on a $500,000 valued house versus a $250,000 valued house will yield different amounts to be paid. According to the County Attorney, assigning different tax rates based on property value is not legal. For example, this is also true for two property owners of differently valued property who use the local county library about the same amount. A statutory cap is provided in NC General Statutes 153A-149(c):
Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation.

18. What is the percentage of the county's total recycling is recovered by the roadside pickup in rural areas?

Rural Curbside represents about 13% of dry recycling tonnage (excluding Haz Waste, waste oil, anti-freeze, filters, etc. and food waste).

19. What is the average Property tax value in the proposed district?

Including vacant property, exempt, improved, commercial, etc., the average total property value within the district is $218,404.

20. How did we come up with the proposed tax rate?

The tax rate was calculated by dividing the estimated total cost of the rural curbside/roadside recycling program by the total assessed value of properties within the proposed service district to arrive at the suggested tax rate of 1.5 cents per $100 assessed value.

21. What is the average tax value of property with homes in the proposed district?

Average total property value of the parcels with homes is $290,314.

22. Is there an education element in subscription service provided across the state?

Educational elements from the various subscription programs across the state vary considerably from county to county. We have requested information from several counties that have a subscription type recycling collection service, and of the three responses we received to date, there is a variation from some County involvement to almost none. In all cases, the contractor seems to be the lead agency. Staff may be able to report with more information in the near future pending responses from other communities.

23. Was every property notified of the public hearings and of the pending consideration by the Board of a solid waste service tax district?

Yes, notice of the public hearing was mailed to all property owners whose property is incorporated into the proposed service district.

24. Could we reduce the size of the proposed tax district?

The proposed district boundary could be reduced as long as no parcels that were not notified as part of the public hearing process are included. Additionally, properties within a service district must be contiguous.

25. What was the result of the Board of Commissioners adopted language that was conveyed to the NC legislature requesting to be given the authority to impose a fee like the previous Rural 3-R Fee?

The local bill was submitted to the Orange County legislative delegation last year. It was sponsored and introduced by Rep. Foushee and was co-sponsored by a number of other representatives. However, the bill died in committee and is no longer eligible for consideration.

26. Are some convenience center costs paid from the general fund/property tax revenue?

Funding to operate convenience centers is provided from both a Convenience Center Fee charged annually on the tax bill to only residential property owners, and represents about 25% of costs. The remainder of the funding is provided by the General Fund supported by all County taxpayers, both municipal and rural, regardless of jurisdiction, type of property or whether they use the centers.

27. What is the total tax value of tax exempt properties within the proposed service district?

Total value of exempt properties including building and land is $224,559,229.

28. Why did the Commissioners abolish the previous Rural 3-R Fee without first determining where the replacement funding would come from? What was the urgency?

The Board of Commissioners received a recommendation from the County Manager and the County Attorney that recent actions by the legislature and courts raised questions as to the County's legal authority in imposing the Rural 3-R Fee and that the Board should consider eliminating that Fee. The Board responded to that recommendation.

29. Is it true that Catawba County leads the state in recycling? I thought Orange County was the state's leader?

The State of North Carolina General Statutes requires measurement of the rate of waste landfilled per person in each county annually and there is a statewide goal of 40% waste reduction that was to have been achieved by 2001. It was 12% statewide last year. That rate of landfilling per person is then compared to an established base year of 1991-92 and the difference is that County's waste reduction rate. By this statutorily required metric, Orange County led the State of North Carolina with a 58% waste reduction rate in FY 2012-13. Orange County also had the highest waste reduction rate for the preceding four years. For comparison, Catawba County's waste reduction rate was 27% in FY 2012/13.

Catawba County had the State's highest rate of recycling per person in FY 12-13 as calculated separately by the NC DENR Division of Environmental Assistance and Customer Service from annual local government reports. Orange County was sixth last year by that measure and has generally been in the top ten since the metric was established. That metric was independently established by the NC DENR Division of Environmental Assistance and Outreach in the early 2000s as an alternative means of evaluating progress in Solid Waste Management. It is also believed that this alternative "unofficial" means of presenting recycling was developed due to the overall poor progress state-wide with regard to waste reduction per capita performance and that this alternative method would shed a more positive light on state performance. It is not statutorily required but measures recycling progress County by County. In Counties with large industrial and commercial recycling programs that are connected to local government operations the recycling per person may be reported as higher than those with less industry. E.g. UNC Chapel Hill reports its 4,400 tons of recycling separately from Orange County.

In the original omnibus State Solid Waste Bill in 1989, the State did establish recycling goals at rates of 25% and 40% but in 1991 revised that metric to be a waste reduction rate. The rationale for using a waste reduction measure is that it is calculated by the State, independently from what is reported by each County as recycled in its programs. Further, the waste reduction rate more holistically reflects the means other than recycling of reducing waste such as backyard composting, 'smart shopping', encouragement of reuse and repair as alternatives to disposal.

30. What is fair about having people who don't use the curbside recycling service having to pay for it? Those that use it should pay for it.

There are many government services, if not most, whose use by any specific taxpayer and that taxpayer's financial contribution are not proportional. Not all taxpayers use the public library, but all contribute to its funding. In Orange County not all tax payers use convenience centers but all taxpayers (including municipal residents) contribute to its funding, including those non-residential property owners who are prohibited from using it. The question of fairness with regard to public funding and utilization of service is inherent in government services and benefits. It is the nature of public funding and a matter of perception.

Like the funding for libraries or convenience centers, the service district tax is a way to offer a needed or desired service to a large group of residents without making the cost prohibitively expensive.

31. How many residents in Orange County contract for garbage service?

This number is not known because private haulers are not required to report it and can be reluctant to reveal their proprietary business data. In the late 1990s, phone interviews by Orange County Public Works recorded about 5,000 reported private waste customers in the unincorporated area of the county. Another informal phone survey about five years ago by the Solid Waste Department came to a similar number, but those were based on non-binding responses from the private haulers of a range and remain only estimates of use of private waste hauling services.

32. How will the cost of the opt-out service be kept at a reasonable fee?

The cost of the opt-out or subscription service option would presumably be fully funded by the subscribers, regardless of the level of the fee. Unfortunately, if the cost becomes too expensive some subscribers may cancel their service and/or new residents may choose not to enroll. If this happens the service fee would continue to escalate in order to achieve necessary levels of funding to operate the program, and the number of subscribers would continue to decline. Alternatively, the Board could agree to supplement this program from the general fund when the service fee reached a certain level or the number subscribers become insufficient to sustain the recycling service. In that instance, municipal residents would then be subsidizing a rural service that they are not eligible to receive.

33. How long will it take to get ready for the opt-out subscription service? Will it cost more, less or about the same as the tax district? Sounds like more trouble.

The County Manager has previously indicated that at least six months would be required to establish the opt-out service option. Given the Board's December 2013 declaration of intent to establish a service district (among other Board solid waste/recycling related priorities that are consuming staff resources) no preparatory work has been performed with regard to an opt-out option. There is still some uncertainty with regard to some of the details of implementation of an opt-out type service that would have to be resolved by the Board through discussions with staff and the approval of an implementation plan and subscription fee schedule.

Additionally, if quantities of recyclable material shift from the curbside program to the convenience centers due to the increasing cost of the opt-out (subscription) service, the impact on the centers could be substantial and additional resources will likely be necessary to collect and haul these additional materials. Staff has not conducted a detailed analysis of these additional costs.

34. Is there any other county that charges for convenience centers as well as for the cost of recycling?

Based upon a less than comprehensive research due to the large number of questions involved, and the limited timeframe in which to respond we have found that, according to NCDENR State records from County reporting on the annual report, the following communities appear to meet those criteria of charging for convenience centers and charging for recycling collection: Caldwell

County, Carteret County, Cleveland County, Hertford County, Nash County, and Pender County. Given more time staff might be able to identify others.

35. Has Orange County examined Catawba County, NC and their incentive program?

Orange County staff has investigated Catawba County's approach to unincorporated area curbside recycling and is reasonably familiar with their program. We have the following observations:
Catawba has a single exclusive franchised waste and recycling hauler with a ten year contract serving the whole County with residential trash and recycling collection, commercial waste collection and Construction and Demolition waste collection. Of the 33,600 residences in unincorporated County, about 14,000 or 42% subscribe to waste collection and 97% of those are reported to use the recycling program at least monthly which is the minimum to be considered a recycler. Those using recycling get the lower monthly trash collection rate of $18.88 including the cart. Setting out the recycling cart at least once a month constitutes program use, irrespective of contents. Those who don't recycle at the curb pay $24.33 per month for trash collection including a cart.

Catawba County contracts Solid Waste Convenience Center operations to Republic who charges a fee of $1.75 per bag of residential waste delivered to their Convenience Centers that provides partial support to the system and they also charge for bulky items at $17.50 per small pick up or $26.25 per large pickup truck. During conversion to recycling carts last year, the County in conjunction with Republic provided a broad variety of outreach including electronic media, presentations, web page and PSAs in local papers. Republic put out their educational materials when they converted to carts for the schedule changes and information about what to recycle. They achieved a recycling rate at the curb of 239 pounds per eligible household last year. Orange County unincorporated area curbside recycling rate was about 250 pounds per household among all households, not just those calculated as participating. If only the 7,800 households considered as participating were counted, the rate is 440 pounds per household.

36. Is there research on what the cost per household will be for an opt-out type service?

Please see #8 above.

37. How many people use the convenience centers for recycling versus using the existing curbside recycling service?
There are approximately 20,000 households in the unincorporated area and they represent almost all users for conventional recycling of paper, cans, bottles and cardboard. The number of urban single family or apartment dwellers using the SWCCs for recycling is assumed around 10% in this estimate as they have access to curbside or on-site recycling and more convenient 24 hour unstaffed drop-off sites.

Thus: of those 13,700 residences (at the time of the survey was conducted) that have access to curbside recycling an estimated 57% or ~7,800 use the service at least once a month. If 90% of all the remaining households eligible recycle instead at convenience centers, that means 5,300 of those and if 50% of the remaining households that do not have access to curbside recycling recycle at the SWCCs, then another 3,200 households recycle at the SWCCs. Urban users are more difficult to estimate.

This information and estimates are summarized in the table below Rounded to nearest 100:

Type household	Number	Percent recycling	Number recycling	Tons recycled	Comments
Rural with curbside recycling access	13,700	57% recycle curbside	7,800. Some of these use SWCCs to recycle too.	1700 at the curb in rural program	% using at least once/month based on route survey of 1400 units in January 2013
Rural with curbside access who don't use the system	5,800	90% estimated as recycling at SWCCs	5,300	TOTAL AT SWCCs from all users ~3,390	
Rural with no access to curbside recycling	6,300	50% estimated as recycling at SWCCs	3,200		
Rural with contract curbside recycling	200 (1% of all rural residents)	100%	200		
Urban users of sites for recycling		10% est. of tons recycled at SWCCs			

38. Can we work with the towns to get similar service that they receive from the contractor?

The Urban Curbside and Rural Curbside program are two distinct programs and it is our understanding that the Towns prefer a distinct program within the municipalities with no comingling of finances. The municipal service is weekly, the rural service is bi-weekly. The Urban program contractor is under contract to Orange County to provide that service. Orange County is the provider of all public recycling services within the county either directly, or indirectly through a contractor. We work closely with the towns with regard to all county recycling services within their jurisdiction.

For several years the Rural program was also contracted to private companies by Orange County. After the first company was unable to provide quality service and meet service schedules a competitive request for proposals resulted in a second private company being selected. After a few years that company too was unable to provide acceptable service (resident complaints and rising costs) so eventually the county assumed service responsibility and has provided high quality service for less cost than a private contractor.

39. How did you get to the conclusion of the tax district?

Following the elimination of the Rural 3-R Fee the Board evaluated and considered numerous funding and service alternatives. These alternatives included elimination of the rural program, privatization, franchising, combining various waste fees, funding all or various combinations of services through property taxes, eliminating convenience centers, providing only convenience centers, creating an single all-encompassing solid waste district including the towns, and various other service and fee permutations. Ultimately these were rejected, some due to vigorous resident objections, and last December the majority of the Board indicated a preference for, and an intent to establish a rural service tax district for recycling.

40. Will the tax district increase/encourage participation as compared to the previous Rural 3-R Fee funded service? Cite research that county-wide taxation will increase participation.

Based on our own long-term experience and our inquiries with knowledgeable recycling professionals, participation is more determined by how each citizen interfaces with the program, the choices available to the citizen, community incentives or disincentives of convenience or cost, a community's motivation/enthusiasm/knowledge through the supporting programmatic education and outreach, the local environmental culture, etc. that impacts participation than whether the service is funded by taxes or fees. However, regardless of funding source, there is general agreement that the need to opt-in or subscribe is clearly a barrier to participation. According to staff in the State's Recycling office in the Department of Environment and Natural Resources (DENR), regardless of how a curbside recycling program is paid for, if recycling service is automatically available (meaning that the household does not need to subscribe or opt-in) then participation is stronger than if the household is simply offered the service and all they need to do is put a bin or cart at the street or road.

41. How will the district tax impact properties on Rosemary and Graham streets in Chapel Hill?

The proposed solid waste service district does not apply to properties located within corporate municipal limits.

42. Why are some properties exempt from property taxes?

Some property is exempt from property taxes by state law (General Statutes 105-125). The following is an excerpt from this statue that comprises most of the tax exempt properties in Orange County:

Exemptions. - The following corporations are exempt from the taxes levied by this Article. Upon request of the Secretary, an exempt corporation must establish its claim for exemption in writing:

(1) A charitable, religious, fraternal, benevolent, scientific, or educational corporation not operated for profit.

43. Why not include the entire unincorporated area for recycling service?

This was previously considered by the Board and could certainly be an option. This would require a significant expansion of the rural program into the less densely populated portions of the county. The proposed district area was created in part by what area can be serviced with existing resources (collection vehicles and drivers). There was also an interest in not increasing expenses in a period of financial uncertainty (loss of Rural 3-R Fee and landfill closure). Certainly services could be expanded to include the entire unincorporated area, phased in over a two to three year period. It is unlikely that an opt-out (subscription) service could adequately fund such an expansion.

44. All discussion of this tax has been focused on providing bi-weekly curbside recycling services. Given the tax is being referred to as "Solid Waste Tax District" rather than "Recycling Tax District," what assurances do citizens have that, once in place, the tax district will not be used for other solid waste purposes?

It is correct that all focus is currently on the bi-weekly curbside recycling service and staff has not recently been directed to evaluate other service option for the proposed district. Given the critical decision timeline necessary with regard to the rural curbside service, it is not likely that other services will be considered at this time. However, this Board or any future Board, at its discretion, may consider any number of programmatic variations of a service district in the future. Staff is not aware of any longer term plans for other purposes.

45. Who determines the tax rate and when it may be raised? If it is the commissioners, is there a requirement for public hearing prior to such action?

Only the Board of Commissioners has the authority to set a tax rate. The tax rate is set annually as part of the budget process. Public hearings are held each year during the budget process to provide opportunity for public input, including input with regard to the tax rate.

46. Why can't the county request an RFP from Waste Industries for outsourcing collection in the rural area prior to the April 1 meeting? Couldn't we loosely tie the RFP to town proposals in order to benefit from scales of economy?

Any RFP process is required to be a competitive process open to all qualified recycling collection contractors and only negotiating with a single company would be contrary to state purchasing law, absent an emergency situation. Such a process could not have been conducted in such a short time frame as to have been ready by April 1. Furthermore, the RFP process conducted by the Towns last summer resulted in several proposals being received, has led the Towns to pursue an agreement with the county for providing the urban curbside services. So apparently the Towns have determined that the county service, integrated as it can be with other county services, including integration of the public education and outreach function, was cost competitive with proposals received from the private sector. The county maintains a considerable economy of scale with its county-wide compliment of services and programs.

47. What are the costs of opening the five convenience centers 7 days/week?

A brief evaluation of the cost to extend the hours of convenience centers to seven days/week has resulted in an estimated cost of $400,000 to $440,000 per year increase over current operating costs. A more thorough and detailed analysis should be conducted to develop budget level cost estimates. The above estimate assumes 362 days per year operation, from 7am to 6pm. It should be noted that the convenience centers have never been open seven days/week since their creation in the early 1090's. They have always been closed on Wednesdays for employee training and site maintenance purposes.

There are a number of issues and assumptions that would have to be tested to confirm any cost proposal, including garbage/trash service and storage capacity given our dependence on distant waste transfer station disposal. Currently, with the available transfer station operations closing at noon on Saturday until Monday, the waste collected at the centers Saturday afternoon and Sunday afternoon must be stored until Monday disposal. Our storage capacity used is typically at a maximum until we can dispose of the waste Monday morning. Opening Sunday morning would require additional storage capacity that has not been incorporated into the above estimates. There are certainly other, less extensive schedule of operation expansions that could be considered. Staff would suggest a comprehensive analysis of such a major expansion of hours at convenience centers prior to any serious discussion of such a decision.

It should also be noted that previous Board of Commissioners' have made a commitment to a concept of Neighborhood/District Convenience Centers. This concept presumes that the District centers would have more expansive hours of operation and that Neighborhood Centers would have less expansive hours of operation. Part of the basis for this concept was to balance hours of operation with level of use, resulting in a less costly program; a balance of cost with convenience.

48. What reason does the county have to believe that the 1,650 "new" households being added to the tax district (those which have not been included in curbside recycling to date) intend to use the service if provided? What reason is there to believe that adding these households will increase the total amount of recycling in the county, given that the program already has 55-60% participation levels?

The majority of the residences included in the proposed expansion area of the district beyond the current service area include more dense neighborhoods that were identified in field surveys conducted 2-3 years ago for the purpose of identifying priority areas for program expansion. For some of these areas we have received resident requests or inquiries with regard to expanding services. We feel confident that the proposed expansion areas will meet or exceed the 57% participation rate of the existing area. There are some less dense areas also included either due to statutory contiguity requirements for service districts or as a result of routing connectivity reasons. It is our expectation, based on similar areas currently serviced, that we can expect participation rates at or beyond the current program-wide average 57% rate.

49. I have been paying the Solid Waste Convenience Center Fee for three years and it has increased to $40/year in that period. Included among the tax bill explanations for this fee is "The cost of expanding the hours of operation for the solid waste convenience centers". Why has there not been any expansion of hours in that three year period?

The hours of operation at the Eubanks Road and Walnut Grove Church Road Centers were increased by opening on Thursdays from 7 am to 6 pm effective September 5, 2013.

50. How many exempt properties are there in the proposed district?

There a total of 694 tax exempt properties in the proposed service district.

51. How many vacant properties (no homes or other structures) are in the proposed district?

The total number of vacant properties within the district is approximately 5,469.

52. What is the average home value and the average assessment throughout the county?

Average total property value throughout the county is $290,545.

53. If a homeowner does land/house improvements, will this change the cost of the tax on the property?

Anything that changes the property tax assessment would change their property tax bill.

54. If you implement the service district tax will it be tax-deductible on state and federal taxes?

It is possible that this property tax would be deductible; however you should consult an accountant or other tax professional to obtain a definitive answer in your specific situation.

55. Would it be possible to hold a referendum on the service district tax?

The Board of Commissioners could voluntarily conduct a referendum on whether to establish a service district tax; however, the results of such a referendum would not be binding.

56. Would a resident have the option of requesting monthly pickup service under either the service district or opt-out (subscription) option?

Customized service schedules would not be offered under either service option. While it's certainly physically possible to vary collection frequency per household it is not a practical approach to residential collection as the cost per customer compared to the cost of varying the service is too high to be financially practical. Collection routing would also become complicated by having the collector maintain awareness of the varying service frequency among hundreds of residences along a given route.

57. Would creation of the service district tax actually increase production of recyclables over what we're doing now or over the opt-out (subscription) option?

There is no evidence that funding the rural curbside program through creation of a service district tax would necessarily increase the quantity of recyclables generated as compared with the previous annual fee. There is considerable evidence and experience within North Carolina that opt-out (subscription fee for service) funded programs generate considerably less recyclables (and participation) than non-subscription type curbside recycling programs.

58. Is the 61% our waste reduction goal or the percentage of program participation we wish to achieve?

Orange County, along with the Towns of Carrboro, Chapel Hill and Hillsborough, has adopted a goal of 61% waste reduction of the quantity of originating from Orange County that was landfilled as compared to the base year of 1991/92. The governments have not established program participation goals.

59. Will recycling rate decline if curbside is eliminated in the rural area, because convenience centers are so successful and can compensate for the elimination?

There is little evidence available in North Carolina with regard to the impact on the quantity of recyclables recovered when rural curbside programs are eliminated in locations where a network of convenience centers are available. It is the county's professional staff opinion that all currently participating unincorporated area curbside residents would not shift their recycling to convenience centers and that a net reduction in the quantity of recyclables recovered from this action.

60. Can the Rural 3-R Fee be reinstated?

The County Manager recommended, and the Board of County Commissioners agreed, that the County cease assessing the Urban, Rural and Multi-family recycling fees beginning with the Fiscal 2013/14 Annual Budget.

61. Won't there at some point have to be a transfer station for waste and recyclables located within the county (as part of a comprehensive plan)?

At some point in the future it is likely that the governments in Orange County will be compelled to again consider the issue of a local transfer station. There will almost certainly be mounting financial and environmental motivations to do so. A recycling center (recyclable materials transfer facility) already exists on Eubanks Road at present, although it will at some point in the near future have to be improved/enlarged. Development of a comprehensive solid waste management plan could address these and other longer term waste management and recycling issues, including creation of an overall waste management strategy that maximizes cost efficiencies, identifies and locates necessary facilities, minimizes disposal, provides for a broad-based series of waste and recycling services and programs and explores proven technological innovation opportunities.

62. Why did we close the landfill and then have to dispose of Orange County trash in another county? What if other counties decide not to take our trash any longer?

The Board of Commissioners elected to close the Eubanks Road landfill due to various social justice related issues perceived to have unfavorably impacted the Rogers Road area neighborhood over the past 42 years. Among the consequences of closing the landfill was that waste generated within Orange County would necessarily be required to be delivered to out-of-county disposal facilities. If Orange County is prepared to pay for transportation to and tipping fees at out-of-county disposal facilities it is unlikely in the near future that such facilities would not be available or willing to accept Orange County waste. It is unclear what the long-term implications might be. It is primarily because of the cost and environmental impacts of having to use out-of-county disposal facilities that effective and broad-based recycling programs should be maximized; inherent resource savings from recycling are also a factor. Additionally, Orange County could exert some environmental and fiscal control over our solid waste situation by use of a local waste transfer station even if the disposal dilemma suggested remains without a local landfill.

63. As an owner of multiple properties I only receive one envelope with all my tax bills, so why are so many notices sent (and postage money wasted) about the tax district public hearing?

North Carolina General Statute 153A-302 is unclear in that it requires an individual notice be sent to the owner "as shown by the county tax records" "and at the address shown thereon," of each parcel proposed to be included within the service district. Given that it is unclear the county has determined it would minimize its risk at the lack of clarity by mailing notices to each individually.

64. With the Urban curbside program going well, and the more suburban (but unincorporated) type areas also wanting the curbside service, why is this service being forced on the truly rural part?

The Board of Commissioners is responsible for and has authority in the unincorporated portion of Orange County only with regard to recyclables collection. The urban curbside recycling programs are politically, operationally and legally distinct from the rural curbside recycling program. In accordance with state statutes the flat annual recycling fees are deemed permissible within the urban area and can be used to fund the urban recycling program. Even though some suburban areas are municipal-like in character and density, these areas are outside the urban municipal boundaries making the legality of a mandatory recycling fee in those areas questionable. Likewise, a service district tax would not allow services to be offered to only the

more suburban-like neighborhoods within unincorporated areas of the county due to the requirement that such a district must be contiguous, and all of the suburban rural neighborhoods are not contiguous. An opt-out (subscription fee for service) type service could be provided within these areas but would involve passing by many non-suburban type residences who would also want the service.

65. Only 1/3 of the rural area use curbside so why doesn't the BOCC step back and relook at program?

Of the current 13,750 residences eligible for rural curbside/roadside recycling it has been established that the participation rate is 57%. Since the residents outside the current service area are not eligible no participation rate exists county-wide. The county did evaluate the program in 1993 when it was implemented and again in 2004 when alternative funding was considered and the previous Rural 3-R Fee established and decided that in order to achieve aggressive waste reduction objectives that services must be provided outside of the municipalities.

66. What is the revenue received for the sale of recyclable materials? How does this revenue affect what we are paying?

The total rural recycling program cost used for establishing the fee or tax rates is calculated based on expenses net of revenue. While markets fluctuate monthly on the price received for the sale of recyclables, in FY 12/13 approximately $58,000 in revenue was generated from the sale of recyclables from the rural program, which covers approximately 9% of all the program costs (direct and indirect expenditures).

67. Could the service district tax be implemented temporarily until the county can get legislative authority to go back to the flat fee method?

The Board of Commissioners, consistent with state law, may establish a service district or abolish a tax district as they wish.

68. Why don't we consider a flat service fee?

The Board of Commissioners received a recommendation from the County Manager and the County Attorney that recent actions by the legislature and courts raised questions as to the County's legal authority in imposing a flat fee for recycling services that required non-users of the service to pay the fee. The Board responded to that recommendation.

69. Why is the service district just for a part of the county and not the whole county? Don't you have to offer the program to all residences?

A service district may be developed for all or any part of a county. If a proposed district includes all or part of a municipality, that municipality must formally consent to being included. All residences included within a district would have to be offered the service.

70. Can we adopt a short term way to fund the program and then do a study for the best long term funding option?

The Board of Commissioners could consider and adopt a short-term way to fund the rural recycling program until a more formal or systematic investigation is conducted to identify a

more permanent funding source. The Board could also adopt of the two current options to function as a short term funding mechanism.

71. Most rural residents use convenience centers so why not let rural residents use them rather than the curbside program?

Many rural residents do use convenience centers, which were originally created primarily for unincorporated area residents' use. The geographical distribution of the five centers however, is not equally convenient to all residents. Some residents contract for curbside/roadside garbage service and need/desire the curbside/roadside recycling service to complement that service. And while all residents must disposal of their garbage somehow (public health and local ordinance imperatives), recycling is optional/voluntary and some residents only recycle because it is extraordinarily convenient, which roadside/curbside recycling is for some residents.

72. We are doing a good job on recycling now so why do we need a new tax?

Orange County does an excellent job recycling and part of the reason for this good job is the network of complementary and overlapping recycling programs and services provided that maximizes recycling opportunities. Funding for this corresponding network is provided by a network of fees, taxes, material revenues and avoided tipping fees, etc. Consideration of the new tax is necessitated by the elimination of the Rural 3-R Fee for previously stated reasons.

73. Wouldn't curbside service be a preferable option for those residents who do not live near a convenience center?

Not all residents live near one of the five convenience centers and need or appreciate the curbside/roadside service. Even some residents who live in reasonable proximity to convenience centers prefer the curbside/roadside service.

74. In the unincorporated area subdivisions with high participation, is there not a concern that recycling would be placed in the trash because all of these residents who now recycle curbside would not go to the convenience centers, especially those that have private garbage service?

It is possible that those residents would choose not to recycle as faithfully if the curbside/roadside service is eliminated. It would be a mistake to assume that everyone currently participating in the curbside/roadside recycling program would begin using convenience centers if that program was eliminated or made prohibitively expensive.

RES-2014-023

ORANGE COUNTY BOARD OF COMMISSIONERS
RESOLUTION ESTABLISHING A SOLID WASTE COLLECTION AND DISPOSAL SYSTEM SERVICE DISTRICT

WHEREAS, the Orange County Board of County Commissioners ("Board") has determined there is a need to establish a solid waste collection and disposal system service district in order to provide for the health, safety, and general welfare of the residents of the area shown on Attachment 1 hereto that being the solid waste collection and disposal system service district ("District"); and

WHEREAS, in accordance with Article 16 of Chapter 153A of the North Carolina General Statutes the Board conducted a public hearing on the establishment of the District; and

WHEREAS, during the two public hearings and in determining whether to establish the District the Board considered the resident or seasonal population and population density of the proposed District, the appraised value of property subject to taxation in the proposed District, the present tax rates of the county and any cities or special districts in which the District or any portion thereof is located, the ability of the proposed District to sustain the additional taxes necessary to provide the services planned for the District, the probable net revenues of the projects to be financed and the extent to which the services will be self-supporting, and the overall need for solid waste collection, disposal, and recycling in the District.

NOW, THEREFORE, BE IT RESOLVED, The Board finds that there is a demonstrable need for providing solid waste collection, disposal, and recycling in the District as authorized by N.C.G.S. 153A-301(a)(5), it is impossible or impracticable to provide those services on a countywide basis, it is economically feasible to provide the proposed services in the District without unreasonable or burdensome annual tax levies, and there is a demonstrable demand for the proposed services by persons residing in the District.

BE IT FURTHER RESOLVED that for all the foregoing reasons the Orange County Board of Commissioners hereby establishes a solid waste collection and disposal system service district in the areas of Orange County shown on Attachment 1.

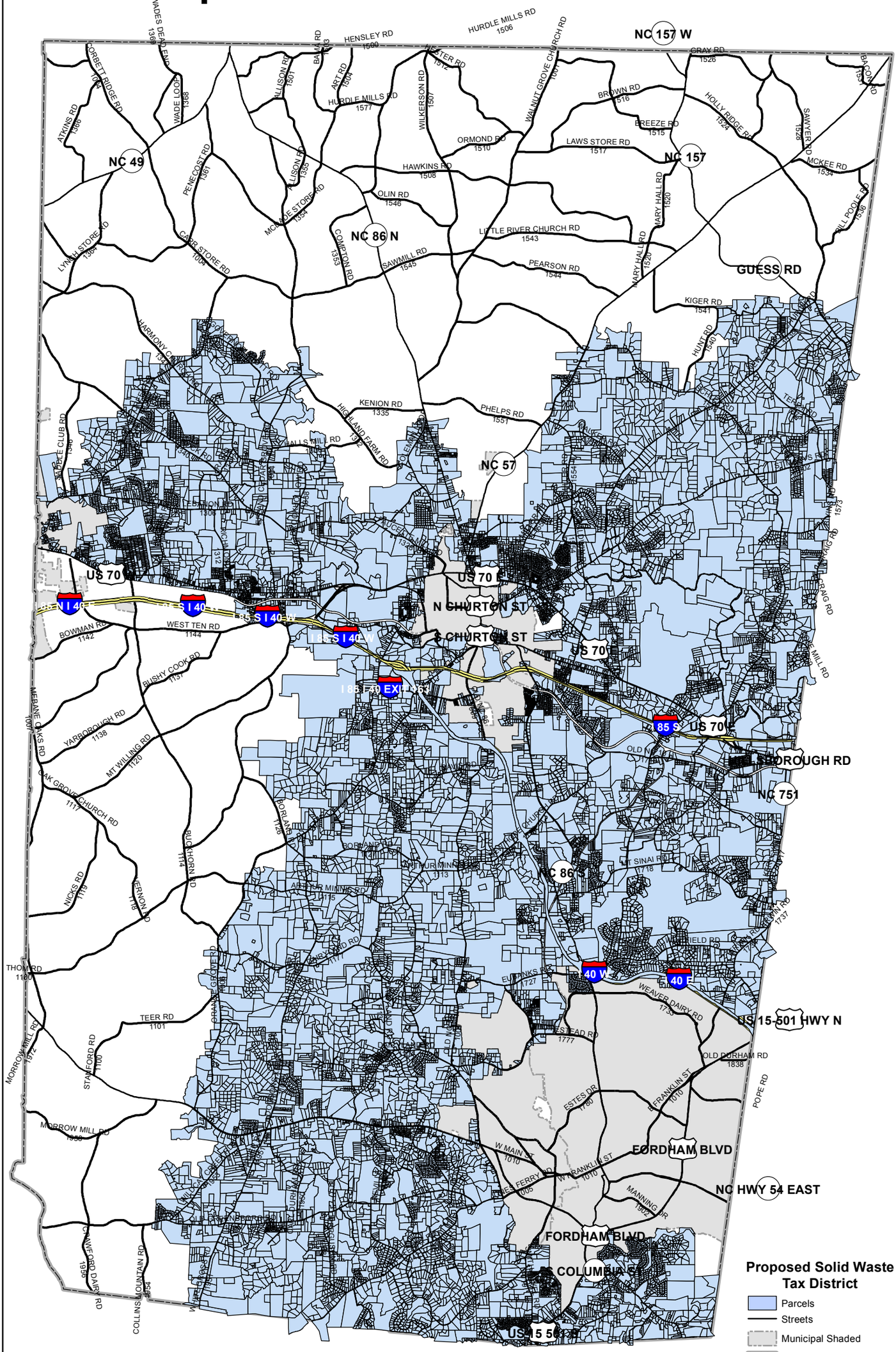
Passed the _____ day of _____, 2014 and having an effective date of July 1, 2014.

_____
Barry Jacobs, Chair
Orange County Board of Commissioners

Attest:

_____
Clerk to the Board of Commissioners

Proposed Solid Waste Tax District



This map contains parcels prepared for the inventory of real property within Orange County, and is compiled from recorded deed, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The county and its mapping companies assume no legal responsibility for the information on this map.

Date: 2/6/2014
1 inch = 12,000 feet

Orange County Tax Administration
Land Records/GIS

Layer	Parcel Count	Total Evaluation(Excludes Exempt)
Solid Waste Tax District	20,545(Includes 694 Exempt)	$4,478,900,424

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 7-c

SUBJECT: DC Fast Charger Electric Vehicle Station Licensing Agreement with Brightfield Transportation Solutions

DEPARTMENT: Asset Management Services, Department of Environment, Agriculture, Parks & Recreation, County Attorney

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
1) Site Locator
2) Typical Installation Illustrative
3) Licensing Agreement

INFORMATION CONTACT:
Jeff Thompson, 919-245-2658
David Stancil, 919-245-2522
John Roberts, 919-245-2318

PURPOSE: To consider:

1) Approving a Licensing Agreement and associated Easements granted to Brightfield Transportation Solutions for electric vehicle "DC Fast Charger" fueling station construction and operations at The Justice Facility parking lot in Hillsborough, NC and the Skills Development Center parking lot in Chapel Hill, NC;

2) authorizing the Chair to sign all necessary documents upon final review of the County Attorney.

BACKGROUND: Orange County is a leader in North Carolina (among both the public and private sectors) in developing and offering for use electric vehicle charging stations to its residents and stakeholders.

In 2011 the Board of County Commissioners authorized staff to secure an $83,540 grant with the United States Department of Energy and its Carolina Blue Skies & Green Jobs Initiative for the installation of 16 "Level 2" electric vehicle charging stations. These funds were accepted in November 2011, and the 16 stations were successfully installed in 2012. Attachment 1, "Site Locator", illustrates where these charging stations are installed and publicly available. The Agenda Abstract for the November 15, 2011 grant acceptance and installation authorization can be found at http://www.co.orange.nc.us/OCCLERKS/111115.htm - see Item 5-i.

The installations of these charging stations have seen significant growth in use and popularity as plug-in electric vehicles become more mainstream and popular with consumers. This growth in use is a significant objective of the grant. Because of this demonstrated success and growth,

assisted by Orange County's vision and leadership, the Carolina Blue Skies Initiative suggested that Orange County be considered for private sector partnership with Brightfield Transportation Solutions ("Brightfield") for the licensing agreement where Brightfield would finance, install and operate two "DC Fast Charger" electric vehicle stations - one near the Eno River Farmers Market in Hillsborough, NC, and one near the Chapel Hill/Orange County Visitors Center and Orange County Skills Development Center in Chapel Hill, NC. The existing "Level 2" stations will provide a complete electric vehicle charge in approximately 6 to eight hours, depending on the charging system of the vehicle. The DC Fast Charger station technology allows for a full re-charge in approximately 30 minutes to one hour. This technology will allow for owners of electric vehicles to visit areas for much shorter time frames to receive a full charge - something that is appealing to most electric vehicle owners, especially those visiting and spending dollars within Orange County.

The County's proposed contribution to this initiative is only the conveyance of a utility easement for the locations of the property. Brightfield will permit, design, install, and own the facilities and will charge a nominal fee for the charging service. Brightfield will offer the County and its local government partners (Chapel Hill, Carrboro, Hillsborough, Orange County Schools and Chapel Hill-Carrboro City Schools, and OWASA) a discount to these charging services should these entities invest in the plug-in electric vehicles now and into the future.

The Agreement stipulates the parking areas as not exclusive to electric vehicles; however, they would be include signage as electric vehicle charging areas.

The licensing arrangement proposes a nine year term upon the final commissioning of the stations, with a mutually agreed option for a five year renewal period of the license and/or a mutually agreed buyout provision of the stations at the end of the license term. The full proposed licensing agreement is provided at Attachment 3.

If the licensing agreement is approved, the Board of County Commissioners will be presented the utility easements for approval after Brightfield secures all of the necessary regulatory approvals for the development.

FINANCIAL IMPACT: There is no cost to the County for this licensing agreement. Should the County exercise its mutually agreed buyout option at the end of the term, the County would purchase the facilities for a negotiated fair market value at that time.

RECOMMENDATION(S): The Manager recommends that the Board:

1) approve a Licensing Agreement and grant the associated Easements to Brightfields Transportation Services, LLC for electric vehicle "DC Fast Charger" fueling station construction and operations at The Justice Facility parking lot in Hillsborough, NC and the Skills Development Center parking lot in Chapel Hill, NC;

2) authorize the Chair to sign all necessary documents upon final review of the County Attorney.

Attachment 1

Site Locator

Justice Facility Parking Area - 106 East Margaret St

Skills Development/Visitors Center - 501 W Franklin St

Attachment 2

Typical Brightfield Station Illustration

Attachment 3

STATE OF NORTH CAROLINA
COUNTY OF ____Orange_____

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement" and/or "License") made this ____day of _____, by and between Orange County, organized and existing under the laws of the State of North Carolina, (hereinafter "**Licensor**") and Riding Partners, Inc. d/b/a Brightfield ("BrightfieldTS"), with its principal place of business at 87 Shope Road, Asheville, NC 28805 (hereinafter "**Licensee**");

W I T N E S S E T H:

Upon the terms and conditions hereinafter set forth, **Licensor** hereby grants unto **Licensee** and **Licensee** does hereby accept as a **Licensee** of **Licensor** such property of **Licensor's** located at __106 East Margaret St and 501 W Franklin St_, as more particularly described and shown on Exhibit "A," attached hereto and incorporated herein by reference, (hereinafter "Premises") as shall be necessary for the construction and maintenance of equipment pursuant to the Terms and Conditions set forth herein:

I. **TERMS AND PAYMENTS:**

A. **Use of Licensed Premises**

Licensor for the term set forth herein and subject to the terms and conditions of this License, hereby grant to Licensee permission to use the Premises as described in Exhibit A herein, for the installation of equipment necessary for the operation of a solar powered electric vehicle charging station, and/or stand-alone electric vehicle chargers and/or solar array such equipment and accessories as set forth on Exhibit "B" (hereinafter "Equipment"). **All Equipment and improvements shall hereinafter collectively be referred to as "Licensee Facilities."** The Licensee shall install the Licensee's Facilities solely for the purpose of operating a solar powered electric vehicle charging station. Licensee's facilities, shall be located in the license area as set forth in the attached Exhibit "A" and shall be constructed in accordance with all relevant building codes and regulations. All Exhibits referenced herein are attached hereto and incorporated herein by reference. In the event the Licensor determines a better use for the Premises, Licensor may elect to relocate the Equipment to a new location ("New Location") upon approval by both Parties, both Parties agree that approval shall not be unreasonable withheld. The New Location shall be similar in visibility, user access, solar exposure and shall have equal or higher projected utilization. The Licensor shall be responsible for all costs associated with the removal and site restoration of the original site along with, relocation and installation at the New Location, including, but not limited to, design, engineering, permitting, interconnection, construction, commissioning and all processing costs.

B. **Term**

The term of this License shall be for a period of nine (9) years (the "**term")** commencing from the first day of _____, 201__(the "commencement date") and will terminate at 11:59 p.m. on the ninth anniversary of the commencement date, provided that Licensee is not in default of any of its **obligations** set forth herein. If Licensee shall remain in possession of the Premises at the expiration of this License without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this License.

C. **License Fee**

1. Rental: The License Fee is $1.00 per year. All payments shall be made directly to _____and these payments shall be exclusive of charges of the furnishing of any utilities such as, but not limited to, electricity, gas, water, sewer or telephone.

2. In-Kind Service: During the Term of this Agreement, Licensor's fleet and employee vehicles shall have the ability to utilize the equipment for a vehicle charge event at a reduced rate of _20%_. The fleet and employee vehicles of the Licensor's: 1) municipalities (Chapel Hill, Carrboro, Hillsborough); 2) University systems (University of North Carolina at Chapel Hill, Durham Technical College); and 3) the Orange Water and Sewer Authority), shall have the ability to utilize the equipment for a vehicle charge event at a reduced rate of _20%_ for a three year period from the execution date of this Agreement. This value will be provided on an annual basis by BrightfieldTS and will be based on industry trends and statewide polling.

3. Licensee shall have a separate electric meter to measure Licensee's electric consumption and Licensee shall pay directly to the public utility company for the installation of the meter and for any electricity used by Licensee's Equipment, unless another interconnection solution becomes preferable to both parties. Any such other preferred interconnection solution shall be agreed to in writing by the Parties hereto.

II. INSTALLATION MAINTENANCE AND ACCESS

A. Additional Fees

1. All costs directly or indirectly associated with the installation of the Licensee Facilities are the sole responsibility of Licensee.

B. Prerequisites to Installation

1. Prior to the installation of the Licensee Facilities on the Premises, Licensee shall submit detailed engineering plans and specifications of the planned installation to the Licensor. Upon securing regulatory approval of the plans and specifications, the Licensee shall provide the Licensor with at least ten (10) days' notice of the actual installation of the Licensee's Facilities. Licensee shall use its best efforts to follow an installation schedule which will limit interference with the _parking_ area as well as the ability to use the parking spaces within the license area.

2. Prior to the installation of any of the Licensee's Facilities on the Premises, Licensee shall, at Licensee's sole cost and expense provide the Licensor with copies of any and all permits for the installation.

3. Prior to the installation of any of the Licensee's Facilities on the Premises, or entry onto the Premises, Licensee shall provide the Licensor with Certificates of Insurance as required by Section III of this License.

4. Signage: Licensee will be permitted to place signage for the electric vehicle charging station as shown on Exhibit C attached hereto. No additional signage will be permitted without the express approval of the Licensor. Notwithstanding anything contained herein, all signs must be professionally made, approved by Licensor prior to display, such approval not to be unreasonably withheld, and must comply with applicable governmental regulations. It shall be responsibility of Licensee to obtain local permits for signage and to ensure such signage is authorized under local ordinances. All signs that do not have prior approval by Licensor will be removed at the sole cost of Licensee.

C. Maintenance

1. All installation and other work to be performed by Licensee hereunder shall be done in such a manner so as not to interfere with, delay, or impose any additional expense upon Licensor in maintaining the Premises. In no event will Licensor be required to consent to any installation or other work by Licensee which would negatively impact any part of the Premises or any adjoining property of Licensor.

2. Licensee shall maintain its Licensee's Facilities in proper operating condition and within industry accepted safety standards and such other standards as may be adopted by the federal government from time to time.

Licensor assumes no responsibility for the licensing, operation and or maintenance of the Licensee's Facilities.

D. **Permits and Compliance**

1. The Licensee's Facilities and installation, operation and maintenance of such must be in compliance with all federal, state and local laws, including but not limited to local zoning requirements. It shall adhere to reasonable technical industry standards.

2. The Licensee shall at all times in good faith, use its best efforts to obtain licenses, permits and approvals necessary for the installation or operation of the Licensee's facilities, at Licensee's sole expense. Licensor, to the extent it can legally do so, will cooperate with Licensee in obtaining necessary permits.

3. Notwithstanding the obligations of the Licensee, Licensor shall maintain in good condition and repair the Premises.

E. **Access, Authorized Personnel and Limits on Exclusivity of Space Use**

1. Licensee shall have a non-exclusive right to access the premises for ingress and egress purposes. In the event an additional right of way or easement is required by Licensee for such access, Licensee shall negotiate the right of way or easement separate from this License and all costs associated with obtaining the right of way or easement shall be borne entirely by Licensee.

2. Licensee and its authorized personnel shall have reasonable access to the Premises twenty-four (24) hours a day, seven (7) days a week, for the purposes of routine and emergency maintenance of the Licensee's Facilities.

3. At present, it is recognized that there is strong demand for parking during the normal business hours at the Premises. Therefore, during the initial_2_years of the license Agreement, parking in the _ 5_ spaces adjacent to the electric vehicle station will be open use and non-exclusive. In year _3_ of the license Agreement, it is contemplated that there will be an increased demand for designated access for these spaces, as electric vehicle parking only. Licensee and Licensor agree that beginning in year _3_ of this Agreement, one of the _5_spaces to be designated as "Electric Vehicle Parking Only" at the point that there are _50_ such vehicles registered in _Orange County_. Designating additional parking spaces of any equipment owned and operated by licensee will be reviewed each additional year of the license agreement, using the same metric (e.g. _1_ designated space per __50__ registered electric vehicles, etc.). Licensee and Licensor understand and agree that there will be no enforcement of these guidelines without prior approval of the governing board of the Licensor.

III. **<u>LIABILITY AND CONDEMNATION</u>**

A. **Insurance**

1. Licensee shall provide a certificate of insurance prior to the commencement of this License evidencing coverage in the limits and amounts shown below. All certificates of insurance for general liability shall show the __Orange County__ as an additional named insured.

General Liability	$1,000,000.00
Automobile Liability	$500,000.00

(combined single limit; hired and non-owned coverage, for company owned vehicle only)

2. Licensee shall require its contractors/subcontractors, prior to commencing any installation, repair or maintenance work on the premises to provide the Licensor a certificate of insurance evidencing like coverages and limits as described above.

3. During the term of this License and any renewals thereof, the Licensee shall provide to the Licensor, upon the anniversary date of this License, a certificate of insurance evidencing the coverage in the amounts shown above. All certificates issued on behalf of the Licensee to the Licensor shall require no less than thirty (30) days prior written notice to the Licensor as to the termination, lapse, or reduction in coverage.

4. The failure of the Licensee to maintain any of the coverage or meet any of the required conditions of this License shall constitute a default. Upon such default, the Licensor shall have the option of obtaining and maintaining such coverage as set forth in Section III (A) (1) herein and shall have the right of reimbursement from the Licensee for the cost of said coverage, or shall have the option of terminating this License upon thirty (30) days written notice to the Licensee.

B. **Indemnification**

1. Licensee agrees to indemnify, defend and hold Licensor harmless from and against injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) which may be imposed upon or incurred by or asserted against Licensor occurring during the term of this License, or during any period of time prior to the Commencement Date hereof or after the expiration date hereof when Licensee may have been given access to or possession of all or any part of the Premises arising from:

   (i) any work or act done in, on or about the Premises or any part thereof, including the installation, use, maintenance, repair or removal of the Licensee Facilities, at the direction of Licensee, its agents, contractors, subcontractors, servants, employees, Licensees or invitees, except if such work or act is done or performed by Licensor or its agents or employee;

   (ii) any negligence (including gross or ordinary negligence, any willful or wanton act or omission or any other wrongful act or omission occurring in, on, or about the Premises or any part thereof, to the extent such injury, loss, damage, liability, costs, and/or expenses are caused by the negligence, gross negligence, or misconduct of Licensee, its agents, employees, contractors, subcontractors, servants, licensees, or invitees; and

   (iii) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this License on its part to be performed or complied with.

2. To the extent authorized by North Carolina law Licensor agrees to indemnify, defend and hold Licensee harmless from and against injury, loss, damage (but not consequential damages or punitive damages), or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) which may be imposed upon or incurred by or asserted against Licensee occurring during the term of this License arising from:

   (i) any negligence (including gross or ordinary negligence, any willful or wanton act or omission or any other wrongful act or omission occurring in, on, or about the Licensee Facilities or any part thereof, to the extent such injury, loss, damage, liability, costs, and/or expenses are caused by the negligence, gross negligence, or misconduct of Licensor, its agents or employees; and

   (ii) any failure on the part of Licensor to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this License on its part to be performed or complied with.

3. The above referenced language shall not be construed as waiving any defense or limitation which either party may have against any claim or cause of action by any person not a party to this Agreement. Nor shall said language be construed as waiving any defense either party may have against each other to the defense of governmental immunity. Provided, however, the indemnification language contained hereinabove, is entered into only to the extent it is currently authorized by North Carolina law and does not violate nor contravene state or local laws as it relates to either party, individually, or jointly.

C. **Casualty**

In case of damage to the Premises or those portions of the Premises which are essential to the operation of the Licensee Facilities, Licensor may, at its expense, cause the damage to be repaired to a condition as nearly as practicable to that existing prior to the damage, with reasonable speed and diligence, subject to delays which may arise by reason of adjustment of loss under insurance policies, Governmental Regulations, and for delays beyond the control of Licensor, including a "force majeure". Licensor shall not, however, be obligated to repair, restore, or rebuild any of Licensee's personal property, including but not limited to the Licensee Facilities. Licensor shall not be liable for any consequential damages, inconvenience, or annoyance to Licensee, or injury to Licensee's business resulting in any way from such damage or the repair thereof for the time that Premises are rendered unusable for Licensee's intended purpose, the base rent shall proportionately abate. In the event the damage shall involve the Premises generally and shall be so extensive that Licensor shall decide, at its sole discretion, not to repair or rebuild the Premises, this License shall, at the sole option of Licensor, exercisable by written notice to Licensee given within thirty (30) days after Licensor is notified of or otherwise becomes aware of the occurrence of the casualty, be terminated as of the date of such casualty, and the base rent, taking into account any abatement as aforesaid, shall be adjusted to the termination date and Licensee shall thereupon promptly vacate the Parking Lot and the Premises.

D. **Condemnation of Premises**

In the event that any government, public body, or other condemning authority shall take, or if Licensor shall transfer in lieu of such taking, all or such part of the Premises thereby making it physically or financially infeasible for the Premises to be used in the manner intended by this License, Licensee shall have the right to terminate this License effective as of the date of the taking by the condemning party and the rental shall be prorated appropriately. However, if only a portion of the Premises is taken, Licensor shall upon consultation with Licensee determine whether the License should remain operative, giving either Party the right to terminate upon 120 days notice of the intent to terminate.

V. **HAZARDOUS SUBSTANCES**

Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within any Premises in violation of any law or regulation. Licensor represents, warrants and agrees (1) that neither Licensor nor, to Licensor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Premises in violation of any law or regulation, except as disclosed herein, and (2) that Licensor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. As used in this paragraph, **"Hazardous Material"** shall mean hazardous or radioactive material, polychlorinated biphenyls, friable asbestos or other hazardous or medical waste substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or by any other federal state or local law, statute, rule, regulation or order (including any Governmental Requirements, as hereafter defined) concerning environmental matters, or any matter which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet. "**Governmental Requirements**" shall mean all requirements under any federal, state or local statutes, rules, regulations, ordinances, or other requirements of any duly constituted public authority having jurisdiction over the Property.

This Section shall survive the termination of this License.

VI. OTHER TERMS AND CONDITIONS

A. Special Event

If Licensee desires to host a special event or demonstration event onsite for the EV station, Licensee will need to coordinate that permission through the adopted Orange County Facilities Use Policy and its processes.

B. Assignment

Licensee may transfer or assign any or all of its interest in this License upon thirty (30) days advanced written notice to Licensor.

C. Taxes and Assessments

Licensee shall pay any taxes, assessments, charges, fees or licenses attributable to its use of the Premises, including any increase in real property taxes and any use, occupancy, and/or personal property taxes.

D. Mechanics Liens

Licensee shall not suffer or permit any mechanic's, laborer's, or materialman's lien to be filed against the Premises by reason or work, labor, services, of materials requested and supplies claimed to have been requested by Licensee; and if such lien shall at any time be so filed, within fifteen (15) days after notice of the filing thereof, Licensee shall cause it to be cancelled and discharged of record. In the event Licensee does not cause such lien to be cancelled and discharged of record, Licensor may terminate this License and proceed in accordance with applicable law.

E. Fixtures and Removal

Licensor covenants that except in the event that it exercises the Option to Purchase described in Section VII. A. below, all personal property and improvements of every kind and nature installed, constructed, or placed by Licensee on the Premises, shall be and remain the property of Licensee despite any default or termination of this License and may be removed by Licensee provided that Licensee, at its expense, shall restore the Premises to its condition as of the commencement date of the License reasonable wear and tear excepted.

F. Removal of the Licensee Facilities Upon Expiration or Termination

Unless Licensor exercises the Option to Purchase described in Section VII. A. below, upon the expiration of the term of this License or the termination hereof, whichever first occurs, Licensee shall have the option of removing all of the Licensee Facilities or conveying the Licensee Facilities to Licensor. In the event Licensee elects to remove the Facilities, Licensee shall restore the Premises to its condition as of the Commencement Date of this License, reasonable wear and tear excepted. Any and all removal of Licensee's equipment shall be performed in a workmanlike manner, without any interference, damage or destruction to any other equipment, structures or operations at the Site or any other equipment of other Licensees thereon.

G. Amendments.

This Agreement may be amended in a writing signed by both parties. As to amendments that the Licensor deems substantial, including any amendment affecting the term of this Agreement or the License Fee, approval by the Orange County Board of County Commissioners may be required. As to other amendments, the Orange County Manager may approve.

VII. EXPIRATION/TERMINATION OF LICENSE

A. **Option to Purchase**

A. **Option to Purchase, Renewal**

1. Beginning in year ten (10) of this Agreement and/or upon expiration of the initial term of this Agreement, the Licensor shall, pursuant to and consistent with the terms of this Agreement, and with the mutual agreement of both the Licensor and Licensee, have the option to purchase Licensee's Facilities at Fair Market Value (the "**FMV").**

2. Fair Market Value shall be determined by an appraiser or CPA. The cost of determining the FMV shall be that of the Licensor. In the event of a dispute regarding the appraisal, Licensee shall have appraisal completed and the average of the two appraisals shall serve as the FMV. Licensor may exercise this option at any time after the expiration of the initial term.

3. Beginning in year ten (10) of this Agreement and/or upon expiration of the initial term of this Agreement, the Licensor shall, pursuant to and consistent with the terms of this Agreement, and with the mutual agreement of both the Licensor and Licensee, have the option to renew the existing Agreement for an additional six (6) year period.

B. **Termination**

In the event of default as described in Section VII. E. below, Licensor may, at its option, terminate this License upon written notice to Licensee. Except where a different time is set forth elsewhere herein, said notice shall be thirty (30) days.

C. **Holding Over**

Should Licensee hold possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, Licensee will become a Licensee on a month-to-month basis upon all the terms, covenants, and conditions of this License except those pertaining to the License term. Licensee will continue occupancy from month-to-month until terminated by Licensor or Licensee by the giving of thirty (30) days' written notice to the other. Nothing contained herein shall grant Licensee the right to holdover after the term of this License has expired.

D. **Non-Waiver**

Failure of Licensor to insist on strict performance of any of the conditions or provisions of this License or to exercise any of the rights hereunder shall not waive such rights.

E. **EVENT OF DEFAULT**

It shall be an **Event of Default** if any one or more of the following events shall occur:

1. Licensee shall default in the payment when due of any Rent or other sum of money specified hereunder to be paid by Licensee, and Licensee does not remedy such default within ten (10) days after written notice thereof from the Licensor (provided, however, that the Licensor shall not be required to provide such notice with respect to more than two payments required during any calendar year during the term hereof); or

2. Licensee shall default in the performance of any other of the terms, conditions or covenants contained in this License to be performed or observed by Licensee, other than that specified in (1) above, and Licensee does not remedy such default within thirty (30) days after written notice thereof or, if such default cannot be

remedied in such period, Licensee does not commence such efforts to remedy the default within twenty (20) days after such notice and continue to pursue such efforts and/or acts to completion with reasonable diligence.

3. In the event Licensor shall fail to keep or perform any of the terms, conditions or covenants contained in this License to be performed or observed by Licensor, and Licensor does not remedy such failure within thirty (30) days after written notice thereof is given to Licensor, Licensee shall have and shall be entitled to exercise any and all rights and remedies permitted by applicable law.

VIII. MISCELLANEOUS

A. Notice

1. The parties hereby acknowledge that all notices relative to this License shall be served upon the parties in writing and shall be deemed properly served only when delivered by one of the following methods: hand delivered, overnight courier, or posted by certified United States mail, return receipt requested, addressed to the party to whom directed at the following addresses or at such other addresses as may be from time to time designated in writing:

To Licensor: Orange County
c/o Jeff Thompson, Director, Asset Management Services
PO Box 8181
Hillsborough, NC 27278

To Licensee: Riding Partners, Inc.
c/o/ Matthew Johnson, President
87 Shope Road
Asheville, NC 28805

B. Governing Law

This License shall be governed by and construed in accordance with the laws of the State North Carolina. All rights and remedies of Licensor under this License shall be cumulative and none shall exclude any other rights or remedies allowed by law or by equity. Venue shall be in Orange County North Carolina for any action brought by either party against the other related to this License.

C. Attorney's Fees

The prevailing party shall be entitled to recover from the non- prevailing party reasonable attorneys' fees, costs, and expenses incurred in any action or proceeding arising out of or relating to this Agreement.

D. Severability

Should any provision or provisions contained in this License be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.

E. Entirety

This License contains the entire Agreement of the parties and may not be modified, except by an instrument in writing and signed by both parties.

Attest: _____

_____ By: _____

_____
Commissioners
(Official Seal)

Title: Chair, Orange County Board of County

Date: _____

Attest:

_____
Matthew Johnson
President, Riding Partners, Inc.
(Corporate Seal)

By: _____

Date: _____

******

STATE OF NORTH CAROLINA
COUNTY OF _____

I_____, Notary Public of the County and State aforesaid certify that _____, personally came before me this day and acknowledged that s/he is the _____ of the _____, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its _____ and attested by him/herself as its _____.

Witness my hand and notarial seal this ____ day of _____, 20___.

(SEAL)

_____
Notary Public
My Commission Expires: _____

****

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, Notary Public of the aforesaid County and State, certify that _____ personally came before me this day and acknowledged that he/she is_____ of Riding Partners, Inc. Corporation, and that he/she, as _____, being authorized to do so, executed the foregoing on behalf of the said corporation.

Witness my hand and notarial seal this _____ day of _____, 20_____

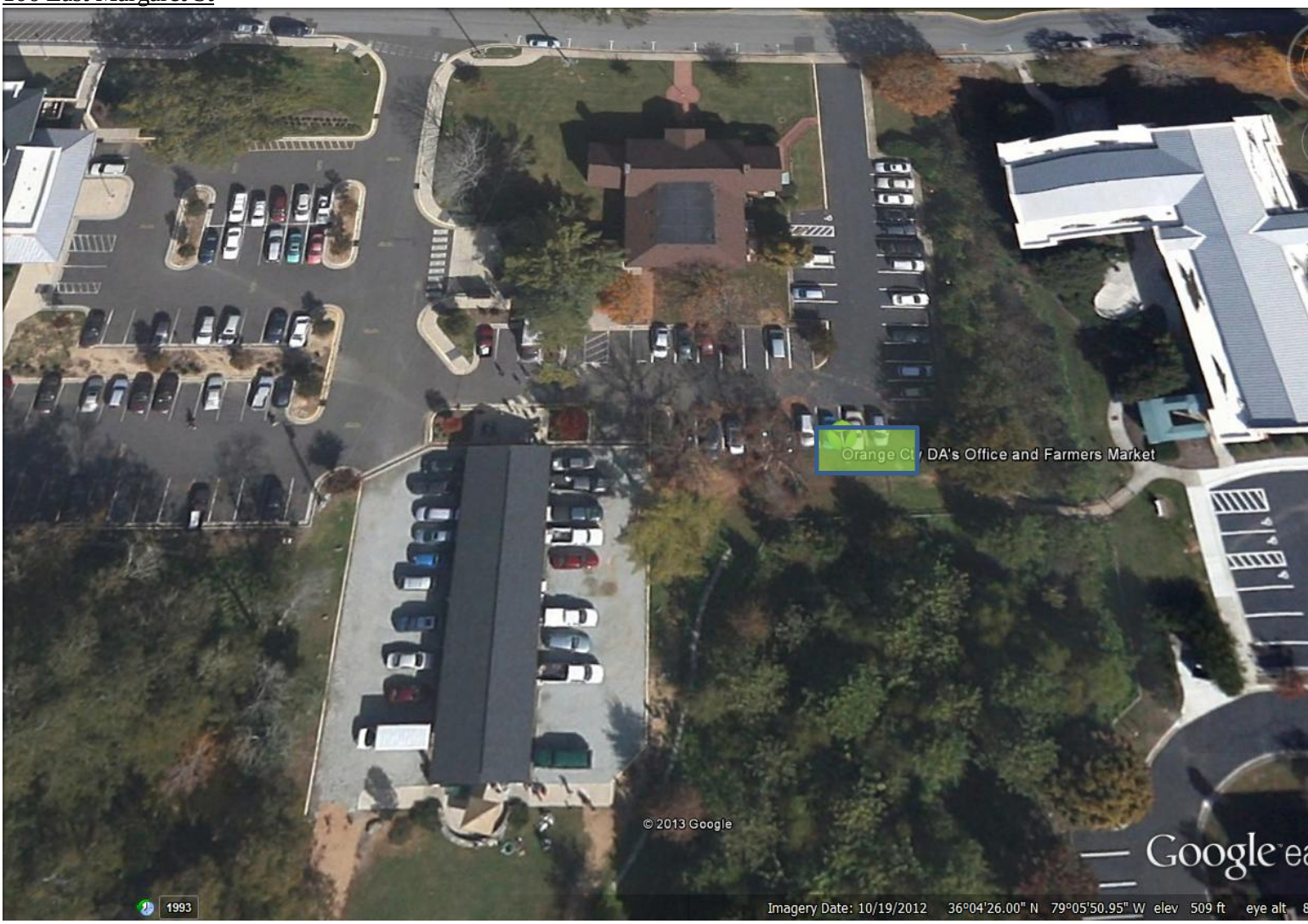
(SEAL)

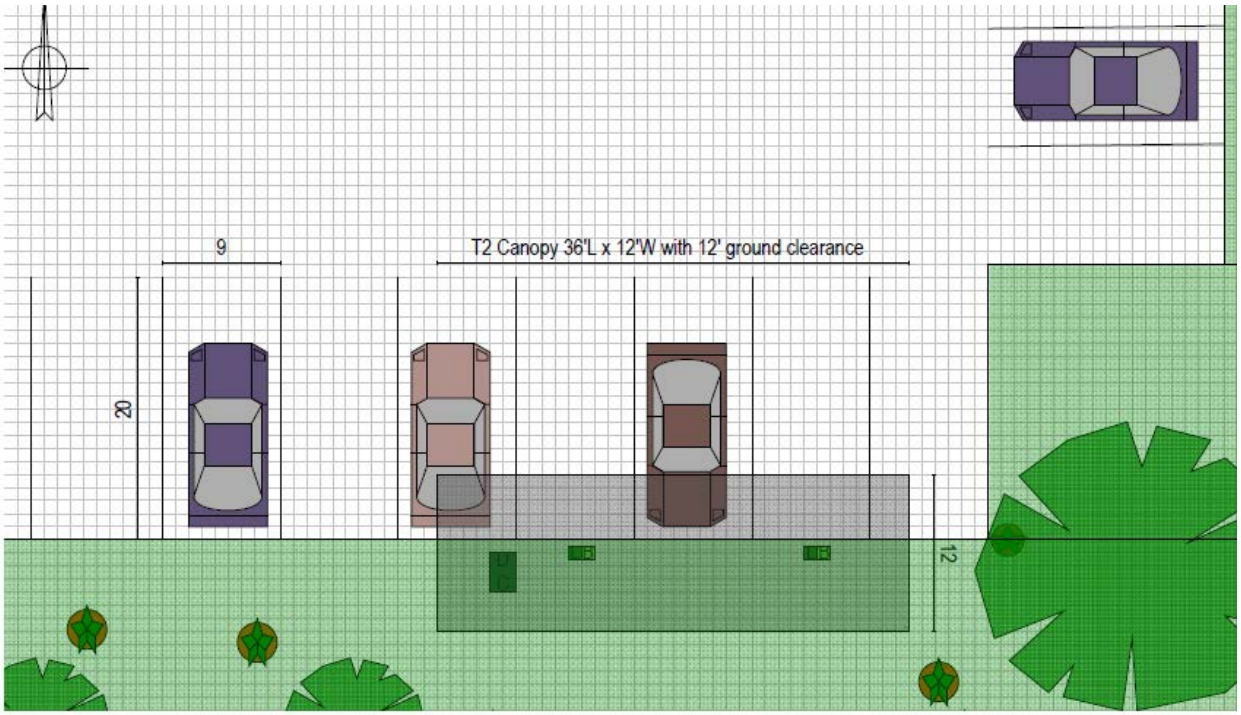
_____
Notary Public
My Commission Expires: _____

Exhibit A

Copy of SURVEY outlining the area of construction and license area

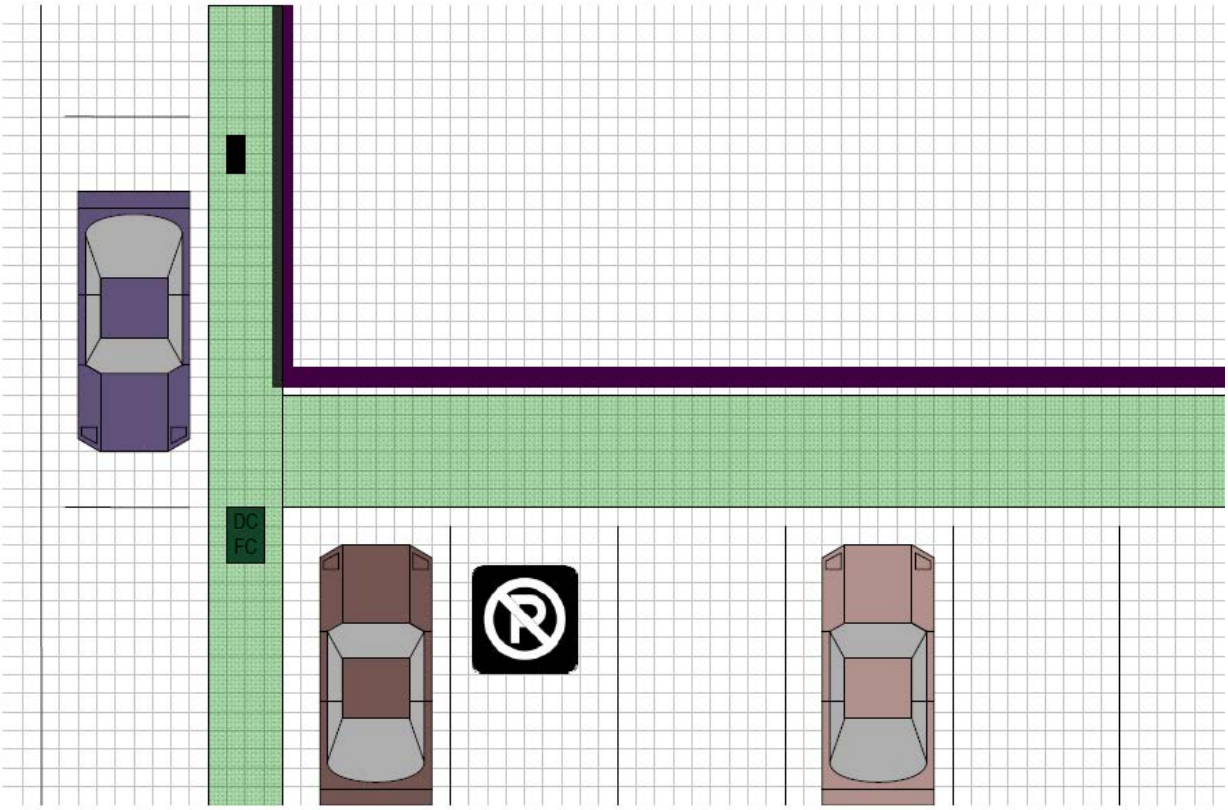
106 East Margaret St





1 grid = 1 foot

501 W Franklin St



1 grid = 1 foot

Exhibit B Equipment

List and description of equipment for installation

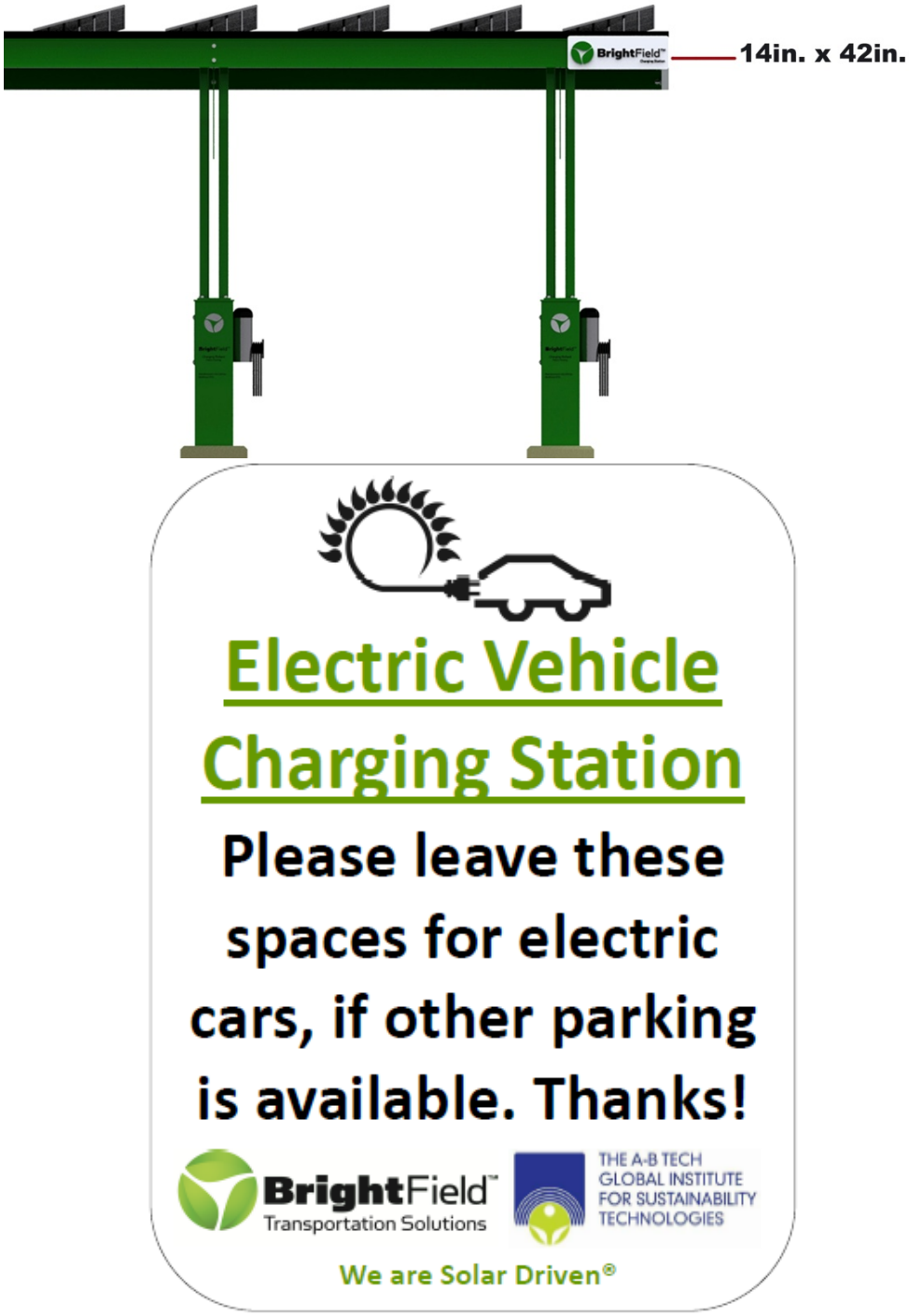
501 W Franklin St

- **1- Fuji 25KW DC Fast Charger**
- **Appropriate metering and reporting equipment**

106 East Margaret St

- **5000 Watt (21 panel) Brightfield® T3 PV array**
- **3- Networked ChargePoint L2 Charger(s)**
- **1- Fuji 25KW DC Fast Charger**
- **Appropriate metering and reporting equipment**

Exhibit C
Signage



Sample of sign to be placed on station trunk.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda Item No. 7-d

SUBJECT: Morinaga America Foods Temporary Office Lease – Link Government Services Center, Lower Level

DEPARTMENT: Asset Management Services, Economic Development County Attorney

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
1) Site Locator; Floor Plan
2) Lease
3) Key Lease Terms

INFORMATION CONTACT:
Jeff Thompson, 919-245-2658
Steve Brantley, 919-245-2326
John Roberts, 919-245-2318

PURPOSE: To consider:

1) approving a 12 month lease with Morinaga America Foods for temporary office space in the Link Government Services Center at 200 South Cameron Street, Hillsborough;

2) authorizing the Chair to sign all necessary documents upon final review of the County Attorney.

BACKGROUND: Morinaga America Foods ("Morinaga") is aggressively developing its manufacturing and operations facility in Orange County and expects to be complete in the fall of 2015. Morinaga is interested in leasing temporary office space for its President, Toshiaki Fukunaga, and key staff in advance of the completion of the permanent facilities.

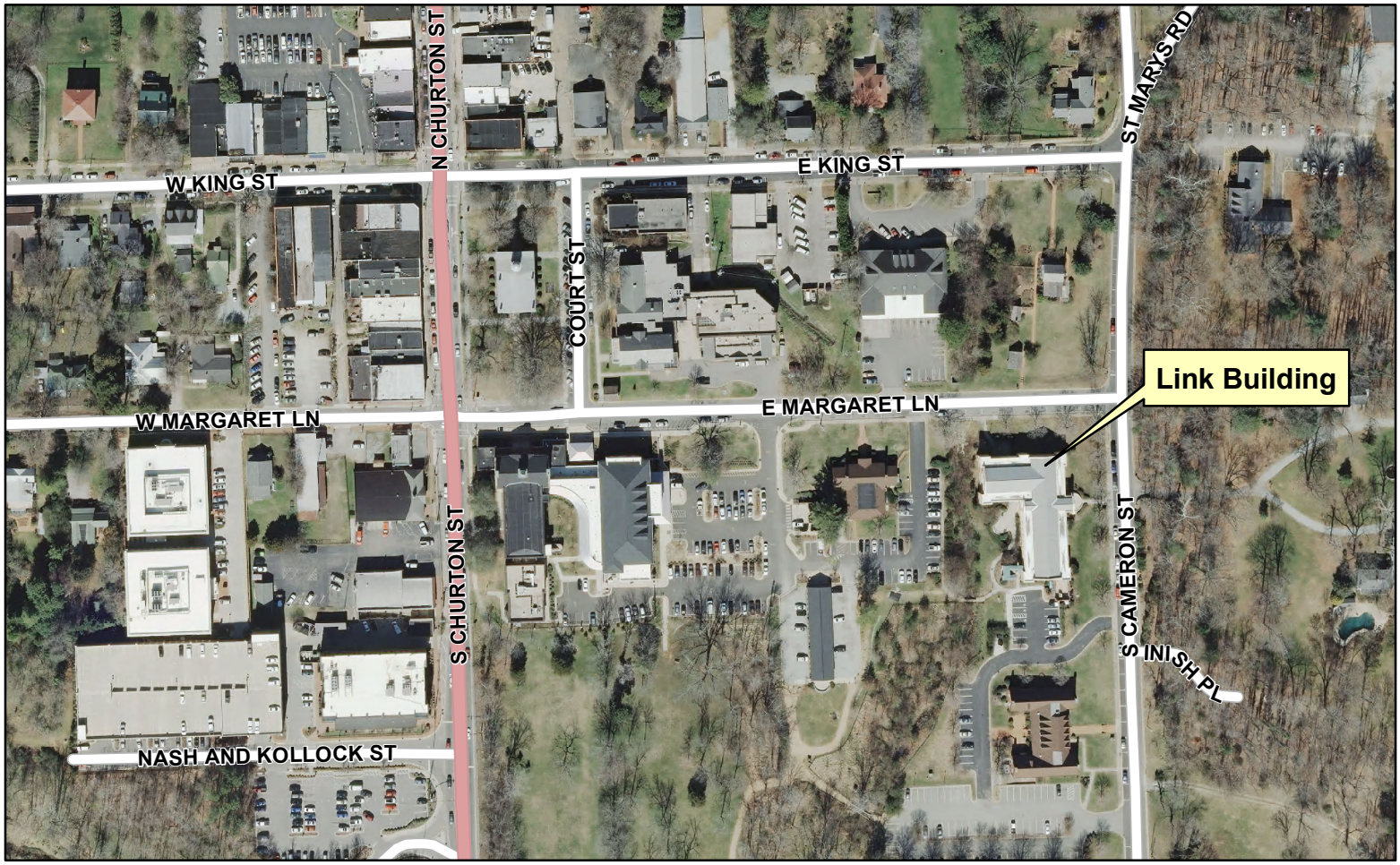
The contemplated space is located in the lower level of the Link Government Services Center in Hillsborough (note Attachment 1: Site Locator and Contemplated Floor Plan). The County has immediately available and currently under-utilized space in the facility that is suitable for the temporary facilities for Morinaga. This Lease arrangement benefits Morinaga in its plan to begin operations in Orange County in advance of its full operations build-out. The proposed Lease is Attachment 2. Attachment 3 illustrates the key Lease terms.

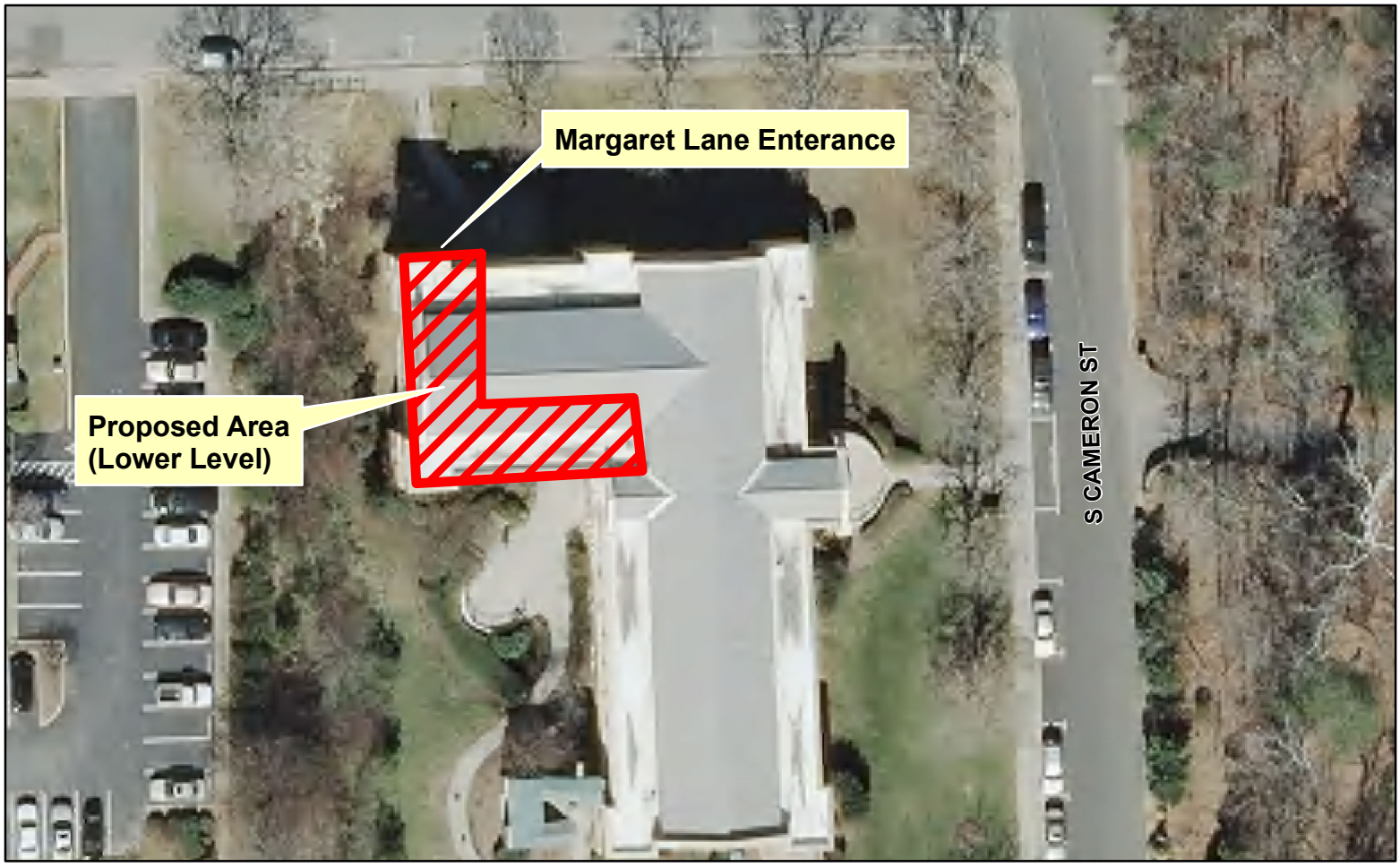
FINANCIAL IMPACT: The County would receive a total of $8,076 for the rental of the "Morinaga Phase 1 area" during the term of the Lease. Should Morinaga exercise its option to increase its leased area, the additional space would be pro-rated at $14 per square foot through the remaining term of the Lease.

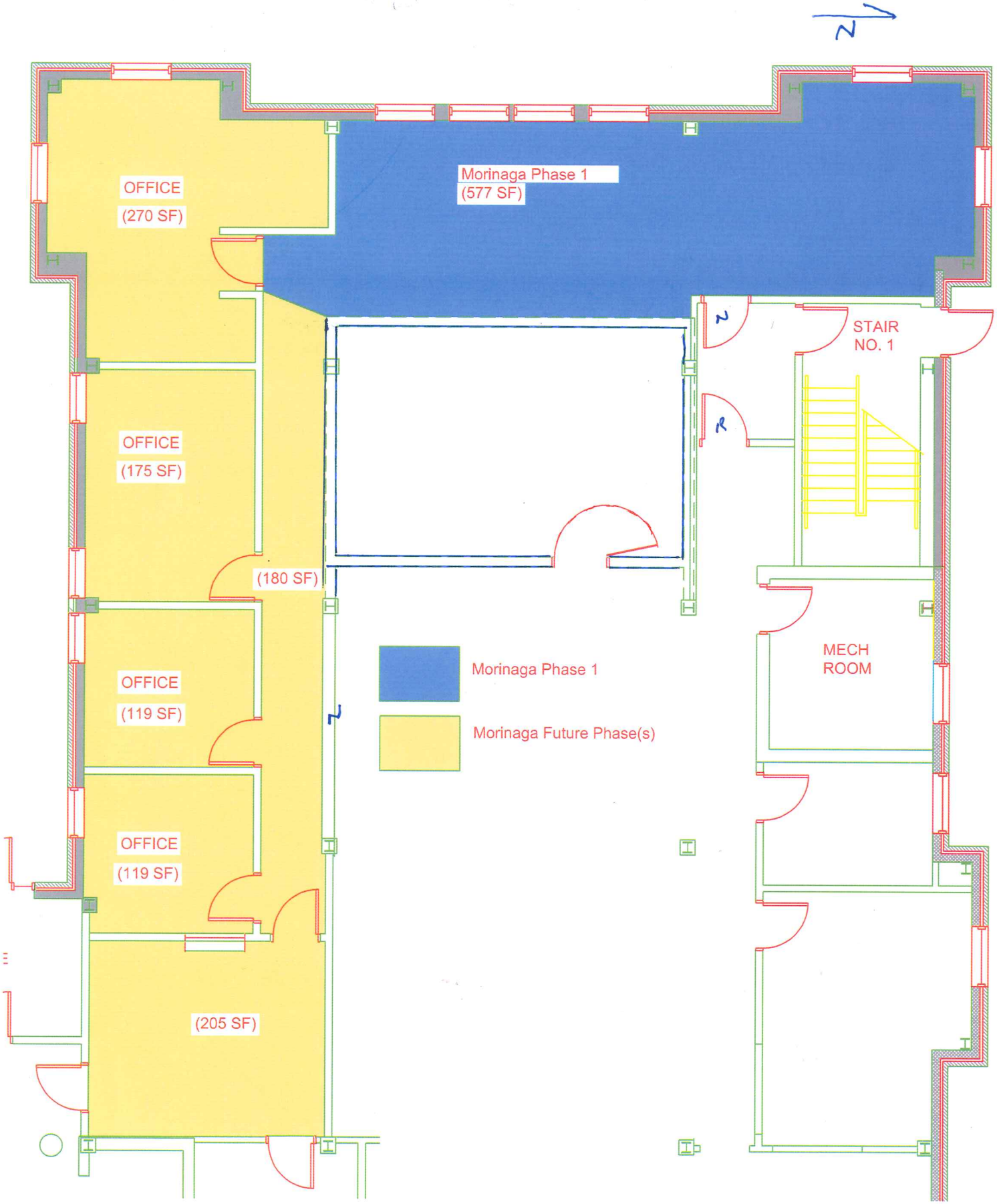
RECOMMENDATION(S): The Manager recommends that the Board:

1) approve a 12 month lease with Morinaga America Foods for temporary office space in the Link Government Services Center at 200 South Cameron Street, Hillsborough; and

2) authorize the Chair to sign all necessary documents upon final review of the County Attorney.


N CHURTON ST
W KING ST
E KING ST
ST MARYS RD
COURT ST
Link Building
W MARGARET LN
E MARGARET LN
S CHURTON ST
S CAMERON ST
S INISH PL
NASH AND KOLLOCK ST


Margaret Lane Enterance
Proposed Area
(Lower Level)
S CAMERON ST


N
Morinaga Phase 1
(577 SF)
OFFICE
(270 SF)
OFFICE
(175 SF)
(180 SF)
OFFICE
(119 SF)
OFFICE
(119 SF)
(205 SF)
STAIR
NO. 1
MECH
ROOM
Morinaga Phase 1
Morinaga Future Phase(s)

Attachment 2

STATE OF NORTH CAROLINA
COUNTY OF ORANGE **LEASE**

THIS LEASE, made and entered into as of the 1st day of May, 2014, by and between Orange County, hereinafter referred to as "County," and Morinaga America Foods, hereinafter referred to as "Tenant;"

WITNESSETH:

THAT FOR and in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Premises. County does hereby lease and let unto Tenant and Tenant does hereby accept as Tenant those certain premises designated as Suite “Morinaga Phase 1” of the John M. Link Jr. Government Services Building, 200 South Cameron Street, Hillsborough, Orange County, North Carolina, as more particularly shown on EXHIBIT A appended hereto.

2. Acceptance of Premises. The Tenant represents that the lease property, the sidewalks and structures adjoining the same, any subsurface conditions thereof, and the present uses and non-uses thereof have been examined by the Tenant. The Tenant accepts the same in the condition in which they now are without representation or warranty, express or implied, in fact or by law, by the County, the nature, condition or usability thereof, or the uses to which the leased property may be put. Provided, County shall be responsible for ensuring that the heating/air-conditioning system is in good operating condition; the exterior walls and roof, the lighting system (excluding such additions as may be required for Tenant's particular business operation) and the parking area and sidewalks are in good repair on the date of commencement of the lease term. County represents and warrants to Tenant that it holds unencumbered fee title to the lease premises. The County shall not be responsible for any latent defect or change of condition in such building, improvements and personalty, and the rent hereunder shall in no case be withheld or diminished on account of any defect in such property, any change in the condition thereof, any damage occurring thereto or the existence with respect thereof of any violations of the laws or regulations of any governmental authority, except as hereinafter provided. In addition, Tenant acknowledges that the Bentley Building is a smoke free building and does not permit tobacco use inside of the building.

3. Term and Rental.

(a) This Lease shall commence on May 1, 2014, and shall continue for a term of twelve (12) months, ending on April 30, 2015, both dates inclusive, unless sooner terminated as herein provided. Upon mutual written agreement this Lease may be renewed for up to one twelve month terms. Any renewal may be for the entire leased premises of the designated suites. Any such renewal shall be subject to a mutually agreed upon increase in rent. The Tenant may choose to lease additional space identified as “Morinaga Future Phase(s)” shown on EXHIBIT A appended hereto during the Lease term.

(b) Tenant shall deliver to County a deposit in the amount of six hundred seventy three dollars ($673.00), which is the equivalent to the rent for one (1) month. Deposit shall be held as a security deposit against claims for damages. This money may be deposited for the exclusive use of Orange County and will be returned to Tenant at the end of the lease within 30 days provided there has been no damage to the leased premises.

(c) The Tenant agrees to pay the County without demand at its office, or at such other place or places as County may from time to time designate in writing, the sum of six hundred seventy three ($673.00) per month ($8,076.00) for the 12 month lease term, on or before the fifth day of each month of the term. Should the Tenant elect to Lease additional spaces identified as "Morinaga Future Phase(s)", the Lease rate shall be fourteen dollars per square foot multiplied by the remaining term of the Lease Agreement. Any additional space lease would begin on the first day of a mutually agreed upon month.

(d) The extension of time for the payment of any installment of rent, or the acceptance by the County of any money other than of the kind herein specified, shall not be a waiver of the right of the County to insist on having all other payments of rent made in the manner and at the time herein specified.

(e) If any installment of rent is not received by the fifth (5th) day of any month it is due, Tenant shall pay as additional rent a late payment fee of Fifty Dollars ($50.00). This additional rent shall be due immediately without demand therefore and shall be added to and paid as a part of the installment payment of rent with respect to which it is incurred.

4. Holdover. If the Tenant shall remain in possession of the leased property after the expiration of the original or renewal period as set out above, such possession shall be as a month-to-month tenant. During such month-to-month tenancy, rent shall be the rent in effect during the last month of the term immediately preceding.

5. Insurance. The County shall keep in force insurance to provide for property damage to the building for replacement cost purposes. Provided, however, Tenant shall be responsible for and pay to County any increase in County's insurance premium occasioned by the nature of the Tenant's business.

The Tenant shall maintain fire and casualty insurance covering the Tenant's fixtures, equipment, and other property located in the demised premises.

Tenant shall keep the leased property insured, at its sole cost and expense, against claims for personal injury or property damage under a policy of general public liability insurance, with limits of at least $1,000,000 for bodily injury and $100,000 for property damage. Such policies shall name the County as additional named insured under the policy.

The Tenant shall provide the County certificates of such insurance at or prior to the commencement of the term of this lease, and thereafter within ten (10) days prior to the expiration of such policies. Such policies shall provide that the same may not be canceled without at least ten (10) days prior written notice to County.

6. Rental Adjustment. In addition to the base rental, the Tenant shall assume and pay any additional fire insurance premium, hazard insurance premium, or other extended coverage insurance premium required as a result of any particular operation or use of said premises over and above the insurance premium required to be paid by County in the absence of said operation or use.

7. Signs. The County will place and maintain in and about the leased property at appropriately designated places, such neat and appropriate signs advertising the Tenant as such. Any special Tenant sign will be at the sole cost of the tenant but in the same styling, provided, however, that County shall not unreasonably withhold approval of such signs as

Tenant may desire. Upon the termination of this lease the Tenant shall remove all special signs and repair any damage to the leased property caused by the erection, maintenance or removal of such special signs.

8. Repairs. The County shall maintain the roof and exterior walls of the demised property including exterior paint, provided that in the event Tenant desires to alter the interior color scheme, said alteration must be approved by County and shall be at the Tenant's expense. In addition, County shall maintain the paved parking area and front entry to the building. The Tenant shall not cause or permit any waste, damage or injury to the leased property. The Tenant, at its sole expense, shall keep the leased property as clean and in good condition (reasonable wear and tear excepted), and shall make all repairs, replacements and renewals, whether ordinary or extraordinary, seen or unforeseen, including all structural repairs, necessary to maintain the interior of the leased property. All repairs, replacements and renewals shall be at least equal in quality of materials and workmanship to that originally existing in the leased property. The County shall be responsible for repairs and maintenance of the roof and outside walls and other external structural members, including the foundation of the leased premises. The County shall be responsible for maintenance of the heating plant and air-conditioning systems in such condition as existed at the commencement of this lease, which County warrants to be in good working condition as of the date of this lease. The County shall be responsible for the removal of snow (in a timely manner) from the parking lot and the walkways. The County shall in no event be required to make any repair, alteration or improvement to the interior of the leased property. Any equipment replaced by the Tenant shall belong to the Tenant, save equipment replaced in connection with Tenant's obligation to maintain the premises in the same condition as exists at the commencement of this lease, and all proceeds from the disposition thereof may be retained by the Tenant. The Tenant shall indemnify the County against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands including responsible counsel fees, because of Tenant's failure to comply with the foregoing. Maintenance of the paved parking area shall be defined as and limited to maintaining and keeping the parking area in good condition with a hardtop surface pavement and proper striping.

9. Improvements. No substantial alteration, addition or improvement to the leased property shall be made by the Tenant without the written consent of the County. Any alteration, addition or improvement made by the Tenant after such consent shall have been given and any fixtures permanently installed as part thereof, shall, at the County's option, become the property of the County upon expiration of or other sooner termination of this lease; provided however, that the County shall have the right to require the Tenant to remove such fixtures at the Tenant's cost upon such termination. This clause shall not preclude Tenant from decorating the interior of the leased premises from time to time in Tenant's discretion.

10. Liens for Improvements by Tenant. The Tenant shall not permit any mechanic's lien to be filed against the fee of the property by reason of work, labor, services or materials supplied or claimed to have been supplied, whether prior or subsequent to the commencement of the term hereof, to the Tenant or anyone holding the leased property, through or under the Tenant. If any such mechanic's lien shall at any time be filed against the leased property, the Tenant shall, within 30 days after notice of the filing thereof, cause such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If the Tenant shall fail to cause such lien to be discharged within such 30 day period, then, in addition to any other right or remedy of the County, the County may, but shall not be obligated to, discharge such lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such

event the County shall be entitled, if the County so elects, to compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor and to pay the amount of the judgment for and in favor of the lienor, with interest, costs and all other allowances. Any amount paid by the County for any such purposes, shall be repaid by the Tenant to the County on demand, with interest thereon at the rate of 6% per annum from the date of payment, and if unpaid may be treated as additional rent as provided for elsewhere in this lease. Nothing in this lease shall be construed in any way as constituting the consent or request of the County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialmen for the performance of any labor or the furnishing of any materials for any property or as giving the Tenant the right, power of authority to contract for or permit the rendering of any service or the furnishing of any material that would give rise to the filing of any mechanic's lien against the fee of the leased property.

11. Tenant's Warranty of Non-Disturbance. Tenant hereby expressly covenants and agrees that the Tenant shall be responsible for controlling the noise level emanating from the Tenant's use of the demised premises in such a way that other occupants of the building of which the demised premises are a part shall not be disturbed. Tenant shall be responsible for and pay for the installation of any special padding for other noise suppression devices that may be required for control of the level of sound emanating from the demised premises.

12. Tenant’s Obligation to Comply with Applicable Laws and Compliance with Requirements of Insurance Policies. The Tenant shall, throughout the term of this lease at its sole expense, promptly comply with all laws and regulations of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and the orders and regulations of the National Board of Fire Underwriters, or any other body now or hereafter exercising similar function, which may be applicable to the leased property, the fixtures, and equipment therein, and the sidewalks and curbs adjoining the leased property. The Tenant shall comply with the requirements of all policies of public liability, fire and all other types of insurance at any time in force with respect to the building and other improvements on the leased property.

13. Utilities. The County shall pay charges for gas, electricity, light, and power used, rendered or supplied upon or in connection with the leased property. The County shall be responsible for the payment of all charges related to the supply of water to the leased property.

14. Condition of Premises. The Tenant shall, during the term of this lease and any renewal or extension hereof, at its sole expense, cause the leased property to be kept clean and in a manner satisfactory to the County.

15. Surrender in Same Good Order and Condition. The Tenant shall vacate the leased property in the good order and repair in which such property now is, ordinary wear and tear excepted, and shall remove all its property therefrom so that the County can repossess the leased property no later than Noon on the day upon which this lease ends, whether upon notice or by holdover or otherwise. The County shall have the same rights to enforce this covenant by ejectment and for damages or otherwise as for the breach of any other condition or covenant of this lease. Tenant may at any time prior to or upon the termination of this lease or any renewal or extension thereof remove from the leased property all materials, equipment, and property of every other sort or nature installed by the Tenant thereon, provided that such property is removed without substantial injury to the leased property. No injury shall be considered substantial if it is promptly corrected by restoration to the condition prior to the

installation of such property, if so requested by the County. Any such property not removed shall become the property of the County.

16. Prohibition Against Unlawful or Extra-hazardous Use and Enforcement Against Subtenants. The Tenant may use and occupy the leased property for general office uses and for no other purpose without the prior written consent of County. Tenant shall not use or occupy nor permit the leased property or any part thereof to be used or occupied for any unlawful business, use or purpose, nor for any business, use , or purpose deemed extra-hazardous, nor for any purpose or in any manner which is in violation of any present or future governmental laws or regulations. The Tenant shall promptly, after the discovery of any such unlawful or extra-hazardous use, take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants, or other persons guilty of such unlawful or extra-hazardous use. The Tenant shall indemnify the County against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims, and demands, including reasonable counsel fees, arising out of any violation of or default in these covenants.

17. County's Right to Cause Expiration or Termination upon Listed Defaults

(a) The occurrence of any of the following shall constitute an event of default:

1. Delinquency in the punctual payment of any rent or additional rent payable under this lease when such rent shall become payable. Should such rent payment not be made when due then upon the expiration of five days after the due date, such rent payment shall be delinquent.

2. Delinquency by the Tenant in the performance of or compliance with any of the conditions contained in this lease other than those referred to in the foregoing subparagraph 1, for a period of 30 days after written notice thereof from the County to the Tenant. In the event, Tenant is incapable of curing the default within such thirty (30) day period, the County may in its discretion extend the time for as long as the County deems necessary to cure such default. Provided, however, the Tenant shall promptly and diligently commence action to cure such default and provide County with evidence of Tenant’s intent to cure the default. Any additional period of time beyond thirty (30) days granted to Tenant to cure any default shall not be extended so as to jeopardize the interest of the County in this lease or so as to subject the County to any civil or criminal liabilities.

3. Filing by the Tenant in any court pursuant to any statute, either of the United States or any state, or a petition in bankruptcy or insolvency or for reorganization, or for the appointment of a receiver or trustee of all or a portion of the Tenant's property, or an assignment by the Tenant for the benefit of creditors.

4. Filing against the Tenant in any court pursuant to any statute, either of the United States or of any state, of a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or trustee of all or a portion of the Tenant's property, if within 180 days after the commencement of any such proceeding against the Tenant such petition shall not have been dismissed.

(b) Upon the expiration or termination of this lease, the Tenant shall peacefully surrender the leased property to the County, and the County, upon or at any time after such expiration or termination, County may, without further notice, reenter the leased property and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess the

Tenant and remove the Tenant and all other persons and property from the leased property and the right to receive all rental income therefrom.

(c) At any time after such expiration, the County may relet the leased property or any part thereof, in the name of the County or otherwise, for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this lease) and on such conditions (which may include concessions or free rent) as the County, in its uncontrolled discretion, may determine, and may collect and receive the rent thereof.

(d) No such expiration or termination of this lease shall relieve the Tenant of its liability or obligations under this lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the leased property or any part any part thereof shall have been relet, the Tenant shall pay to the County the rent and additional rent required to be paid by the Tenant up to the time of such expiration, and thereafter the Tenant, until the end of what would have been the term of this lease in the absence of such expiration, shall be liable to the County for, and shall pay to the County, as and for liquidated and agreed current damages for the Tenant's default:

1. The equivalent of the amount of the rent and additional rent which would be payable under this lease by the Tenant if this lease were still in effect, less

2. The greater of:

(a) The fair rental value of the leased property for the remaining term of the lease, after deducting all the County's reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage Commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(b) The net proceeds of any reletting effected pursuant to the provisions of paragraph d. of this article, after deducting the County's reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(e) The Tenant shall pay such current damages (herein called "deficiency") to the County monthly on the days on which the rent and additional rent would have been payable under this lease if this lease were still in effect, and the County shall be entitled to recover from the Tenant each monthly deficiency as such deficiency shall arise. At any time after any such expiration, whether or not the County shall have collected any monthly deficiency, the County shall be entitled to recover from the Tenant, and the Tenant shall pay to the County, on demand, as and for liquidated and agreed final damages for the Tenant's default, an amount equal to the difference between the rent and additional rent reserved hereunder for the expired portion of the lease of the leased property for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the leased property for the period for which such installment was payable shall be discontinued to the date of termination at the rate of four percent per annum.

(f) The terms "enter", "reenter", "entry", or "reentry" as used in this lease are not restricted to their technical meaning.

18. Lien on Tenant's Improvements and Personal Property. The County shall have first lien paramount to all others on every right and interest of the Tenant in and to this lease, and on any building or improvement on or hereafter placed on the leased property, and on any furnishings, equipment, fixtures, or other personal property of any kind belonging to the Tenant, or the equity of the Tenant therein, on the leased property. Such lien is granted for the purpose of covenanted to be paid by the Tenant, and for the purpose of securing the performance of all of the Tenant's obligations under this lease. Such liens shall be in addition to all rights of the County given under statutes of this state, which are now or shall hereinafter be in effect. The provisions of this paragraph shall not be applicable to liens existing at the commencement of this lease.

Provided, that County may, at his option, agree to subordinate this lien to liens arising in connection with purchased of equipment or leasehold improvement financing by Tenant, which agreement County covenants not to unreasonably withhold.

19. County's Right to Receiver upon Tenant's Default. In addition to any other security for the performance of this lease, the Tenant hereby assigns to the County all of the rents and profits which might otherwise accrue to the Tenant from the use, enjoyment, and operation of the leased property, such assignment to become effective, however, only after default by the Tenant in the performance of its obligations under this lease. If the County, upon default of the Tenant, elects to file a suit in equity to enforce the lease and protect the County's right hereunder, the County may upon notice to the Tenant, as ancillary to such suit, apply to any court having jurisdiction for the appointment of a receiver of the leased property, the improvements and buildings located thereon, the personal property located therein, and thereupon the court may forthwith appoint a receiver with the usual powers and duties of receivers in like cases. Such appointment shall be made by such court as a matter of strict right to the County and without consideration of the adequacy of the value of the Tenant's interest in the lease, or of the value of the property, or the commission of waste thereon, or the deterioration thereof. Nothing herein shall prevent the enforcement of the County's lien for rent in any court or by proceeding authorized to the laws of this state, or the institution by the County of a separate proceeding in equity for the appointment of a receiver as an ancillary remedy to protect the rights and interest of the County. Any and all remedies or proceedings are considered cumulative and not exclusive.

20. Waiver of County's Rights Only by Written Instrument. No failure by the County to insist upon the strict performance of any item or condition of this lease or to exercise any right or remedy available on a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach shall constitute a waiver of any breach or of any such term or condition. No term or condition of this lease required to be performed by the Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the County. No waiver of any breach shall affect or alter any term or condition in this lease, and each such term or condition shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

21. Performance of Tenant's Obligations - Unpaid Insurance Premiums

(a) If the Tenant shall at any time fail to pay any amount in accordance with the provisions of this lease, or shall fail to take out, keep in force, or shall fail to perform any of its other obligations under this lease, then the County may after notice and opportunity to cure in accordance with the provisions of Section 17(a)2, or without notice if any emergency exists, and without releasing the Tenant from any obligation of the Tenant contained in this lease, may (but shall be under no obligation to) pay any amount payable by the Tenant hereunder, and

perform any other act required to be performed by the Tenant hereunder. The County may enter upon the leased property for such purposes and take any action necessary therefore.

(b) All sums so paid by the County and all costs and expenses incurred by the County in connection with the performance of any such act, together with interest thereon at the rate of 6% per annum from the respective dates of each such payment and such costs and expenses, shall constitute additional rent payable by the Tenant under this lease and shall be paid by the Tenant to the County on demand.

(c) Notwithstanding anything in this lease to the contrary, the County shall not be limited, in the proof any damages which the County may claim against the Tenant by reason of the Tenant's failure to provide and keep insurance in force, to the amount of the insurance premiums not paid or incurred by the Tenant. The County shall also be entitled to recover as damages for such breach the uninsured amount of any loss, together with damages, costs, and expenses of any suit offered or incurred by reason of damage to the leased property occurring during any period when the Tenant shall have failed to provide and keep such insurance in force.

22. Performance of Tenant's Obligations-Taxes. If the Tenant shall default in the performance of any tax obligation under this lease, the County may, after notice and opportunity to cure in accordance with Section 17(a)2 or without notice if any emergency exists, perform such obligation for the account and at the expense (including reasonable counsel fees) of the Tenant. The amount of any payment made or expense incurred by the County for such purpose, with interest thereon at the rate of 6% per annum, shall be deemed additional rent and forthwith shall be repaid by the Tenant to the County, or, at the County's election, may be added to any subsequent installment of rent due and payable under this lease. Nothing herein contained shall be deemed to waive any right of the County to sue for and recover by action at law any sums of which the County may have incurred under the provisions of this subparagraph. The provisions of this paragraph shall survive the termination of this lease.

23. Right of Entry. The County or its agent shall within twenty-four (24) hours notice have the right to enter the leased property at reasonable times in order to examine it, to show it to prospective purchasers or lessees, or to make such decorations, repairs, alterations, improvements or additions as the County may deem necessary or desirable. The County shall be allowed to take all material into and upon the leased property that may be required therefore without the same constituting an eviction of the Tenant in whole or in part. The rent reserved shall not abate while decorations, repairs, alterations, improvements, or additions are being made, whether by reason of loss or interruption of the business of the Tenant or otherwise. During the last month prior to the expiration of the term of this lease, the County may place upon the leased property the usual notices "To Let" or "For Sale", which notices the Tenant shall permit to remain thereon without molestation. If during the last month of the term the Tenant shall have removed all or substantially all of the Tenant's property therefrom, the County may, with the Tenant's permission, immediately enter and later, renovate and redecorate the leased property without elimination of abatement of rent and without liability to the Tenant for any compensation, and such acts shall have no effect upon this lease. If the Tenant or its employees shall not be personally present to permit entry at any time when an entry therein shall be immediately necessary, as herein provided, the County may enter the premises by such means as may be appropriate, including forcible entry, without rendering the County or such agents liable therefore (if during such entry the County or his agents shall accord reasonable care to the Tenant's property), and without in any manner affecting the obligations and covenants of this lease. The County's right of reentry shall not be deemed to impose upon

the County any obligation, responsibility or liability for the care, supervision or repair of the leased property other than as herein provided. In the event that it becomes necessary for County to replace or repair any major component or any structural or other system in the leased premises, the County shall have full and unrestricted access to the building and the leased property. The County reserves the right temporarily to interrupt, curtail, stop or suspend air-conditioning and heating service, and all other utility or other services, because of accident or emergency or for repairs, alterations, additions, or improvements, or because of the County's inability to obtain, or difficulty or delay in obtaining, labor or materials necessary therefore or compliance with governmental restrictions in connection therewith, or because of any other cause beyond the County's reasonable control, provided that, except in cases of emergency, the County will use its best efforts to limit such stoppage to after-business hours, will notify the Tenant in advance, if possible, of any such stoppage, and, if ascertainable, its estimated duration, and will proceed diligently with the work necessary to resume such service as promptly as possible and in a manner and at times as will not materially interfere with or impair the Tenant's use of the leased property. No diminution or abatement of fixed rent or other compensation shall be claimed by the Tenant, nor shall this lease or any of the obligations of the Tenant hereunder be affected or reduced by reason of such interruption, stoppage, or curtailment, nor shall the same give rise to a claim in the Tenant's favor that such failure constitutes total or partial eviction from the leased property, provided that if the leased property shall be unreasonably untenantable for a continuous period of more than four business days by reason of any such stoppage, the fixed rent payable by the Tenant shall abate until the Tenant shall be again able to use the leased property.

24. Destruction by Fire or Other Casualty. In the event the premises or any substantial portion thereof are destroyed by fire or other casualty during the term of this lease, it is understood and agreed that County shall have no obligation to rebuild, and, at the election of County or Tenant the lease may be terminated

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25. Condemnation. If the whole of the leased property, or such portion thereof as will make the leased property unsuitable for the purposes herein leased, is condemned for any public use or purpose by any legally constituted authority, then in either of such events this lease shall cease from the time when possession is taken by such public authority and rental shall be accounted for between the County and the Tenant as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either the County or the Tenant to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither the County nor the Tenant shall have any rights in or to any award made to the other by the condemning authority.

26. Assignment of Lease. The Tenant shall not assign, mortgage, or encumber this lease, nor sublet or permit the leased property or any part thereof to be used by others, without the prior written consent of the County in each instance. If this lease is assigned, or if the leased property or any part thereof, is sublet, or occupied by anybody other than the Tenant, the County may, after an event of default, as hereinabove defined, by the Tenant, collect rent for the assignee, subtenant, or occupant and apply the net amount collected to the rent herein reserved. No such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of this assignee, subtenant, or occupant as tenant, or a release of covenants in this lease. The consent by the County to an assignment or subletting shall not be construed to relieve the Tenant from obtaining the consent in writing of the County to any further assignment or subletting. Provided, further, County shall not unreasonably withhold consent to assignment.

27. Assignment of Interest in Rents. The County shall have the right, without selling its fee interest in the leased property or assigning its interest in this lease, to assign from time to time the whole of the net rent at any time payable hereunder to persons, firms, corporations, trusts or other entities designated by the County in a written notice to the Tenant, and in any such case the Tenant shall pay the net rent, subject to the terms of this lease, to the County's designee at the address mentioned in any such notice for the period covered by such assignment.

28. Exoneration from Liability. The County shall not be liable for any personal injury to the Tenant or to its officers, agents and employees, or to any other occupant of any part of the leased property, irrespective of how such injury or damage may be caused, whether from action of the elements or acts of negligence of the occupants of adjacent properties, or any other persons; provided that nothing contained herein shall relieve the County of the consequences of its own negligence.

29. Reimbursement of Expenses. The Tenant shall pay and indemnify the County against all legal costs and charges, including counsel fees lawfully and reasonably incurred, in obtaining possession of the leased premises after default of the Tenant or after the Tenant's default in surrendering possession upon the expiration or earlier termination of the term of the lease or enforcing any covenant of the Tenant herein contained. The Tenant further covenants that in case the County shall be made party to any litigation commenced against the Tenant, due to act or omission on the part of the Tenant alone, then the Tenant shall pay all expenses, costs, and reasonable attorney's fees incurred by or imposed on the County in connection with such litigation, and such expenses, costs, and attorney's fees shall be additional rent due on the last day after services of notice of such payment or payments, together with interest at a rate of 9% per annum from the date of payment, and shall be collected as any other rent specifically reserved herein. Provided that this claim shall not be applicable where the County shall be made a party by reason of any independent liability of the County caused by some act or omission on the part of the County or resulting from any act or omission on the part of both Tenant and County.

30. Smoke Free Facility. Tenant acknowledges that County buildings are smoke-free. Tenant shall ensure that employees, customers or invitees of the Tenant abide by the County’s ordinances and Board of Health Rules which prohibit smoking.

31. Weapons Prohibited. Tenant acknowledges that a County ordinance has been approved by the Board of Commissioners that prohibits weapons in County facilities. Tenant will ensure that employees, customers or invitees of the Tenant abide by the County’s ordinance that prohibits weapons in the facility.

32 Notice by Registered or Certified Mail. Any notice under this lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. The County hereby designates its address as:

Orange County
Attn: Director of Asset Management
131 West Margaret Lane; Suite 301
PO Box 8181
Hillsborough, NC 27278

The Tenant hereby designates his address as:

Morinaga America Foods
Attn : Toshiaki Fukunaga
TITLE
ADDRESS 1
ADDRESS 2
ADDRESS 3

33. Grammatical Usage. In construing this lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

34. Entire Agreement. This lease contains the entire agreement between the parties, and any executory agreement hereafter made shall be ineffective to change, modify, or discharge it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

[Signature Page to Follow]

IN TESTIMONY WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

COUNTY: ATTEST:

BY:_____ _____
Barry Jacobs, Chair Donna S. Baker, Clerk to the Board

TENANT: WITNESS:

_____ _____
Toshiaki Fukunaga
Morinaga America Foods

STATE OF NORTH CAROLINA
ORANGE COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that Donna S. Baker personally appeared before me this date and acknowledged that she is the Clerk to the Board of Commissioners of Orange County, and that by authority duly given and as the act of Orange County, the foregoing instrument was signed in its name by Barry Jacobs, Chair, sealed with its official seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the _____ day of _____, 2014

_____
Notary Public

My Commission expires:_____

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

I, _____, a Notary Public, do hereby certify that _____, personally appeared before me this day and acknowledged the due execution of the foregoing Lease Agreement.

WITNESS my hand and official seal this the _____day of _____, 2014.

_____
Notary Public

My commission expires: _____

Attachment 3

Key Lease Terms –
Morinaga America Foods; Link Government Services Center

1. 12 month lease of approximately 577 square feet of the lower level of currently unoccupied space at Link (labeled on Attachment B as “Morinaga Phase 1”;

2. The annual Lease rate is $14 per square foot--$12 per square foot for the space and an additional $2 per square foot for utility reimbursement to the County (electric, gas, and water utilities; not phone and data services);

3. Morinaga has the option to increase the office area up to the estimated 1,068 of additional space indicated on the floor plan as “Morinaga Future Phase(s)” at $14 per square foot as the Morinaga staff grows;

4. Provision of a secure, separate entrance (and programmed proximity card access) from the Margaret Street entrance;

5. Access to the building break room area;

6. Morinaga would provide its own telephone, data, furniture, and office machinery systems;

7. The building security systems would be programmed and hard-key configured to offer segregated security and protection to the building sectors belonging to the County as well as the Morinaga section;

8. All lower level areas not assigned to Morinaga would be secured and segregated for continued County use;

9. All standard County Lease Agreement stipulations (insurance, etc.) are included in the Lease;

10. AMS staff would clean and provide minor alterations to prepare the space for occupancy; AMS staff would respond to maintenance service calls; Morinaga would arrange for periodic cleaning services.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: April 15, 2014

Action Agenda
Item No. 8-a

SUBJECT: Report on Orange County's "Small Business Loan Program"

DEPARTMENT: Economic Development Manager's Office

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):

1. Bylaws of Orange County Small Business Loan Program
2. Operating Policies & Procedures of Orange County Small Business Loan Program, Revised 1/13/12
3. Orange County Economic Development's New Marketing Brochure for Small Business Loan Program
4. Ad Design Proposed for Local Media

INFORMATION CONTACT:

Clarence Grier, Assistant County Manager & CFO, (919) 245-2453
Steve Brantley, Economic Development, (919) 245-2326

PURPOSE: To receive a report on the "Small Business Loan Program", including details on current balances and activity, and receive information on the Economic Development Office's new marketing efforts to increase awareness and demand for the program by potential small business borrowers in Orange County.

BACKGROUND: In 2000 the Small Business Loan Program was created to provide loans for small businesses to help stimulate the creation of jobs for Orange County residents, as well as support successful business development and expansion in Orange County. The intent of this Program is to provide an alternative funding option to small, local companies that have difficulty obtaining traditional bank funding, but which meet the requirements of the Program's loan fund.

Orange County's original $150,000 funding commitment to the Program was to cover the loan loss reserve of the original loan pool. After several modifications to the Program structure, the Orange County Board of County Commissioners (BOCC) unanimously approved, on March 13, 2007, the transfer of $75,000 from the Program loan loss reserve account to the Orange County Small Business Loan Company to fund this mission. The BOCC also approved the transfer of an additional $75,000 to the Company so that the full $150,000 originally committed to the Program was available for lending to small businesses in Orange County.

On March 10, 2009 the Program's Board of Directors unanimously agreed to issue the first loan in the amount of $50,000. The recipient of this loan was a small start-up service firm offering

commercial janitorial and disaster restoration services. The company is based in Hillsborough, with four primary employees who were Orange County residents. The company also provided part-time employment to area residents according to work load requirements. Since its infusion of cash, the company has been able to secure several large contracts and used the funds to purchase additional equipment

On September 18, 2009 the Program's Board of Directors voted to award the remaining $25,000 in funds to a toy start-up company based in Hillsborough. This entrepreneurial company makes a cloth woven indoor/outdoor flying disc and was the designer, importer and marketer of the Pocket Disc. All Pocket Discs are hand-made of 100% cotton. One of the company's goals is to support third world artisans, so the Pocket Disc is imported from Guatemala, based on fair trade practices. The applicant received additional external funding to build its inventory and secure its supply chain, hire additional sales talent, and extend and focus its marketing efforts. The company has three employees at its Orange County location.

With these two loan awards, the Program began to support the small, entrepreneurial start-ups of Orange County that meet the Program's loan guidelines, but which are unable to secure more traditional, lower-cost bank financing. Due to the success of the program, the two loan awards utilized all of the County's available $75,000 in available funding.

At the March 13, 2007 BOCC meeting, it was requested that the County grant the remaining $75,000 to restore the full $150,000 loan loss that was originally committed by the County. However, during 2008-2009 budget cycle, because the Program had not yet utilized its first $75,000, the remaining $75,000 was not included as a budget request.

In 2010 a total of $200,000 was redirected from the Orange County/Chapel Hill Visitors Bureau's fund balance and shifted to the Small Business Loan Program. This enabled the Program to fund new loans following a long period of inactivity.

At present, the Orange County Small Business Loan Program has issued eight (8) loans to eight (8) local companies, totaling $333,000. Two applications are currently under consideration. Two other applications were submitted and processed, but those applicants later withdrew their applications. All outstanding loans are current under their repayment terms, with zero collection problems.

Companies that have utilized the Loan Program:

Accidental Baker	(bakery in Hillsborough)
Orange County Gymnastics	(gymnastics gym in Hillsborough)
Isis Information Technology	(I.T. service)
Mystery Brewing Company	(brewery in Hillsborough)
The Depot	(general store and music in Hillsborough)
Phd Productions, LLC	(maker of the Pocket Disc toy)
Santosha/ServiceMaster	(commercial janitorial service)
Skram Furniture Company	(custom furniture; loan was repaid)

Current Status:

Balance in SunTrust Checking Account	$160,457.69
Article 46 Quarter Cent Sales Tax Allocation	$200,000.00
Total Fund Available	$ 360,457.69

New Marketing Ads & Brochures:
New marketing collateral pieces have been developed in-house at Orange County Economic Development and will soon be placed with local media (WCHL1360, Chapel Hill News, News of Orange, etc.) to promote greater awareness and demand for the loan program.

Board of Director & Loan Approvers:

Jim Evans, President	Bank Director (Harington Bank in Chapel Hill)
Brad Curelop, Vice President	Bank Director (BB&T Bank in Chapel Hill)
Sherry Gray, Asst. Sec/Treasurer	Small Business (Yesterday & Today Frame Shop)
Tom Proctor	Small Business (The Vacuum Cleaner Hospital)
Earl McKee	BOCC Representative
Clarence Grier	Orange County Representative
Steve Brantley	Orange County Representative
Tom Underwood	Economic Development Advisory Board Rep.

FINANCIAL IMPACT: There are no financial impacts directly associated with this report (available funds were previously allocated as shown above in “current status”).

RECOMMENDATION(S): The Manager recommends that the Board receive the report.

Attachment 1

BYLAWS

OF

ORANGE COUNTY SMALL BUSINESS LOAN PRQGRAM COMPANY

ARTICLE I

PURPOSE

Orange County Small Business Loan Program Company is organized for the following purposes:

(a) To assist Orange County, North Carolina (the "County"), in carrying out the County's governmental functions through serving as a conduit entity to make and facilitate loans to small businesses in the County, as part of a small business loan program approved and initiated by the County, all in order to promote the economic development and general welfare of the County and its citizens;

(b) To enter into agreements with the County, financial institutions and other relevant parties, to fulfill its intended functions in the small business loan program;

(c) To lessen the burdens of government, and provide aid and assistance to the County in carrying out its essential governmental functions; and

(d) To carry out such related functions as may be necessary or convenient to serving the primary purposes described above.

Notwithstanding any other provision of the Articles or these Bylaws, the purposes for which the Company is organized are exclusively charitable, scientific, literary, and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code or 1986, as amended, or the corresponding provision of any future United States internal revenue law. The Company shall not carry on any activities not permitted to be carried on (1) by an organization exempt from federal income tax under such Section 501(c)(3) or future corresponding provision of law, or (2) by an organization contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code or 1986, as amended, or the corresponding provision of any future United States internal revenue law.

The Company shall have all corporate power and authority necessary and convenient to carry on any lawful activity calculated, directly or indirectly, to promote the Company's interests and purposes.

No substantial part of the Company's activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Company shall not participate in or intervene in (including the publishing and distributions of statements) any political campaign on behalf of or in opposition to any candidate for public office.

No part of the Company's net earnings shall inure to the benefit of, or be distributable to, its members, Directors, officers, or other private persons, except that the Company shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the Company's purposes.

ARTICLE II

MEMBERS

The Company shall have no members.

ARTICLE III

BOARD OF DIRECTORS

3.01 General Powers. The Company's business and affairs shall be managed by a Board of Directors (the "Board") consisting of eight persons.

3.02 Composition. The composition of the Board of Directors shall be as follows:

(a) One member of the Orange County Board of Commissioners, as designated by that Board from time to time;

(b) One member of the advisory board to the Orange County Economic Development department, as designated by that advisory board from time to time;

(c) The Director of Orange County Economic Development;

(d) The Orange County Financial Services Director;

[The Directors described in (a), (b), (c) and (d) above are referred to in these Bylaws as the "County Directors"]

(e) Two employees of financial institutions (the "Bank Directors"); and

(f) Two small business owners (the "Small Business Directors").

Attachment 1

All persons serving as County Directors shall be deemed to be serving as Company Directors as a part of that individual's duties of office, and shall not be considered to be serving in a separate office. A person serving as a Director in such capacity shall immediately cease to be a Company Director upon such individual's cessation of service in the referenced capacity, whether or not such member's successor has been appointed and qualified for office.

Each appointing authority for the Directors described in (a) and (b) above shall communicate any designation of a Director to the Secretary in any such manner as may reasonably acceptable to the Secretary.

3.03. Term of Office and Election of Bank Directors and Small Business Directors.

(a) The initial Bank Directors and Small Business Directors, and their initial terms of office, shall be as follows:

Name and Address	***Position***	***Expiration of Term***
Bradley Curelop	***Bank Director***	***June 30, 2009***
Glynn Folk ***Ink Spot Copy Shop*** ***Carrboro***	***Small Business Director***	***June 30, 2009***
Jim Evans ***Harrington Bank***	***Bank Director***	***June 30, 2010***
Sherry Gray ***Yesterday and Today*** ***Frame Shop*** ***Hillsborough***	***Small Business Director***	***June 30, 2010***

(b) Each subsequent Bank Director and Small Business Director shall serve for a term established by the Board but not exceeding two years, in order to provide for an orderly staggering of terms among members of the Board. In any event, however, the term of each Director shall continue until such Director's successor has been duly appointed and qualified for office. Directors may serve an unlimited number of terms

(c) Each year, not earlier than May 1 and not later than June 13, beginning in the year 2009, all Directors shall meet to elect one Bank Director and one Small Business Director to take office on the following July 1. Such election may take place at any meeting of the Board, provided that either (i) notice of the meeting has indicated the election of Directors as among the purposes of the meeting, or (ii) all Directors then serving in office are in attendance at the meeting.

(d) In electing Directors, the Board will endeavor to provide for geographic diversity among Bank Directors, and will endeavor to provide for at least one Small Business Director to have been in business for at least three years. The guidelines in this

paragraph, however, are advisory only, and shall not be deemed to create rights in any Director or any other person.

3.04. Resignation. Any Director may, by written notice to the Secretary, resign at any time.

3.05. Removal. (a) A County Director may be removed only by such Director's appointing authority.

(b) A Bank Director or Small Business Director may be removed from office, without cause, by the vote of not less than four Directors, provided that either (i) notice of the meeting has indicated the possible removal of a Director as among the purposes of the meeting, or (ii) all Directors then serving in office are in attendance at the meeting.

3.06. Filling Vacancies. (a) Any vacancy of a County Director may be filled only by the proper appointing authority for such Director.

(b) The Board may fill vacancies among the Bank Directors or Small Business Directors at any meeting of the Directors, provided that (i) notice of the meeting has indicated the possible election of a Director as among the purposes of the meeting, or (ii) all Directors then serving in office are in attendance at the meeting. Any Director so elected to fill a vacancy shall serve until the next election of Directors and until such Director's successor is elected and qualified.

3.07. Compensation. No officer or Director of the Company shall receive any compensation for service to the Company in any capacity, except that County Directors and other County officers and employees may perform services to the Company as part of their respective positions with the County. Directors and officers may, however, receive appropriate reimbursement for expenditures made on behalf of the Company and approved by the Board, and in addition Directors and officers may receive meals and services in connection with Board or committee meetings.

ARTICLE IV

COMMITTEES

4.01 Loan Committee. The Board shall, from time to time as may be convenient for the Company's purposes meet as a Loan Committee of the whole for the purposes of considering applications for loans through the Small Business Loan Program for which the Company has been formed, and for related purposes.

4.02 Other Committees. The Board, upon authorization by the affirmative vote of at least five Directors (including at least two County Directors), may from time to time establish additional committees and appoint committee members, for such purposes not inconsistent with law (including N.C.G.S 55A-8-25) as the Board may determine from

time to time to be in furtherance of the Company's purposes. Committees may include persons other than Directors, but each committee must include at least two Directors.

4.03. Committee Meetings and Other Procedures. The procedures for the calling of meetings and conduct of other business by committees shall be in accordance with the provisions set out in these Bylaws as applicable to the Board as a whole.

ARTICLE V

MEETINGS OF DIRECTORS

5.01. Regular Annual Meeting. The Board shall meet at least annually for the purpose of electing officers, passing upon reports of the previous year and transacting such other business as may come before the meeting. The County Directors, by notice provided to all Directors as provided for in Section 5.06, shall establish the date, time and place of such annual meeting. If the County Directors make no alternate provisions, the Board shall meet at 9:00 a.m. on the first Monday of May in each year, at the Company's principal office. The Secretary Treasurer shall give notice of the regular annual meeting as provided for in Section 5.06.

5.02. Special Meetings. Special meetings of the Board may be called by the President or by any two Directors, and it shall thereupon be the duty of the Secretary-Treasurer to cause notice of such meeting to be given as provided in Section 5.06. The President or the Directors calling the meeting shall fix the time and place for the holding of the meeting.

5.03 Informal Action. Action taken by the Directors without a meeting is nevertheless Board action if written approval of the action in question is signed by all of the Directors and filed with the Company's official minutes.

5.04. Quorum. Five Directors, including at least two County Directors, shall constitute a quorum; provided, however, that if less than such number of Directors is present at any duly called meeting, a majority of the Directors present may adjourn the meeting from time to time; and provided further that the Secretary-Treasurer shall notify any absent Directors of the time and place of such adjourned meeting. Any one or more Directors may participate in a meeting of the Board by means of a conference telephone or similar Communications device which allows all persons participating in the meeting to hear each other and such participation in a meeting shall be deemed present in person at such meeting.

5.05. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, except to the extent these Bylaws or any applicable provision of law establishes a different requirement for corporate action.

5.06. Notice of Board Meeting. Written notice of the time and place of any regular or special Board meeting, unless waived in writing, shall be delivered to each Director not less than five days prior to the meeting date. Notice of any regular or special Board meeting may be communicated in person; by electronic means; or by mail or private carrier. Notice shall be deemed given when delivered in person, sent by electronic means the receipt of which is confirmed by telephone, facsimile transmission, or e-mail, or, if mailed, three days after the date of such notice, with postage prepaid, is deposited in the United States mail addressed to the Director at such address as appears on the Company's records.

5.07 Waiver of Notice; Presumption of Assent. Any Director may waive in writing any notice of a meeting required to be given by these Bylaws, and may make such waiver either before or after such meeting. The waiver must be in writing, signed by the Director entitled to the notice, and delivered to the Company's Secretary-Treasurer for inclusion in the minutes or filing with the corporate records. A Director's attendance at any meeting shall constitute such Director's waiver of notice of such meeting, unless the Director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or to transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

ARTICLE VI

OFFICERS

6.01. Designation. The officers of the Company shall be a President Vice President, Secretary-Treasurer, Assistant Secretary-Treasurer and such other officers as the Board may determine from time to time to perform such duties as may be designated by the Board.

6.02. Election and Term of Office. The Board shall elect the officers annually at its regular annual meeting provided for in Section 5.01. Each officer shall hold office until the next regular annual meeting of the Board and until such officer's successor shall have been elected. Except as otherwise provided in these Bylaws, the Board shall fill any vacancy in any office for the unexpired portion of the term. The President and the Vice President shall be members of the Board, but none of the other officers need be members of the Board. No one person may serve in more than one of the offices enumerated in these Bylaws.

6.03. Removal of Officers and Agents. Any officer or agent elected or appointed by the Board may be removed by the Board, with or without cause, whenever in the Board's judgment the Company's best interests will be served thereby.

6.04. The President. The President shall

(a) be the Company's principal executive officer, shall in general supervise and control all of the Company's business and affairs, and unless otherwise determined by the Directors, shall preside at all Board meetings;

(b) sign any deeds, mortgages, deeds of trust, notes, bonds, leases, contracts or other instruments or agreements authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board to some other officers or agent of the Company, or shall be required by law to be otherwise signed or executed; and

(c) in general perform all duties incident to the office of the President and such other duties as the Board may assign from time to time.

6.05. Vice President. In the absence of the President or upon the President's inability or refusal to act, the Vice President shall perform the duties of the President and when so acting shall have all the powers of and be subject to all the restrictions applicable to the President. The Vice President shall also perform such other duties as the Board may assign from, time to time.

6.06 Secretary-Treasurer. The Secretary-Treasurer shall

(a) keep the minutes of the meetings of the Board and any committees in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with these Bylaws or as required bylaw;

(c) be custodian of the Company's corporate records and of the Company's seal, and affix the Company's seal to documents, the execution of which on behalf of the Company under its seal is duly authorized in accordance with the provisions of these Bylaws;

(d) keep a register of the names and post office addresses of all Directors;

(e) have general charge of the Company's books and records;

(f) keep on file at all times a complete copy of the Company's Articles of Incorporation and Bylaws containing all amendments thereto (which copy shall always be open to the inspection of any Director), and at the Company's expense, forward a copy of the Bylaws and of all amendments thereto to each Director;

(g) unless otherwise provided by the Board, have charge and custody of and be responsible for all funds and securities of the Company;

(h) unless otherwise provided by the Board, be responsible for the receipt of and issuance of receipts for all moneys due and payable to the Company and for the deposit of all such moneys. In the name of the Company in such bank or banks, trust companies or other depositories, as shall be selected in accordance with the provisions of these Bylaws; and

(i) in general, perform all the duties incident to the offices of Secretary and Treasurer, and such other duties as the Board may assign from time to time.

6.07. Assistant Secretary-Treasurer. In the absence of the Secretary-Treasurer or upon such officer's inability or refusal to act, the Assistant Secretary-Treasurer shall perform the duties of the Secretary -Treasurer and when so acting, shall have all the powers of and be subject to all the restrictions applicable to the Secretary-Treasurer.

6.08. Bonds of Officers. The Board in its discretion may require any officer, agent or employee of the Company to give bond in such amount and with such surety as the Board shall determine.

ARTICLE VII

FINANCIAL TRANSACTIONS

7.01. Authorization. Except as otherwise provided in these Bylaws, the Board may authorize any officer or officers, agent or agents, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Company, and such authority may be general or confirmed to specific instances.

7.02. Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, and all notes, bonds or other evidences of indebtedness issued in the name of the Company shall be signed by such officer or officers, agent or agents, employee or employees of the Company and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Secretary Treasurer and countersigned by the Company's President or Vice President.

7.03. Deposits. All Company funds shall be deposited from time to time to the Company's credit in such bank or banks or other depositories as the Board may select.

7.04. Gifts. The Board may accept on behalf of the Company any contribution, gift, bequest or devise for the general purposes or any special purpose of the Company.

ARTICLE VIII

INDEMNITY OF DIRECTORS AND OFFICERS

The private property of the Directors and officers shall be exempt from execution or other liability for any debts of the Company, and no Director or officer shall be personally liable or responsible for any debts or liabilities of the Company.

The provisions of N.C.G.S. Chapter 55A, Article 8, Part *5*, or any successor provision, shall fully apply without restriction or limitation as to indemnification of and advancing litigation expenses to Directors, officers, employees or agents of the Company. All officers and Directors shall be deemed to have relied on this provision.

To the extent provided in N.C.G.S. Section 55A-8-60, except as limited by N.C.G.S. Section 55A-2-02, no Director, officer, employee or agent of the corporation shall be personally liable for money damages as a result of any action for breach of such person's duty as a Director, officer, employee or agent of the corporation, whether by or in the right of the corporation or otherwise.

No amendment or repeal of this article, nor the adoption of any other amendment to these Articles or these Bylaws inconsistent with this provision, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

ARTICLE IX

AMENDMENTS TO BYLAWS

9.01. <u>In General.</u> These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the affirmative vote of two-thirds of the Directors present at any regular or special meeting, provided a quorum, as provided in these Bylaws, be present and provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal, or such requirement shall have been duly waived by all Directors.

9.02. <u>County Consent Required.</u> Notwithstanding the provisions of Section 9.01, no provision of these Bylaws shall be changed in any way, and no new provisions shall be added to these Bylaws, except with the unanimous approval of all County Directors.

ARTICLE X

OFFICES

10.01. Principal Office. The Company's principal office shall be located at such place as the Board may fix from time to time. The street address of the corporation's initial principal office shall be Orange County Economic Development Department, 131 West Margaret Lane, Hillsborough, North Carolina 27278. The Company's mailing address is Orange County Small Business Loan Program Company, c/o Orange County Economic Development Department, Post Office Box 8181, Hillsborough, North Carolina 27278

10.02. Registered Office. The registered office of the Company required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office. The street address of the corporation's initial registered office shall be Post Office Drawer 1529, Hillsborough, NC 27278.

10.03. Other Offices. The Company may have offices at such other places within the State of North Carolina as the Board may designate from time to time.

ARTICLE XI

MISCELLANEOUS

11.01 Ru1es and Regulations. The Board shall have power to make and adopt such rules and regulations not inconsistent with law, the Articles of Incorporation, or these Bylaws, as it may deem advisable for the management of the Company's business and affairs.

11.02. Sea1. The Board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Company and the word "SEAL" or "CORPORATE SEAL".

11.03. Fiscal Year. The Company's fiscal year shall be each period ending June 30.

11.04. Books and Records. The Company shall keep correct and complete books and records of account and minutes of the proceedings of its Board and committees, and shall keep at its registered or principal office a record giving the names and addresses of the Directors.

Attachment 2

ORANGE COUNTY

SMALL BUSINESS LOAN PROGRAM

Operating Policies and Procedures

Revised July 1998

Revised March 21, 2000

Revised May 25, 2011

Revised January 13, 2012

Attachment 2

ORANGE COUNTY SMALL BUSINESS LOAN PROGRAM

PURPOSE

The purpose of the Orange County Small Business Loan Program (Program) is to stimulate the creation of good jobs for Orange County citizens as well as to stimulate successful business development and expansion in Orange County (County). The program will attempt to assist businesses that have limited access to financing through conventional means or other government guaranteed sponsored programs. Businesses receiving funding through this program are strongly encouraged to be good corporate citizens as defined in Orange County's Economic Development Strategic Plan. Businesses are also encouraged to employ Orange County citizens.

LOAN PROGRAM ADMINISTRATION

The Orange County Small Business Loan Program Company (Company) and Orange County (County) staff may be utilized to underwrite and service these loans, to include billing, generating administrative reports, and collection of delinquent accounts.

PROPOSED STRUCTURE

The Company is a non-profit corporation formed to make and facilitate loans to small businesses under the program described here. The Program is governed by an eight member Board of Directors, acting under the Company's Bylaws. This Program is fully funded by Orange County at the discretion of the Orange County Board of County Commissioners.

This proposed structure may be modified from time to time based upon the review and advice of counsel.

LOAN COMMITTEE

The Board of Directors of the Company will serve as a committee of the whole and as such will serve as the Loan Committee. The Loan Committee Chair shall generally monitor the duties of the Loan Program administration; make sure loan proposal packages are properly prepared prior to their presentations at Loan Committee meetings; and oversee the preparation of commitment letters to approved borrowers. Such commitment letters will be signed by the Chair.

The Loan Committee will have the following responsibilities:

1. Find creative ways to utilize loanable funds to stimulate successful small business development and job creation.
2. Meet monthly to review loan applications and determine which requests will be approved and under what terms and conditions.
3. Periodically review status of existing loans and recommend appropriate corrective action or special monitoring where needed.
4. Approve modifications to loan agreements.
5. Evaluate underwriting requirements and make appropriate adjustments as needed to accomplish the objectives of the program.

Attachment 2

6. Provide direction regarding collection (e.g. legal action, foreclosure, acceleration of amortization, determination of default/charge-off, etc.)
7. Conduct annual review of loan documents and credit files.

FUNDING

The County has provided initial funding for the Program, with the understanding that the Program will eventually develop into a self-sustaining revolving loan fund.

COMMITMENT PERIOD

The County will support the Program until demand for the Program is no longer present, or until it is no longer financially feasible.

ELIGIBILITY

- Businesses must be located within Orange County in areas zoned appropriately for their use.
- Applicant's length of residence in Orange County may be considered in assessing the applicant's degree of commitment to the community. Preference will be given to Orange County residents during the loan review process.
- Applicants must be for-profit business entities whose gross revenues do not exceed $3 million/year.
- Applicants must be willing to contract for management and technical assistance if determined to be necessary by the Loan Committee.
- Applicants must have an equity contribution in the business of at least 10%.
- All owners of the business may be required to execute an Unconditional Guaranty Agreement for the full amount of the loan. Additional Guarantors may be required by the Loan Committee.
- Applicants with any natural person owner who has pending criminal charges or who has been convicted of a crime and is still serving an active prison sentence, is on probation or is on parole is not eligible for an Orange County Small Business Loan.

ELIGIBLE USES OF LOAN PROCEEDS

1. Working capital or operational funds.
2. Purchase of equipment, commercial-use vehicles, or machinery.
3. Improvement of owner-occupied commercial property. (Owner must occupy 50% or more of total space.)
4. Start-up funding.
5. Expansion of business services or products.
6. Acquisition of owner-occupied commercial real estate (7- year maturation).
7. Tenant up fit and lease-hold improvements.
8. A small business loan request that is to be used in conjunction with other financing will be considered on a case-by-case basis.
9. Work force expansion.

LOAN PROCEEDS SHALL NOT BE USED FOR THE FOLLOWING

1. Refinancing of existing bank debt or investor loans. The Loan Committee may grant an exception of up to 50% of loan value.

Attachment 2

2. Purchase of equipment or improvement of real estate which are used or to be used for personal use.
3. Political activities.
4. Owner salary and dividend payments beyond an agreed amount.
5. Speculative ventures (Examples: drilling for gas or oil, commodity futures).
6. Lending or investment.
7. Real property held for sale or investment.
8. Pyramid sales - distribution plan businesses.
9. Floor plan financing (defined as a revolving line of credit that allows the borrower to obtain financing for retail goods. These loans are made against a specific piece of collateral (i.e. an auto, RV, manufactured home, etc.)).
10. Foreign controlled businesses.
11. Non-profit institutions.
12. Private membership clubs.

COMPLIANCE WITH APPLICABLE REGULATIONS

In all cases, loans made from this program must be consistent and in accordance with the following:

1. All state and local regulations governing the applicant's business.
2. Policies established by the Loan Committee for each particular applicant.
3. Policies established by the Board of County Commissioners dealing with this loan program.

AMOUNT OF LOANS

Maximum: $50,000. Minimum: $5,000. Should market conditions change, or in the event of an applicant with extraordinary conditions, a loan in amount outside of the maximum or minimum may be considered by the Loan Committee. All loans are subject to availability of loan funds.

LOAN TERM

Maximum Term - 5 years (except 7 years for the purchase or improvement of real estate used or to be used wholly for the business purpose of the applicant.) Should market conditions change, or in the event of an applicant with extraordinary conditions, a loan term in excess of the maximum term may be considered by the Loan Committee.

INTEREST RATE

All loans will be charged finance charges based on a variable interest rate. The variable interest rate (the "interest rate") will be determined by and be based on the length of the maturity of the loan and an increment over the highest Prime Rate ("Prime") as published on the first business day of the month in the Money Rate Table in the Eastern Edition of the Wall Street Journal generally as follows:

Attachment 2

Loan Term	Interest Rate
0 up to 2 years	Prime plus 2.00%
2 up to 3 years	Prime plus 2.25%
3 up to 4 years	Prime plus 2.50%
4 up to 7 years	Prime plus 3.00%

The finance charges on the loan will be calculated by multiplying a daily periodic rate (the interest rate/ 365) by the unpaid principal amount of the loan on the last day of the billing cycle times the number of days in the month. The daily periodic rate may vary from month to month due to changes in the interest rate and will be determined in the same manner as the interest rate is determined with the loan maturity date unchanged from that used to calculate the interest rate when the loan is made. The Loan Committee will assign an interest rate using the rate guidelines provided above, to each loan commitment.

FEES AND EXPENSES

An origination fee, which may be paid from the loan proceeds, will be charged, payable at closing, ranging from 1% to 1 ½% but, in no case to exceed limits set by North Carolina Statutes. The minimum origination fee will be $100. The applicant will be responsible for all other expenses related to closing the loan, including, but not limited to, recording fees and legal fees. The applicant will also be responsible for any fees related to any appraisals or reports required by the Loan Committee.

LOAN REPAYMENT

Loan repayment schedules will be finalized upon loan commitment. All payments shall be due as stipulated in the repayment schedule. A late payment will be assessed at 2% of the payment amount after the loan becomes 15 days overdue. Loans may be prepaid, in whole or in part, at any time without penalty. In the event the loan payment becomes 30 days overdue, procedures for the Collection of Delinquent Loans shall be followed.

COLLECTION OF DELINQUENT LOANS

If a payment becomes 30 days overdue, the borrower will be contacted. If extenuating circumstances warrant, the loan may be restructured to encourage payment. The Loan Committee will evaluate the loan as a whole, and determine if a restructuring is beneficial to Program.

Once a payment is 60 days overdue, a plan to collect the outstanding balances will be developed in conjunction with Orange County's legal department. Individual Collection Plans will be tailored to the outstanding account, but may include one or more of the following activities:

- When a borrower is 60 days past due, a reminder letter is sent advising of the outstanding loan and of the late payment charged as detailed in the 'Loan Repayment' section above;
- A collection letter is sent when the account is 90 days past due, and may contain additional penalties;
- Accounts that are 120 days past due may be turned over to a professional

Attachment 2

collection agency.

LOAN ANALYSIS

The Loan Committee shall review and consider a number of items in determining whether a loan should be made. Those items shall include at least the following:

1. Business plan.
2. Current and projected employment (including future need for employees; skill levels and education required; employee compensation, health insurance, and other benefits).
3. Business financial statements. (Past two years plus interim)
4. Tax returns. (Past two years - personal and business)
5. Pro formas (financial statement projections that may include monthly cash flow, profit and loss, and additional statements as required by the Loan Committee) to determine that there will be sufficient cash flow to meet obligations for 2 years.
6. Personal financial statements.
7. Information regarding collateral and a current personal credit report.
8. Other available financing including, but not limited to, whether other financial institutions have agreed to consider traditional debt financing and under what circumstances.
9. Any other information that the Loan Committee determines that it needs.

SUGGESTED LOAN GUIDELINES

1. *Creditworthiness* -Although applicants will be considered with credit ratings showing a history of accounts up to 30 days past due, preference will be given to borrowers with good credit ratings. Applicants with bankruptcy or prior to repossessions listed on their credit report will, in most cases, be considered too great a credit risk for this program.
2. *Cash Flow Coverage* -The loan program is targeted to applicants with cash flow coverage, prior to loan program debt, of not less than 1.1 to 1 to current maturities of long-term debt. Cash Flow is further defined as net income plus depreciation.
3. *Debt to Net Worth*- The loan program is targeted to applicants whose total debt does not exceed net worth by 4 to 1.
4. *Collateral* - Loans shall be secured by appropriate forms of collateral, with recorded first lien positions as appropriate. Acceptable forms of collateral will be based on commonly accepted definitions (fixed assets, inventory, accounts receivable, land, building, equipment, or personal assets).

PROCEDURES

1. Applicants will be referred to the Orange County Economic Development department (Department). Department staff will meet with applicants and process applications. Applicants may be referred to the SBTDC for consultation.

2. Completed applications will be submitted to the Loan Committee no later than two weeks prior to its next scheduled meeting.

Attachment 2

3. At the scheduled meeting, the Loan Committee will discuss the strengths and weaknesses of complete loan application(s) and decide whether or not to take action on the request, based on the information provided. The Loan Committee may invite the applicant(s) to a meeting in order to provide additional information.
4. The applicant will be informed in writing of the Loan Committee's decision to deny, grant, grant with condition, or seek more information. Should the Loan Committee deny the applicant's application, the Loan Committee will not thereafter consider any applications from that applicant for at least six months.
5. At its discretion, the Loan Committee may impose any additional terms and conditions necessary to improve the loan or to secure the loan. The Loan Committee may require an itemized budget detailing the proposed use of loan funds.
6. Should the applicant think that the application has been improperly denied, then the applicant may notify, in writing, the Loan Committee. The notice to the Loan Committee shall state why the applicant thinks the loan should be approved. Denial of the application shall then be given further consideration by the Loan Committee. The Loan Committee's decision on the loan is the final decision.
7. The Loan Committee shall provide regular reports to the Board of County Commissioners of loans that it has approved. Any event of default or loan loss shall be reported to the Board of County Commissioners in writing and presented to the Board of County Commissioners at its next regular meeting following the event of default or loan loss.
8. Loan terms and amounts, and documents, including but not limited to financial statements, business plans, customer and supplier lists, description of inventory or assets, contractual obligations and existing liabilities, submitted during the application process shall be treated as confidential information.

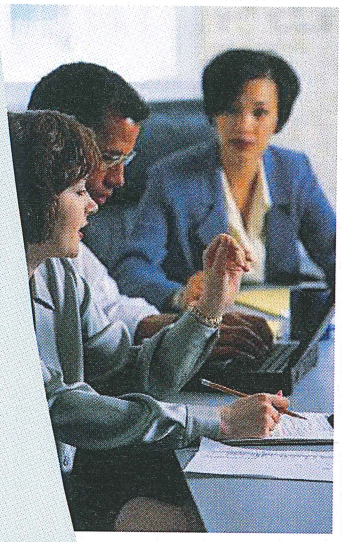
PORTFOLIO MANAGEMENT GUIDELINES

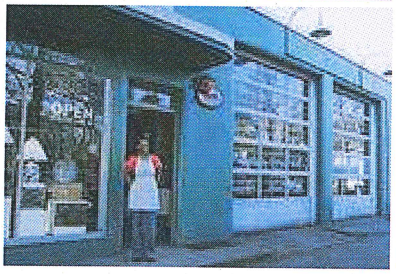
1. Loans to start-up businesses shall not exceed 25% of the loan pool.
2. The total of loan principal past due 30 days or more shall not for any month exceed 10% of outstanding loan commitments.
3. Funds accumulated from the repayment of approved and issued loans, may be used as a source of funding for new loans.

Any exception to the above will result in a moratorium on future loan requests and a review of these loan guidelines by the Loan Committee.

ORANGE COUNTY
NORTH CAROLINA

Small Business Loan Program





The Orange County Small Business Loan Program may be able to help move your business to the next level with funding for equipment, building renovations, working capital or to simply help you turn your idea into a business.

The Small Business Loan Program is administered by Orange County Economic Development

Need capital to grow your business?

The Orange County Small Business Loan Program is a revolving loan fund designed to foster successful local business development and expansion. The program is targeted toward businesses that may have limited access to conventional financing and was developed by Orange County to promote the economic development within the county.

Process

Application packages can be obtained from the Economic Development office in Hillsborough. Completed applications will be submitted to this office as well. Applicants may be referred to the Small Business and Technology Development Center (SBTDC) for assistance in preparing a competitive submission. Applications are then reviewed by a Loan Committee, comprised of community volunteers including bankers, small business owners, and county staff. The Loan Committee will make the final decision on all loans and terms.

See Policies and Procedures for additional information

Eligible use of Proceeds

- Working capital or operational funds
- Purchase of equipment or commercial-use vehicles
- Improvement of owner-occupied commercial property (owner must occupy 50% or more of total space)
- Start-up funding
- Expansion of business services or products
- Acquisition of owner-occupied commercial real estate
- Tenant up fit and lease-hold improvements
- Workforce expansion
- A small business loan request that is to be used in conjunction with other financing will be considered on a case-by-case basis.

Applicant Eligibility

- Applicants must be for-profit business entities whose gross revenues do not exceed $3 million/year
- All businesses must be located within Orange County in areas zoned appropriately for their use (owner's length of residence in Orange County may be considered in assessment).
- Applicants must have an equity contribution of at least 10% in the business.
- All owners of the business may be required to execute an Unconditional Guaranty for the full amount of the loan.
- Applicants with pending criminal charges or who have been convicted of a crime and still serving an active prison sentence, are on probation or parole are not eligible for an Orange County Small Business Loan.

Terms and Conditions*	
Maximum loan	Up to $50,000
Maximum term	5 years
	7 years (Purchase/improvement of real estate)
Fees	Origination fee of 1% to 1.5% Additional fees may be applicable
Interest	Typically prime rate plus 2% to 3%
*Final loan, rates and terms are set by the Loan Committee on a case-by-case basis.	

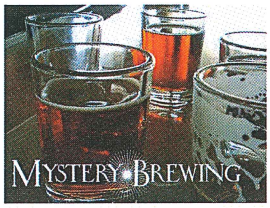
Loan proceeds shall not be used for the following

- Refinancing of existing bank debt or investor loans
- Purchase of equipment or improvement of real estate which are used or to be used for personal use
- Political activities
- Owner salary and dividend payments beyond an agreed amount
- Speculative ventures (drilling for gas or oil, commodity futures)
- Lending or investment
- Real property held for sale or investment
- Pyramid sales - distribution plan business
- Floor plan financing (defined as a revolving line of credit that allows the borrower to obtain financing for retail goods. These loans are made against a specific piece of collateral (i.e. an auto, RV, manufactured home, etc.).
- Foreign Controlled businesses
- Non-profit institutions
- Private membership clubs

All forms are available online:

http://growinorangenc.com/growing-business/small-business-loan-fund/

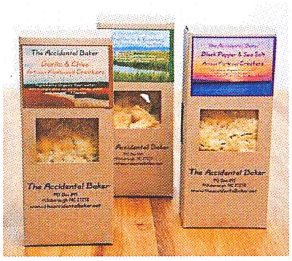
Recipients:



the Depot
general store · music · spirits

Orange County Gymnastics

isis i.t.



Pocket Disc
simple fun anywhere

ServiceMaster by Santosha

skram
furniture company

Additional Services provided by Orange County Economic Development

- Site Selection Services
- Industrial Expansions
- Guidance in Starting a Business
- Labor Force Data Research
- Labor Market Analysis
- Workforce Training Options

Orange County Economic Development
131 W. Margaret Lane, Suite 205
Hillsborough, NC 27278
(919) 245-2325
www.GrowInOrange.NC

ORANGE COUNTY
NORTH CAROLINA

SMALL BUSINESS LOAN PROGRAM POLICIES AND PROCEDURES

The Orange County Small Business Loan Program (Program) is a revolving loan fund program designed to stimulate the creation of good jobs for Orange County citizens, as well as to stimulate successful business development and expansion. The program will attempt to assist businesses that have limited access to financing through conventional means or other government guaranteed sponsored programs. Businesses receiving funding through this program are strongly encouraged to be good corporate citizens and to employ Orange County citizens.

The Orange County Small Business Loan Program Company was incorporated in September 1999 to make and facilitate loans to small businesses in Orange County. The loan program has been approved and initiated by the County, in order to promote the economic development and general welfare of the county and its citizens.

Additional information and applications are available from the Orange County Economic Development Department (contact information located at the bottom of this document). All applications will be reviewed for eligibility and completeness. Completed applications will be submitted to the Board of Directors for the Orange County Small Business Loan Program Company (who acts as the Loan Committee). Applicants will be informed in writing of the Loan Committee's decision.

Eligibility

Applicants must be for-profit business entities whose gross revenues do not exceed $3 million per year.

All businesses must be located within Orange County in areas zoned appropriately for their use. Owner's length of residence in Orange County may be considered in assessment.

Applicants must have an equity contribution of at least 10%.

Owners with an ownership position of 10% or more of the business will be required to execute an Personal Guaranty Agreement for the full amount of the loan. Additional guarantors may be required.

Applicants must be willing to contract for management and technical assistance if determined to be necessary by the Loan Committee.

Applicants with pending criminal charges or who have been convicted of a crime and still serving an active prison sentence, are on probation or on parole are not eligible for an Orange County Small Business Loan.

Eligible Uses of Loan Proceeds

- Working capital or operational funds.
- Purchase of equipment, commercial-use vehicles, or machinery.
- Improvement of owner-occupied commercial property. (Owner must occupy 50% or more of total space.)
- Start-up funding.
- Expansion of business services or products.
- Acquisition of owner-occupied commercial real estate (7-year maturation).
- Tenant up fit and lease-hold improvements.
- A small business loan request that is to be used in conjunction with other financing will be considered on a case-by-case basis.
- Work force expansion.

Loan Proceeds Shall Not Be Used For the Following

- Refinancing of existing bank debt or investor loans. The Loan Committee may grant an exception of up to 50% of the loan value.
- Purchase of equipment or improvement of real estate which are used or to be used for personal use.
- Political activities.
- Owner salary and dividend payments beyond an agreed amount.
- Speculative ventures (Examples: drilling for gas, or oil, commodity futures).
- Lending or investment.
- Real property held for sale or investment.
- Pyramid sales - distribution plan businesses.
- Floor plan financing.
- Foreign controlled businesses.
- Non-profit institutions.
- Private membership clubs.

Compliance With Applicable Regulations

In all cases, loans made from this program must be consistent and in accordance with the following:

- All state and local regulations governing the applicant's business.
- Policies established by the Loan Committee for each particular applicant.

Amount of Loans

Maximum: $50,000
Minimum: $5,000

Should market conditions change, or in the event of an applicant with extraordinary conditions, a loan in amount outside of the maximum or minimum may be considered. All loans are subject to availability of loan funds.

Loan Term

Maximum term—5 years (except 7 years for the purchase or improvement of real estate used or to be used wholly for the business purpose of the applicant.)

Interest Rates

All loans will be charged finance charges based on a variable interest rate. The interest rate will be based on the length of the loan term, as follows:

Up to 2 years	Prime plus 2.00%
2 up to 3 years	Prime plus 2.25%
3 up to 4 years	Prime plus 2.50%
4 up to 7 years	Prime plus 3.00%

The periodic rate may vary from month to month due to changes in the interest rate. The Loan Committee will assign an interest rate using the rate guidelines provided above.

Fees and Expenses

An origination fee, payable at closing from loan proceeds, will be charged at a rate of 1% to 1½%. The minimum origination fee will be $100. Applicant will be responsible for all other expenses related to closing the loan. The applicant will also be responsible for any fees related to any appraisals or reports required by the Program's Loan Committee.

Loan Repayment

Loan repayment schedules will be finalized upon loan commitment. A late payment will be assessed at 2% of the payment amount after 15 days overdue. Loans may be prepaid, in whole or in part, at any time without penalty. In the event the loan payment becomes 30 days overdue, collection procedures will begin. Repayment terms may be modified by the Loan Committee.

Application Procedures

Requests for application to the OCSBLP using the contact information at the bottom of this document may be initiated by the principals of a company or by the company's professional advisors (attorney, bankers, and accountant). Orange County Economic Development staff will meet with the applicants to ensure completeness of the application and process applications. Applicants may be referred to the SBTDC for consultation.

Completed applications will be submitted to Loan Committee no later than two weeks prior to its next scheduled meeting.

At the meeting, the Loan Committee will decide whether or not to take action on the request, based on the information provided. The applicant will be informed in writing of the Loan Committee's decision to deny, grant, grant with condition, or seek more information. Should the Loan Committee deny the applicant's application, the Loan Committee will not consider any applications from that applicant for at least six months.

At its discretion, the Loan Committee may impose any additional terms and conditions necessary to improve the loan or to secure the loan. The Loan Committee may require an itemized budget detailing the proposed use of loan funds.

Should the applicant think that the application has been improperly denied, then the applicant may notify, in writing, the Loan Committee. The notice to the Loan Committee shall state why they applicant thinks the loan should be approved. Denial of the application shall then be given further consideration by the Loan Committee. The Loan Committee decision on the loan is the final decision.

The Loan Committee shall provide regular reports to the Board of County Commissioners of loans that have been approved. Any event of default or loan loss shall be reported to the Board of County Commissioners in writing and presented to the Board of County Commissioners at its next regular meeting following the event of default or loan loss.

NOTE: Loan terms and amounts, and documents, including but not limited to financial statements, business plans, customer and supplier lists, description of inventory or assets, contractual obligations and existing liabilities, ,submitted during the application process shall be treated as confidential information.

Confidential

Orange County Small Business Loan Application

Loan Request

Amount of Loan Requested $	What will you use the loan for (include cost breakdown)?
What collateral do you have available to secure this loan?	

Business Information

Legal Name of Business	DBA Name (if different from Legal Name)		
Street Address (physical address, not a PO)	City/County	State	Zip
Mailing Address (if different from Street address)	City/County	State	Zip
Annual Sales $	Federal Tax ID Number	Business Phone Number	
Date Established	Current Owner Since	Number of Employees	

Business is:
- ☐ Owned
- ☐ Leased

Terms of Lease
- _____ Years
- _____ Months

Business Location
- ☐ Mall
- ☐ Home
- ☐ Shopping Strip
- ☐ Other (identify) _____
- ☐ Office Building
- ☐ Commercial

Type of Organization
- ☐ Sole Proprietorship
- ☐ General Partnership
- ☐ C Corporation
- ☐ LLC
- ☐ S Corporation
- ☐ Other _____

Industry Category
- ☐ Manufacturing
- ☐ Wholesale
- ☐ Retail
- ☐ Service
- ☐ Agricultural
- ☐ Other _____

Briefly describe the product sold or service offered by your business:

Who are your major customers (at least two names):

Confidential

Principal/Owner/Guarantor Information

Please complete for each principal/owner/guarantor with more than 10% ownership (Attach a separate sheet if necessary)
**Alimony, child support or separate maintenance income need not be revealed if you do not wish it considered as a basis for repaying this obligation*

Name(s): ☐ Mr. ☐ Ms. ☐Joint	
Home Address	
% of Ownership in Business:	Gross Income: *$
Monthly Housing Payments: $	Personal Net Worth Excluding Business Value: $

Name(s): ☐ Mr. ☐ Ms. ☐Joint	
Home Address	
% of Ownership in Business:	Gross Income: *$
Monthly Housing Payments: $	Personal Net Worth Excluding Business Value: $

Name(s): ☐ Mr. ☐ Ms. ☐Joint	
Home Address	
% of Ownership in Business:	Gross Income: *$
Monthly Housing Payments: $	Personal Net Worth Excluding Business Value: $

Business Financial Information

Who is your primary bank?	Insurance Provider?
Accounting firm?	Attorney?
Approximate balance in your business checking account? $	
Approximate balance in other checking accounts $	Approximate balance in your savings account $

Please list all business debt and corresponding payment information:

Creditor	Account Balance	Payment Amount	Payment Frequency	Interest Rate	Maturity Date	Collateral

Is the business or any principal/owner an endorser, guarantor, or co-maker for obligation(s) not listed above?	☐ Yes	☐ No
Is the business or any principal/owner a party to any threatened or pending claim or lawsuit?	☐ Yes	☐ No
Are there any delinquent FICA or sales taxes?	☐ Yes	☐ No
Has the business or any principal/owner ever declared bankruptcy?	☐ Yes	☐ No

Please attach explanation for any questions answered "Yes"

Certification and Authorization

The signer(s) certifies that he/she is authorized to execute the application for the business named above, and that the information in this application and any other documents submitted in connection with the application is complete, true, and correct. The signer(s) authorizes the Orange County Small Business Loan Pool to verify the information and to obtain personal, consumer and/or business credit reports. The signer(s) further agrees to provide additional information upon request and to notify the OCSBLP promptly of any material change in the information provided in this application

Business Name _____ Date _____

Additional Guarantor Signature _____ Date _____

By _____ Title _____ Additional Guarantor Signature _____ Date

In addition to the completed application, please submit the following information:

If your company has been in business for at least 18 months, please submit:

- Personal Financial Statement for any person owning 10% or more of the business.
- Business and Personal Tax Returns for the past two years.
- Business Financial Statements, including monthly cash flow, current year's profit and loss, current balance sheet, and profit and loss projection for the next two years (monthly for the next year and quarterly for the following year).
- Business Plan, including employment data (projected need for employees, skill requirements, compensation and benefits).
- Current personal credit report, including credit score.

If your company has been in existence less than 18 months, please submit:

- Personal Financial Statement for any person owning 10% or more of the business.
- Personal Tax Returns for the past two years (business tax return if available).
- Business Financial Statements. If currently operating, please submit financial statements, including monthly cash flow, profit and loss, and recent balance sheet for the operational period. If your company is not yet in operation, see financial submittals required in Business Plan, below.
- Business Plan, including employment data (projected need for employees, skill requirements, compensation and benefits. If your company has yet to begin operations, or has been operating for less than a year, your business plan must include the employment data (projected need for employees, skill requirements, compensation and benefits), management resumes, sources of start-up capital, and projected financial statements for at least two years.
- Current personal credit report, including credit score.

If your company has yet to begin operations (or less than one year), please submit:

- Personal Financial Statement for any person owning 10% or more of the business.
- Personal Tax Returns for the past two years.
- Business Plan, including employment data (projected need for employees, skill requirements, compensation and benefits. If your company has yet to begin operations, or has been operating for less than a year, your business plan must include the employment data (projected need for employees, skill requirements, compensation and benefits), management resumes, sources of start-up capital, and projected financial statements for at least two years.
- Current personal credit report, including credit score.

NOTE: Loan terms and amounts, and documents, including but not limited to financial statements, business plans, customer and supplier lists, description of inventory or assets, contractual obligations and existing liabilities, submitted during the application process, shall be treated as confidential information.

Additional information may be requested by the Loan Committee.

Please mail or email completed application to:

Orange County Small Business Loan Program
P.O. Box 1177
Hillsborough, NC 27278
or yscarlett@orangecountync.gov

Personal Financial Statement

Orange County Small Business Loan Program

As of _____, 20 _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 10% or more interest and each general partner, or (3) each stockholder owning 10% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name	Business Phone
Residence Address	Residence Phone
City, State, & Zip Code	
Business Name of Applicant/Borrower	

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand and checking Account	$ _____	Accounts Payable	$ _____
Savings Accounts	$ _____	Notes Payable to Banks and Others (Describe in Section 2)	$ _____
Certificates of Deposit	$ _____	Installment Account (Auto) Mo. Payments $ _____	$ _____
Retirement Funds (eg. IRAs, 401K)	$ _____	Installment Account (Other) Mo. Payments $ _____	$ _____
Accounts & Notes Receivable	$ _____	Loan on Life Insurance	$ _____
Life Insurance- Cash Surrender Value (Complete Section 8)	$ _____	Mortgages on Real Estate (Describe in Section 4)	$ _____
Securities – Stocks/Bonds/Mutual Funds (Describe in Section 3)	$ _____	Unpaid Taxes (Describe in Section 6)	$ _____
Real Estate (Describe in Section 4)	$ _____	Other Liabilities (Describe in Section 7)	$ _____
Automobile-Present Value	$ _____	Total Liabilities	$ _____
Other Personal Property (Describe in Section 5)	$ _____	Net Worth	$ _____
Other Assets (Describe in Section 5)	$ _____	Total	$ _____
Total Assets	$ _____		

Section 1. Source of Income		**Contingent Liabilities**	
Salary	$ _____	As Endorser or Co-Maker	$ _____
Net Investment Income	$ _____	Legal Claims & Judge	$ _____
Real Estate Income	$ _____	Provision for Federal Income Tax	$ _____
Other Income (Describe below)*	$ _____	Other Special Debt	$ _____

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed

Section 3. Stock and Bonds

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency).

Section 6. Unpaid Taxes (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches).

Section 7. Other Liabilities (Describe in detail.)

Section 8. Life Insurance Held (Give face amount and cash surrender value of policies – name of insurance company and beneficiaries.)

I authorize OCSBLP/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the statement date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: Date: Social Security Number:

Signature: Date: Social Security Number:

Orange County

N O R T H C A R O L I N A

The Perfect Mix For Business

Need capital to start or grow your business?

The Orange County Small Business Loan Program may be able to help move your business to the next level with funding for equipment, building renovation, working capital or to simply help you turn your idea into a business.

Applicant Eligibility

- Applicants must be for-profit business entities (gross revenues less than $3 million/year)
- All businesses must be located within Orange County (zoned appropriately for their use)
- Applicants must have an equity contribution of at least 10% in the business.
- All owners of the business may be required to execute an Unconditional Guaranty for the full amount of the loan.

Please visit our website for additional information:
http://growinorangenc.com/growing-business/small-business-loan-fund/

Orange County Economic Development

131 W. Margaret Lane, Hillsborough, NC 27278 | 919-245-2325 | www.GrowInOrangeNC.com

DRAFT **INFORMATION ITEM** Date Prepared: 04/07/14
Date Revised: 04/08/14

BOCC Meeting Follow-up Actions

(Individuals with a * by their name are the lead facilitators for the group of individuals responsible for an item)

Meeting Date	Task	Target Date	Person(s) Responsible	Status
4/1/14	Review and consider request to consider declaring April 21, 2014 as PowerTalk Day 2014 in Orange County	4/15/2014	Chair/Vice Chair/Manager	**DONE** Included as an agenda item on April 15, 2014 regular meeting agenda
4/1/14	Review request from Commissioner Gordon that the Board consider the Intergovernmental Parks Work Group resolution at a regular meeting in May	6/3/2014	David Stancil	Request was reviewed; Staff will monitor action on the resolution by other governmental entities and bring it to the BOCC after the other jurisdictions and boards review/approve
4/1/14	Follow-up on questions and comments from first Solid Waste Tax District public hearing to develop updated FAQ's and address issues raised	4/15/2014	*Gayle Wilson Michael Talbert	**DONE** Updated FAQ's included in April 15 Board meeting agenda item

INFORMATION ITEM

Barry Jacobs, Chair
Earl McKee, Vice Chair
Mark Dorosin
Alice M. Gordon
Bernadette Pelissier
Renee Price
Penny Rich

Orange County Board of Commissioners
Post Office Box 8181
200 South Cameron Street
Hillsborough, North Carolina 27278

April 9, 2014

Dear Commissioners,

At the Board's April 1, 2014 regular meeting, two petitions were brought forth which were reviewed by the Chair/Vice Chair/Manager Agenda team. The petitions and responses are listed below:

1) Review and consider a request from an Orange County resident, Gayane Chambless, for the Board to consider declaring April 21, 2014 at PowerTalk Day 2014 in Orange County.

   Response*: *This item will be on the Board's agenda for consideration at its April 15th meeting.

2) Review a request from Commissioner Gordon for the Board to consider the Intergovernmental Parks Work Group resolution at a BOCC meeting in May 2014.

   Response: Staff will monitor action on the resolution by other governmental entities and bring it to the BOCC after the other jurisdictions and boards review/approve.

This letter will be provided as an Information Item on the April 15, 2014 agenda for public information.

Best,

Barry Jacobs, Chair
Board of County Commissioners