



# AGENDA | REGULAR TOWN COUNCIL MEETING

May 14, 2024 at 6:00 PM

Council Chambers - Apex Town Hall, 73 Hunter Street

The meeting will adjourn when all business is concluded or 10:00 PM, whichever comes first

## Town Council and Town Executive Leadership

Mayor: Jacques K. Gilbert | Mayor Pro Tempore: Ed Gray

Council Members: Audra Killingsworth, Brett D. Gantt; Arno Zegerman; Terry Mahaffey

Town Manager: Randy Vosburg

Deputy Town Manager: Shawn Purvis

Assistant Town Managers: Demetria John and Marty Stone

Town Clerk: Allen Coleman | Town Attorney: Laurie L. Hohe

## COMMENCEMENT

Call to Order | Invocation | Pledge of Allegiance

## CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Mayor will present the Consent Agenda to be set prior to taking action on the following items:

### **CN1 Agreement - Renewal of GoApex Agreement with Town of Cary and MV Transportation - July 1, 2024 through June 30, 2025**

*Katie Schwing, Senior Planner - Long Range Transit, Planning Department*

### **CN2 Annexation No. 767 - Apex Commerce Center Lot E - 5125 Jessie Drive - 27.5221 acres**

*Allen Coleman, Town Clerk*

### **CN3 Annexation No. 779 - Apex YMCA - New Hill Holeman Road - 25.68 acres**

*Allen Coleman, Town Clerk*

### **CN4 Budget Ordinance Amendment No. 16 and Capital Project Ordinance Amendment No. 2024-18 - Community Development Block Grant (CDBG) Go-Apex Project Funding**

*Jenna Shouse, Senior Planner - Long Range, Planning Department*

### **CN5 Capital Project Ordinance Amendment No. 2024-19 - Cybersecurity Model Grant**

*Erika Sacco, Director, Information Technology Department*

### **CN6 Contract Amendment - Itron Inc. - June 9, 2022 through June 9, 2025**

*Michael Deaton, P.E., Director, Water Resources Department*

### **CN7 Council Meeting Minutes - Various**

*Allen Coleman, Town Clerk*

**CN8 Historical Marker Program Update - Increase Grant to \$4,000**

*Dianne Khin, Director, Planning Department*

**CN9 Memorandum of Understanding (MOU) between Capital Area Metropolitan Planning Organization (CAMPO), Town of Apex, and Various Municipalities - Administrative Updates**

*Shannon Cox, Long Range Planning Manager, Planning Department*

**CN10 Rezoning Case No. 23CZ22 - 1013 Olive Chapel Rd - Statement**

*Joshua Killian, Planner I, Planning Department*

**CN11 Rezoning Case No. 24CZ02 - 5836 Old Smithfield Rd - Statement**

*Shelly Mayo, Planner II, Planning Department*

**CN12 Special Event Authorization - Alcoholic Beverages and Open Containers - Juneteenth Festival 2024**

*Lisa Raschke, Special Events Coordinator, Parks, Recreation, and Cultural Res. Department*

**CN13 Unified Development Ordinance (UDO) Amendments - April 2024 - Statement**

*Amanda Bunce, Current Planning Manager, Planning Department*

## **PRESENTATIONS**

**PR1 Apex Public School Foundation - Quarterly Peak S.T.A.R. Awards - 3<sup>rd</sup> Quarter**

*Councilmember Terry Mahaffey, Sponsor, and*

*Barbara Conroy Co-Founder and President of Apex Public School Foundation*

**PR2 Proclamation - Apex Public Service Recognition Period - May 5 through May 18, 2024**

*Mayor Jacques K. Gilbert*

**PR3 Proclamation - Asian American, Native Hawaiian and Pacific Islander Heritage Month - May 2024**

*Mayor Jacques K. Gilbert*

**PR4 Proclamation - National Foster Care Month - May 2024**

*Mayor Jacques K. Gilbert*

**PR5 Proclamation - National Police Week 2024 - May 12 through May 18, 2024**

*Mayor Jacques K. Gilbert*

**PR6 Proclamation - National Tennis Recognition Month - May 2024**

*Mayor Jacques K. Gilbert*

**PR7 Western Big Branch Area Plan Update**

*Jenna Shouse, Senior Planner - Long Range, Planning Department*



## REGULAR MEETING AGENDA

Mayor Gilbert will call for additional Agenda items from Council or Staff and set the Regular Meeting Agenda prior to Council actions.

### PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council. The speaker is requested not to address items that appear as Public Hearings scheduled on the Regular Agenda. The Mayor will recognize those who would like to speak at the appropriate time. Large groups are asked to select a representative to speak for the entire group. Comments must be limited to 3 minutes to allow others the opportunity to speak.

### PUBLIC HEARINGS

**PH1 FY 2024-2025 Annual Operating Budget and Capital Improvement Plan (CIP) - 2<sup>nd</sup>  
Budget Hearing**

*Amanda Grogan, Director, Budget & Performance Management Department*

### NEW BUSINESS - *None Anticipated*

### UPDATES BY TOWN MANAGER

### CLOSED SESSION

Council will enter into closed session pursuant to:

**CS1 Laurie Hohe, Town Attorney**

**RE: Williams v. Town of Apex.**

**NCGS § 143-318.11(a)(3)**

*"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."*

**CS2 Randy Vosburg, Town Manager**

**NCGS § 143-318.11(a)(6)**

*"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; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee."*

**CS3 Laurie Hohe, Town Attorney**

**NCGS § 143-318.11(a)(6)**

*"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; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee."*

**ADJOURNMENT**

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Katie Schwing, Senior Planner - Long Range Transit

Department(s): Planning

### Requested Motion

Motion to approve an Agreement Amendment No. 2 between Town of Cary, Town of Apex and MV Transportation, to renew terms and responsibilities for the operation of GoApex transit services, effective July 1, 2024 through June 30, 2025, and to authorize the Town Manager to execute on behalf of the Town.

### Approval Recommended?

Yes.

### Item Details

This amendment to the agreement between the Town of Apex, Town of Cary, and MV Transportation renews the terms and responsibilities for the operation of the GoApex Route 1 fixed route transit service. This amendment updates the term to July 1, 2024 through June 30, 2025, updates the cost per hour from \$105.00 (as approved in Amendment #1 for FY24) to \$110.00, and updates the route map and list of bus stops to the most recent versions anticipated for FY25.

The Town of Apex's proposed FY25 budget includes funding for operating GoApex Route 1, and funding is included in the draft FY25 Wake Transit Work Plan through the Wake Transit Community Funding Area Program (Wake Transit Project ID TO005-BF), which provides up to a 50% match of eligible costs reimbursable to the Town.

### Attachments

- CN1-A1: Agreement Amendment No. 2 to GoApex Agreement - Renewal
- CN1-A2: Executed GoApex Agreement - Fiscal Year 2023



NORTH CAROLINA  
WAKE COUNTY

## **AMENDMENT #2 TO GOAPEX AGREEMENT**

Contract Number: EN23-007-00

THIS AMENDMENT #2 TO GOAPEX AGREEMENT, (“Amendment 2”) is entered into by and between the Town of Cary, a North Carolina municipal corporation (hereafter “Cary”) having its office at 316 North Academy St., Cary, NC 27513, Town of Apex (hereafter “Apex”), a North Carolina municipal corporation having its office at 73 Hunter St., Apex, NC 27502, and Cary’s bus services contractor MV Transportation, Inc. (hereafter “MV Transportation”), a corporation duly organized under the laws of the State of California and duly qualified to transact business in the State of North Carolina, having an office at 2711 N. Haskell Ave., Suite 1500-LB2, Dallas, TX 75204. The foregoing may be individually referred to herein as “Party” and collectively referred to as “Parties.”

Cary, Apex and MV Transportation entered into the GoApex Agreement for transit service on June 22, 2022 (“EN2300700”), and Amendment #1 on May 10, 2023 (“EN2300701”), hereafter referred to collectively as “Agreement”.

The Parties desire to renew and amend Agreement.

NOW THEREFORE, in consideration of the mutual promises to each other, as hereinafter set forth, the Parties hereto do mutually agree to amend the Agreement, as follows:

1. As permitted by Section 1, the Parties agree to renew the Agreement for one (1) year beginning July 1, 2024, and terminating June 30, 2025.
2. Section 3.B is amended to update the operating cost per hour to one hundred ten dollars (\$110.00).
3. Exhibit B of the Agreement is deleted in its entirety and replaced by attached Amended Exhibit B and incorporated herein by reference, to include an updated map for GoApex Route 1.
4. Exhibit C of the Agreement is deleted in its entirety and replaced by attached Amended Exhibit C and incorporated herein by reference, to include an updated stop list for GoApex Route 1.
5. Except as modified herein, the Agreement shall continue in full force and effect.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials.

**APEX, Town of Apex**

\_\_\_\_\_  
Randal E. Vosburg, Town Manager

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Allen Coleman, Town Clerk

\_\_\_\_\_  
Date

Reviewed by:

\_\_\_\_\_  
Brent Quick, Contract Administrator

\_\_\_\_\_  
Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

\_\_\_\_\_  
Antwan Morrison, Finance Director

\_\_\_\_\_  
Date

**MV TRANSPORTATION, MV Transportation, Inc.**

\_\_\_\_\_  
Erin K. Niewinski, Executive VP & CFO

\_\_\_\_\_  
Date

**CARY, Town of Cary**

\_\_\_\_\_  
Kelly A. Blazey, Transit Director

\_\_\_\_\_  
Date

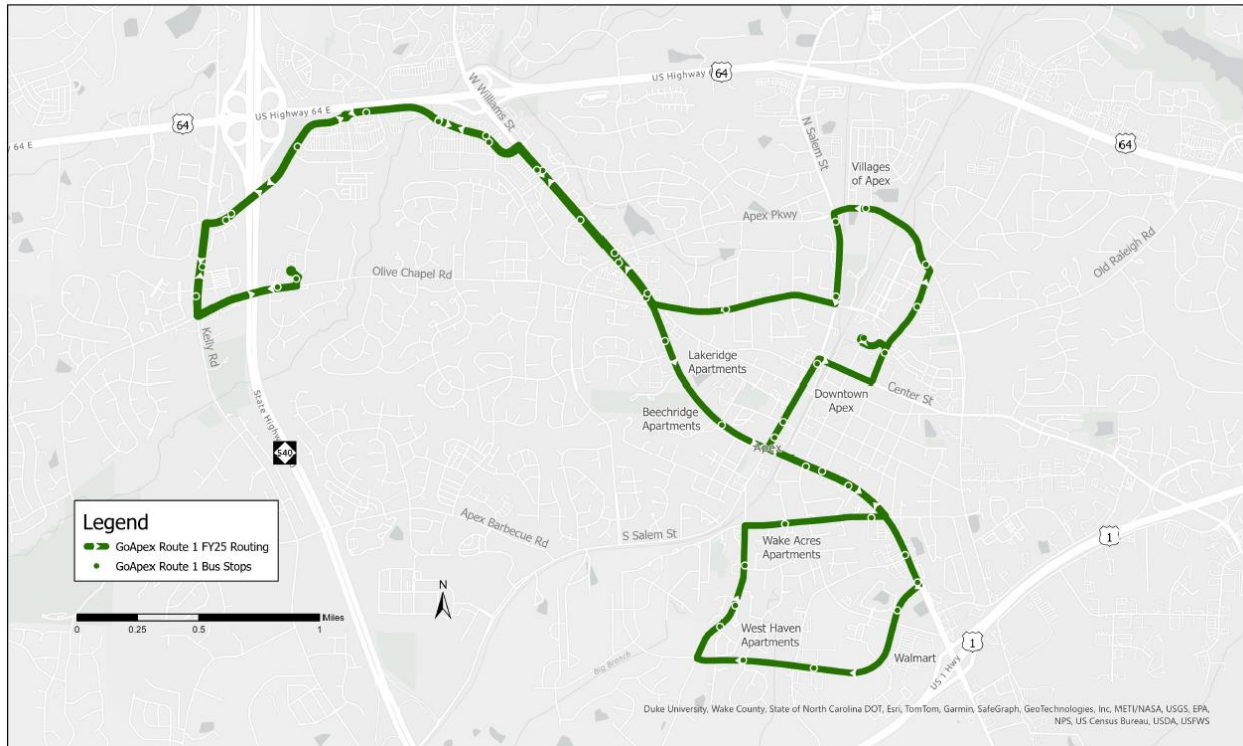
This instrument has been preaudited in the manner required by Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Deputy Finance Officer

\_\_\_\_\_  
Date

## Amended Exhibit B

### Updated GoApex Route 1 Map



## Amended Exhibit C

### Updated GoApex Route 1 Bus Stops

Route Order	Bus Stop ID	Bus Stop Name	Direction	Latitude	Longitude	Built by Town of Apex?	Maintained by Town of Apex?	Shared by a regional provider?	Amenities On Private Property?
1	1452	N Mason St at Old Mill Village Dr (Town Hall (NB))	NB	35.732839	-78.845471	Yes	Yes	Yes (GoTriangle 305)	
2	16093	Apex Senior Center Main Entrance	WB	35.733718	-78.847011	Yes	Yes	No	Yes (Town-Owned)
3	1165	Laura Duncan Rd at Vineyard Station (NB)	NB	35.735576	-78.843081	Yes	Yes	Yes (GoTriangle 305)	
4	16005	Apex Peakway at Laura Duncan Rd	WB	35.738116	-78.842433	Yes	Yes		
5	16007	Apex Peakway at Ambergate Station	WB	35.741476	-78.846851	Yes	Yes		
6	16009	N Salem St at Apex Peakway	SB	35.740682	-78.849079	Yes	Yes		
7	11371	N Salem St at Hunter St (Liberty Station (SB))	SB	35.73621	-78.849066	Yes	Yes	Yes (GoCary ACX)	
8	16013	Hunter St at Hillcrest Rd	WB	35.735441	-78.857171	Yes	Yes		
9	1593	W Williams St at Hunter St (NB)	NB	35.736411	-78.862941	No	No		
10	16017	W Williams St at Apex Peakway (NB)	NB	35.738837	-78.865363	Yes	Yes		
11	1725	W Williams St at Haddon Hall Dr (NB)	NB	35.743772	-78.870595	No	No		
12	16021	Beaver Creek Commons Dr at Chick-fil-A (WB)	WB	35.745855	-78.874754	Yes	Yes		

13	16023	Beaver Creek Commons Dr at Beaver Creek Greenway (WB)	WB	35.7468	-78.878228	Yes	Yes		
14	16027	Beaver Creek Commons Dr at Diamond Dove Ln (WB)	WB	35.741207	-78.893545	Yes	Yes		
15	16029	Kelly Rd at Evening Star Dr (SB)	SB	35.736275	-78.896151	Yes	Yes		
16	16031	Chapel Ridge Rd at Olive Chapel Professional Park	SB	35.737313	-78.888764	Yes	Yes		
17	16033	Olive Chapel Rd at Western Wake Crisis Ministry	WB	35.736819	-78.890092	Yes	Yes		
18	16035	Kelly Rd at Publix Pointe (NB)	NB	35.738028	-78.895671	Yes	Yes		
19	16037	Beaver Creek Commons Dr at Diamond Dove Ln (EB)	EB	35.740821	-78.893927	Yes	Yes		
20	16039	Beaver Creek Commons Dr at Beaver Creek Crossings West	EB	35.745216	-78.888646	Improved	No		Yes
21	16041	Beaver Creek Commons Dr at Regal Cinemas	EB	35.747255	-78.883581	Yes	Yes		
22	16043	Beaver Creek Commons Dr at Beaver Creek Greenway (EB)	EB	35.746706	-78.878278	Yes	Yes		
23	16045	Beaver Creek Commons Dr at Lowe's (EB)	EB	35.745468	-78.874547	Improved	Yes		Yes
24	1731	W Williams St at Haddon Hall Dr (SB)	SB	35.743802	-78.871002	No	No		



25	16049	W Williams St at Healthplex Way (SB)	SB	35.740806	-78.867814	Yes	Yes		
26	1723	W Williams St at Apex Peakway (SB)	SB	35.738247	-78.865063	No	No		
27	1447	W Williams St at Olive Chapel Rd (SB)	SB	35.736155	-78.863075	No	No		
28	16055	W Williams St at Bryan Dr (Post Office)	SB	35.733557	-78.861665	Yes	Yes		
29	16057	W Williams St at Upchurch St	SB	35.728588	-78.857491	Yes	Yes		
30	16059	E Williams St at Salem St	SB	35.727198	-78.854416	Yes	Yes		
31	16061	E Williams St at S Hughes St (Park and Ride (SB))	SB	35.726105	-78.851297	Yes	Yes		
32	16063	E Williams St at Apex Village Center (SB)	SB	35.724946	-78.848173	Yes	Yes		
33	16065	E Williams St at Perry Rd	SB	35.720795	-78.843994	Yes	Yes		
34	16067	E Williams St at Apex Peakway	SB	35.71916	-78.843082	Yes	Yes		
35	1183	Apex Peakway at S Hughes St (Cambridge Village)	SB	35.717491	-78.844572	Yes	Yes	Yes (GoTriang le 305)	
36	16071	Apex Peakway at Norris Park	WB	35.714045	-78.850733	Yes	Yes		
37	16073	Apex Peakway at Shackleton Rd	WB	35.714521	-78.855948	Yes	Yes		
38	16075	Tingen Rd at Baberton Dr	NB	35.716528	-78.857636	Yes	Yes		
39	16077	Tingen Rd at Peace Haven Pl	NB	35.717794	-78.856513	Yes	Yes		

40	16079	Tingen Rd at Sparta Ln	NB	35.720186	-78.855802	Yes	Yes		
41	16081	James St at Germaine St	EB	35.72266	-78.852845	Yes	Yes		
42	16083	James St at E Williams St	EB	35.723031	-78.846483	Yes	Yes		
43	16085	E Williams St at S Mason St (Apex Middle School (NB))	NB	35.725827	-78.8501	Yes	Yes		
44	16087	S Salem St at Williams St	NB	35.727836	-78.853603	Yes	Yes		
45	16089	S Salem St at Moore St	NB	35.728765	-78.852957	Yes	Yes		
46	16091	N Salem St at The Depot	NB	35.732186	-78.85045	Yes	Yes		
47	1452	N Mason St at Old Mill Village Dr (Town Hall (NB))	NB	35.732839	-78.845471	Yes	Yes	Yes (GoTriang le 305)	

CONTRACT CONTROL FORM  
TOWN OF CARY

CCN: EN2300700

DEPARTMENT .....: EN  
 CONTRACT ADMINISTRATOR ..: KELLY BLAZEY  
 ADMINISTRATOR'S PHONE ...: 919 462-2080  
 CONTRACT NAME .....: GOAPEX ROUTE 1 SERVICE AGREEMENT  
 CONTRACTOR'S NAME .....: APEX TOWN OF  
 CONTRACT EXPIRATION DATE: 6/30/2023


TYPE: 4	1=SERVICE	STATUS: 1	1=NEW
	2=EQUIPMENT		2=RENEWAL
	3=CONSTRUCTION		3=REVISION
	4=AGREEMENT		4=CHANGE ORDER
	5=REIMBURSEMENT		

TRANSMITTAL INFORMATION:	ACTION DATES	" " ATTORNEY'S REVIEW NOT
NOTICE OF AWARD SENT .....		REQUIRED.
BONDS RECEIVED .....		
* NOTICE TO PROCEED SENT ..		
* INSURANCE CERTIF.RECEIVED:		
* OCCURS AFTER CONTRACT EXECUTION		

FINANCE INFORMATION  
 CARY BUSINESS LICENSE VERIFIED:  
 ENCUMBRANCE/PO NUMBER:  
 ACCOUNT NUMBER: 25-0000-391.1031  
 PROJECT NAME ..: GOAPEX ROUTE 1 SERVICE  
 PROJECT NUMBER:  
 OBLIGATES REVENUE TO THE TOWN: \$498,376.00  
 OBLIGATES TOWN EXPENDITURE ..:  
 " " NO CHANGE IN PRESENT ENCUMBRANCE/PO

COMMITTEE APPROVALS:	ACTION DATES	OTHER APPROVALS:	ACTION DATES
SAFETY/PUBLIC WORKS ..:		COUNCIL .....	
PLANNING & DEVELOPMENT:		BUDGET ADJUSTMENT:	
FINANCE/PERSONNEL .....		OTHER:	

DEPARTMENT DIR APPROVAL DATE: 4/27/2022

FINANCE <sup>DS</sup>  
 INITIALS:  DATE IN: ACTION DATE:  
 COMMENTS:

TOWN MANAGER  
 INITIALS: DATE IN: ACTION DATE:  
 COMMENTS:

"  
 TOWN CLERK  
 INITIALS: ACTION DATE:  
 COMMENTS:  
 " TO MAYOR FOR SIGNATURE

**CONTRACT ADMIN. EXECUTED DATE:**

TOWN ATTORNEY (Approved as to form only)  
 INITIALS: DATE IN: ACTION DATE:  
 COMMENTS:

## GOAPEX AGREEMENT

This Agreement ("Agreement") is made by and between **Town of Cary** (hereinafter "Cary"), a North Carolina municipal corporation having its office at 316 North Academy St., Cary, NC 27513, **Town of Apex** (hereinafter, "Apex"), a North Carolina municipal corporation having its office at 73 Hunter St., Apex, NC 27502, and Cary's bus services contractor **MV Transportation, Inc.** ("MV Transportation") a corporation duly organized under the laws of the State of California and duly qualified to transact business in the State of North Carolina having an office at 2711 N. Haskell Ave., Suite 1500-LB2, Dallas, TX 75204. The foregoing may be individually referred to herein as "Party" and collectively referred to as "Parties."

Cary provides a transit service called GoCary. Pursuant to an agreement between Cary and MV Transportation ("GoCary Agreement"), MV Transportation is GoCary's service provider. MV Transportation will extend transit service to Apex pursuant to the terms of this Agreement.

Apex is utilizing the services of MV Transportation pursuant to this Agreement to provide a public bus service called "GoApex Route 1" (hereinafter "Route 1" or "Service") with the respective responsibilities and duties of the Parties as listed below.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

### 1. Term

The Agreement shall become effective upon execution by all Parties ("Effective Date") and shall expire June 30, 2023. The Route 1 initial date of service will begin at a date agreed upon via email by the Town of Cary Transit Administrator, Town of Apex Long Range Planning Manager, and MV's General Manager. The Parties may extend the term in one-year increments for a period up to three (3) additional years. In January of each year of this Term, Cary and Apex will begin to confer and to review MV Transportation's performance and projected cost for the coming contract year. The option for extending the term of the Agreement must be agreed upon by the Parties in writing at least ninety (90) days before the end of the current term.

### 2. Operations

The purpose of this Agreement is to set forth the duties and responsibilities of each Party in the provision of Route 1 service. GoApex Route 1 will be a fixed-route transit service open to the general public. Operational characteristics of the Service may be changed for the benefit of any party upon written approval by all Parties.

A. Cary shall have the following responsibilities:

1. Finalize the alignment for Route 1, including the schedule, the span of

revenue service (the time when a vehicle is available to the general public and there is an expectation of carrying passengers), and the timing of revenue service, after collaboration with Apex. Cary agrees to consult with Apex on these elements to maximize regional coordination. Any material change in the route alignment, stop locations, schedule, span of service, timing of service, or overall operation of Route 1 must be agreed to in writing by both parties. Cary will respond to all communications and requests by Apex within ten (10) business days unless such communication or request is specifically identified by Apex as an “Urgent Operational Concern” Cary will respond within two (2) business days. Cary will provide feedback to Apex on the operation of the service.

2. Assist Apex where reasonably possible (in Cary’s sole discretion) in the provision of information about and marketing of Route 1. This may include reviewing and providing comments on marketing materials, participating in outreach events, and assisting with coordination with other regional transit providers.
3. Provide Apex a minimum of 15 days written notice of potential service disruption, except in the case of service disruption due to inclement weather, safety concerns, or other emergency situations in which case notice will be provided as soon as reasonably possible. Cary has final authority on all changes to service level. Cary will attempt to maintain service on all scheduled routes dependent on available resources. Action plans for service disruptions will be communicated by email to the MV Transportation General Manager and Town of Apex Long Range Planning Manager, or designee.
4. Cary shall report Route 1 operating statistics to comply with deliverables outlined in the General Operating Agreement for Bus Operations – Community Funding Area Program executed between the Town of Apex, GoTriangle, and Capital Area Metropolitan Planning Organization (Wake Transit Operating Agreement), including ridership by date, revenue and deadhead hours, revenue and deadhead miles, missed trips, and a log of customer complaints and resolutions, all in an editable format, to Apex by the 15<sup>th</sup> of the month following the month of service.

B. MV Transportation shall have the following responsibilities:

1. Operate Route 1 on all weekdays and Saturdays according to the operating schedule set forth in Section 2.A.1, except for the holidays listed in Exhibit A, attached and incorporated by reference, or as otherwise agreed to in writing by the Parties. By February 15<sup>th</sup> of the preceding fiscal year, Cary agrees to provide a revised list of holidays during which time GoCary and Route 1 will not be operated during the subsequent fiscal year. Apex agrees to provide annually a revised list of holidays, if any, during which time Route 1 will or will not be operated by March 1<sup>st</sup>.

2. Ensure appropriate usage and placement of any identifying Route 1 materials on vehicles, including bus wraps, or other appropriate industry accepted signage as agreed upon, and paper schedules.
3. Use Americans with Disabilities Act (ADA) accessible light transit vehicles (LTVs) with a seated capacity of no less than 16 persons, equipped with automated vehicle locators (AVL) and which comply with all applicable federal and state laws and regulations.
4. Agree that if any vehicle intended for, or normally used for Route 1 service is inoperable for any reason, MV Transportation will immediately deploy another vehicle of equal or greater seating capacity which is compliant as required in subsection 2.B.3. MV Transportation will ensure that any vehicle deployed will have either a bus wrap or other industry-accepted signage identifying it as a GoApex vehicle.
5. MV Transportation shall operate Route 1 in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina. MV Transportation is responsible for the maintenance, cleaning, and safe operation of all vehicles used in providing the Service as well as any claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered for personal injury, including bodily injury or death and/or property damage, including loss of use thereof, resulting from the negligence of MV Transportation.
6. Maintain, throughout the term of the Agreement and any extensions of the term, commercial general liability, auto and umbrella/excess insurance policies at its expense, covering personal injury and property damage on and in the vehicles and inside and outside the park and ride lots. The policies shall have at least the coverage amounts specified in Section 19 of this Agreement and at no time during the term of this Agreement shall coverage amounts be less than the coverage amounts required of MV Transportation by the GoCary Agreement. Cary and Apex shall be named as an additional insured on the general liability, business auto liability, and umbrella/excess policies and the policies will be primary and non-contributory. At Apex or Cary's written request, MV Transportation shall provide certificates of insurance referencing that the coverage is primary and non-contributory with copies of the Additional Insured Endorsement attached. Apex or Cary may request complete, certified copies of the policies. Notwithstanding the foregoing, neither the requirement of MV Transportation to have sufficient insurance nor the requirement that Cary and Apex are named as additional insureds, shall constitute waiver of either Town's governmental immunity in any respect, under North Carolina law.
7. Prepare and maintain on a form developed by Cary or MV Transportation

on-going statistical, operational, and service data related to Route 1 separately from regular GoCary data. This includes but is not limited to the following: Vehicle Pre-Trip Inspection Checklist sheets, monthly reports that include total road calls, passenger trips, vehicle miles and vehicle hours, and any other daily, monthly, and/or annual data as required by FTA under the National Transit Database (NTD) program requirements. This information shall be provided to Apex upon request.

8. Report all passenger or vehicle accidents to Cary within one (1) hour of occurrence and follow-up with a detailed written accident report within twenty-four (24) hours. Cary will provide this information to Apex's Planning Director and/or designee by email as soon as is reasonably practical, but no more than 48 hours after the accident.

C. Apex shall have the following responsibilities:

1. Apex shall build or provide ADA accessible bus stops as identified in Exhibit C, or additional future bus stops proposed by Apex with Cary's written approval. Apex shall maintain the bus stops used for the Service as identified in Exhibit C. Exceptions are stops that are either: (1) shared by a regional provider or (2) located on private property. Maintenance includes maintaining and upkeeping all associated transit amenities, including cutting or trimming of any vegetation; routine cleaning of the transit amenities, including the removal of litter and trash from trash receptacles; snow and ice removal; and maintaining ADA accessible conditions.
2. Provide employees of MV Transportation with access to restroom facilities during all periods of revenue service, including any keys or other methods of entry needed to access such a facility. These locations will be agreed to in writing by all parties.
3. Obtain National Transit Database (NTD) ID and complete annual NTD reporting.
4. Determine the fare, if any, to be charged for the Service. The initial service will be implemented fare-free. If Apex decides to charge a fare, Apex is solely responsible for determining and procuring technology, developing policies and procedures, conducting public involvement and marketing, and paying any associated implementation and operating costs.
5. Respond to all communications and requests by Cary within ten (10) business days, unless such communication or request is specifically identified by Cary as an "Urgent Operational Concern," in which case Apex will respond within two (2) business days.
6. Establish and implement a plan for marketing Route 1, including: designing and printing schedule brochures or other informational literature; providing such literature to Cary for distribution on vehicles; and following, at a minimum, engagement standards outlined in the Wake

Transit Public Engagement Policy (“Engagement Policy”). Materials must be consistent with the service provided. Materials with a GoCary logo, image of a vehicle or person covered by the GoCary Agreement, or any other reference to GoCary, are subject to Cary review and approval to ensure accuracy of information. Images of vehicles or person(s) covered by the GoCary Agreement may be pre-approved for general use in public materials, eliminating the need for review and approval for each use.

7. Report all Route 1 operating statistics in compliance with the deliverables associated with the Wake Transit Operating Agreement.

### **3. Funding and Billing**

- A. Apex will pay for the cost of installing GoApex branding on the bus operating the Service. MV Transportation shall provide a quote for the installation of the images subject to Town of Apex approval. Following completion and inspection of the installation by the Town of Apex, Town of Cary shall invoice the Town of Apex. The invoice shall be paid by the Town of Apex within 30 days of receipt. Apex is responsible for any costs associated with the removal of branding and other identifying characteristics from vehicles and the cost to fabricate and install replacement GoCary wraps on the vehicles at the conclusion of the service agreement.
- B. Apex will pay Cary the annual operating cost for the Route 1. Costs may be reduced based on any grants, fare revenue collected, or other monetary contributions received from Cary from any other party, if applicable. The annual operating cost as agreed by the Parties is determined by the following formula: operating cost per hour (\$97.50) multiplied by the number of platform hours per day multiplied by the number of operating days per year. Platform hours are the revenue plus deadhead hours (deadhead hours are times when the bus is away from the maintenance facility but not in revenue service, including travel to and from the facility to the service start/end location). Cary will inform Apex of any changes to its operating cost per hour and the justification therefore, no later than February 15th of each year. Operating cost is a fully allocated rate which includes the full cost of the service provided by MV Transportation, fuel, capital expenses and overhead for Cary. It is expected that, at a minimum, the operating cost per hour will be adjusted based on the Municipal Cost Index (MCI), as calculated by Cary.

All service information will be reported to the National Transit Database (NTD). Apex must obtain an NTD ID and submit all Route 1 data. Cary and MV Transportation will assist Apex in this reporting. As a result, Cary and Apex agree that the provision of Route 1 service may increase the amount of Federal Transit Administration (FTA) formula grant funding that can be acquired by Cary. If Cary secures FTA Section 5307 and Section 5339 formula grant funds that are attributable to Route 1, Cary will deduct from its billing of Apex for the operation of Route 1 an amount equal to the share of FTA Section 5307 and Section 5339 funds allocated to Cary for the preceding



federal fiscal year (October 1 – September 30) that is attributable to Route 1, starting with the fourth fiscal year following the first fiscal year of annual reporting. This deduction may be applied on a prorated monthly basis.

- C. Cary will provide a monthly invoice to Apex within fifteen (15) days after the end of each month of Service. Apex shall reimburse Cary within thirty (30) days of receipt of an invoice. In the event Apex finds any part of an invoice inconsistent with this Agreement, Apex shall clearly identify and provide evidence to Cary of any inconsistent or erroneous expenses within ten (10) days of receipt of an invoice and Cary will work in good faith to determine if there is an error in the invoice.
- D. MV Transportation will be compensated by Cary pursuant to the terms of the GoCary Agreement.

#### **4. ADA and Paratransit Requirements**

- A. MV Transportation agrees to provide Route 1 service in a manner that meets all applicable ADA public transit requirements, including the policies, regulations and training of all operators in the safe use of all ADA equipment. Requirements may include, as appropriate, providing ADA accessible vehicles on fixed route service, knowledge of mobility device tie-down procedures, operation of bus kneeling feature (if available), appropriate use of the public address and talking bus technologies, and knowledge of service animal regulations.
- B. Apex will be responsible for providing all complementary ADA paratransit service to Route 1. Cary and MV Transportation will not be required to provide complementary ADA paratransit service as part of this Agreement.

#### **5. Technology**

MV Transportation agrees to install and utilize the standard technology platform agreed to between Cary and MV Transportation, including Computer-Aided Dispatch/Automated Vehicle Locator systems (CAD/AVL), equipment for counting passenger totals, camera systems, Automated Passenger Counters (APCs), head signs, announcement systems, wi-fi routers, real-time passenger information, and communication systems between drivers and dispatch. Costs of these platforms will be included in the hourly rate.

#### **6. Termination for Failure to Perform ("Breach")**

The Parties agree that in the event that a Party breaches any provision of this Agreement, within sixty (60) days of receipt of written notice from a non-breaching Party, the breaching Party will cure the breach to the reasonable satisfaction of the non-breaching Party if the breach can be cured. Any breach of this Agreement

materially impacting operation of GoApex service (“Operation Breach”) shall require immediate response and a plan of action to cure the breach within fifteen (15) days of receipt of written notice from a non-breaching party which clearly states that such breach is considered an Operation Breach. If the breach is not timely cured, or cannot be cured, then, the non-breaching Party may, at its election, terminate the Agreement. The Parties will cooperate on a winding down of the Service, including reasonable notice to the public. Apex shall pay Cary for Service provided prior to date of termination.

## **7. Termination for Convenience**

Any Party may terminate this Agreement at any time for any reason, provided the terminating Party provides a minimum of one hundred eighty (180) days advance written notice to the other Parties. In this event, the Parties will cooperate on a winding down of the service, including reasonable notice to the public. Apex shall pay Cary for the Service provided prior to the date of termination.

## **8. Customer Information and Complaint Handling**

- A. Apex agrees to receive and respond to customer complaints regarding stop-related issues applicable to Route 1.
- B. MV Transportation will utilize existing customer service and dispatch staff during all hours of operation to respond to inquiries about immediate operational concerns. MV Transportation will work to resolve complaints within 48 hours of receipt, with follow-up to the complainant within one week after receipt. MV Transportation will maintain a separate complaint log that will include both the nature of the complaint and the resolution thereof and share with Cary and Apex on a monthly basis.
- C. The GoTransit Regional Information Center, operated by GoTriangle, is the call center responsible for most transit-related inquiries in the Triangle region. Cary contracts with GoTriangle for usage of this call center. Apex, in coordination with Cary, agrees to provide current schedule and stop location information to the Regional Information Center, which the Parties agree will serve as the primary point of contact for customer information about Route 1.

## **9. Further Agreements**

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and with due diligence to provide for and carry out the purpose of this Agreement.

## **10. Amendment**

Any modification of this Agreement shall be made by Written Agreement.

## **11. Notices**

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to Cary:

Transit Administrator  
Town of Cary  
316 N. Academy St.  
Cary, NC 27513

With a copy to:

Senior Transit Planner (Service)  
Town of Cary  
316 N. Academy St.  
Cary, NC 27513

If to Apex:

Town Manager  
Town of Apex  
Physical - 73 Hunter Street  
Mail - PO Box 250  
Apex, NC 27502

And with copy to:

Senior Long Range Transit Planner  
Town of Apex  
Physical - 73 Hunter Street  
Mail - PO Box 250  
Apex, NC 27502

If to MV Transportation:

Regional Vice President for Division 178  
MV Transportation, Inc.  
2711 N. Haskell Av., Suite 1500-LB2  
Dallas, TX 75204

With a copy to: [contractsreview@mvtransit.com](mailto:contractsreview@mvtransit.com)

## **12. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the Parties and their agents, grantees, successors, and assigns.

## **13. Dispute Resolution**

In the event a dispute arises between the Parties to this Agreement concerning a question of fact in connection with the requirements of this Agreement or compensation therefore, the Parties agree to bargain in good faith towards a mutual resolution. If the Parties, after honest good faith negotiations, cannot reach an agreement, then either Party may adjudicate their dispute as allowed by North Carolina State Law.

## **14. Force Majeure**

The Parties shall not be liable to each other for any failure, delay, or interruption of service or for any failure or delay in the performance of any obligation under this contract due to strikes, walkouts, unusual adverse weather, governmental restriction, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, epidemic, pandemic, or other similar acts beyond the reasonable control of the Parties ("Force Majeure Event"). In the event a Party believes a Force Majeure Event has occurred ("Invoking Party"), the Invoking Party shall provide written notice to the other Party within fifteen (15) days of the date on which the Invoking Party determines that the Force Majeure Event will render performance to be impossible (including temporary delays). Thereafter, the Invoking Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting the specific performance noticed and to complete its performance in as timely a manner as is reasonably possible. In no event shall the delayed performance be longer than the duration of the noticed Force Majeure Event without the joint written approval of the other Party.

## **15. Verification of Work Authorization**

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

## **16. Compliance with Federal Laws and Regulations**

The following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable), unless a more stringent state or local law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324); and any other federal

provisions required by law.

### **17. Cary Branding**

Apex and MV Transportation shall not use the seal, logo, or any other branding identifiers of GoCary or the Town of Cary.

### **18. Representations and Warranties**

The individuals signing the Agreement have the right and power to do so and bind their respective parties to the obligations set forth herein, and such individuals do so personally warrant that they have such authority.

### **19. Insurance**

MV Transportation and MV Transportation's permitted subcontractors shall purchase and maintain on a primary basis and at its sole expense during the term and for three years after the termination of this Agreement insurance or self-insurance for the following: protection from claims under Worker's or Workmen's Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of MV Transportation's employees or subcontractors; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage; Cyber Liability covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to MV Transportation's performance under this Agreement.

Minimum limits of insurance coverage are:

General Liability	\$2,000,000 per occurrence/ \$2,000,000 aggregate
Commercial Automobile Liability	\$2,000,000 CSL
Commercial Excess/Umbrella Liability	\$5,000,000 per occurrence
Workers Compensation	Statutory Limits
Employer's Liability	\$500,000 each accident
Professional Liability	\$1,000,000 per claim
Cyber Liability	\$2,000,000 per claim and aggregate

MV Transportation may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies or self-insurance. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to Cary and Apex, as applicable based on loss.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### Insurers

The minimum insurance ratings for any company insuring MV Transportation shall be Best's A- or a qualified self-insurance program approved by the state of North Carolina. Should the ratings of any insurance carrier fall below the minimum rating, Cary or Apex, may, at their option, require MV Transportation to purchase insurance from a company whose rating meets the minimum standard. MV Transportation's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If MV Transportation is unable to find an authorized carrier for any line of insurance coverage, MV Transportation shall notify Cary in writing. Cary shall then notify Apex.

#### Additional Insured Status

All insurance policies (except Workers Compensation and Professional Liability) shall name Cary and Apex, and each Town's elected officials, officers, employees, and volunteers as additional insureds.

#### Notice of Cancellation

Each policy shall provide that Cary and Apex shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, MV Transportation shall procure substitute insurance so as to assure Cary and Apex that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

#### Primary

MV Transportation's insurance coverage shall be primary for any claims related to this Agreement.

#### Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against Cary or Apex, or either Town's agents or agencies, it being the intention of the parties that the insurance policies shall protect Cary and Apex and be primary coverage for any and all losses covered by the policies.

#### Verification of Coverage

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement. Cary's or Apex's review or acceptance of certificates of insurance shall neither relieve MV Transportation of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Agreement.

Certificate Holder addresses should read:

Town of Cary  
PO Box 8005  
Cary, NC 27512-8005

Town of Apex  
PO Box 250  
Apex, NC 27502

**Special Risks or Circumstances**

Cary, with prior written consent from the Town of Apex, reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Written consent from Apex may be provided by electronic communication.

**20. Indemnification**

To the fullest extent permitted by law, MV Transportation shall indemnify and hold harmless Cary and Apex, their elected officials, officers, and employees, from and against any and all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs) (collectively "Claims"), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by MV Transportation of any term or condition of Agreement, (b) any breach or violation by MV Transportation of any applicable law or regulation, or (c) any other cause resulting from any act or failure to act by MV Transportation under this Agreement, but only to the extent caused by any negligence, act, or omission of MV Transportation. This indemnification shall survive the termination of Agreement.

**21. Independent Contractor**

MV Transportation is an independent contractor and is solely responsible for its Services and the supervision of its employees and permitted subcontractors. All persons assigned by MV Transportation to provide Services pursuant to this Agreement shall, for all purposes of this Agreement, be considered employees of MV Transportation only. MV Transportation shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. If Cary notifies MV Transportation in writing that any person providing Services appears to be incompetent, disorderly, or otherwise unsatisfactory to Cary or Apex, such person shall be removed from the project and shall not again be employed on it except with the prior written consent of Cary. No extension to any "Milestone Date" or completion date will be granted for replacement of such personnel or subcontractors.

**22. Public Records**

All parties acknowledge that records in the custody of Cary or Apex may be public records and subject to public records requests. Cary or Apex may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by MV Transportation, the Town will not disclose records that meet all of the requirements of a trade secret as set forth in

N.C.G.S. 66-152, that are specifically designated as “trade secret” or “confidential” at the time of initial disclosure by the Contractor, and that are otherwise entitled to protection under N.C.G.S. 132-1.2(1).

### **23. Entire Agreement; Amendments to Agreement**

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, “clickthrough agreement”). Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.

### **24. Dissemination of Information.**

Cary takes efforts to assure that accurate information about Cary is disseminated such that neither the public trust nor the public’s perception of Cary impartiality is compromised. MV Transportation and Apex, mindful of those efforts, agrees that they shall not publicly disseminate any information concerning Cary or GoCary, to include images of vehicles or people covered by the GoCary Agreement, without prior approval from Cary. Images of vehicles or person(s) covered by the GoCary Agreement may be pre-approved for general use in public materials, eliminating the need for review and approval for each use. Any approval given by Cary may be given with certain stipulations, such as Cary participation in the creation of the public product or Cary review and the option to refuse ultimate release of the final product should it fail to meet Cary’s standards and goals. “Publicly disseminate” means but is not limited to electronic, video, audio, photographic or hard copy materials serving as, in whole or part, advertising, sales promotion, professional papers or presentations, news releases, articles, or other media products, and/or business collateral pieces. Notwithstanding the foregoing, the parties agree that MV Transportation may list Cary as a reference in response to requests for proposal and may identify Cary as a customer in presentations to potential customers.

### **25. Non-Exclusive Remedies/No Waiver**

The selection of one or more remedies for breach shall not limit a party’s right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default. Every right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

### **26. Survival**

All representations, indemnifications and other terms and conditions of Agreement which by their nature should survive Agreement termination shall survive its expiration or termination.



**27. No Waiver of Immunity**

Nothing in this Agreement shall be construed to mandate purchase of insurance by Cary pursuant to N.C.G.S. 160A-485 or to in any way waive Cary's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of either Cary or Apex shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

**28. Gifts and Favors**

MV Transportation shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. §14-234, N.C.G.S. §133-1, and N.C.G.S. §133-32.

**29. Nondiscrimination**

No party shall discriminate in violation of any federal, state, or local law. MV Transportation and Apex shall comply with the Americans with Disabilities Act of 1990 ("ADA").

**30. Electronic Version of Agreement**

Cary may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

**31. No Third Party Beneficiaries**

Unless otherwise explicitly stated, there are no third-party beneficiaries to Agreement.

**32. Electronic Signatures**

Apex and MV Transportation acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of Cary, to execute this Agreement and any associated documents. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, Apex and MV Transportation consents to be legally bound by the terms and conditions of this Agreement and that such act constitutes Apex and MV Transportation's signature as if actually signed by Apex and MV Transportation in writing. Apex and MV Transportation also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the

enforceability of its electronic signature. Apex and MV Transportation acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby, through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

**33. Recitals**

The Recitals are incorporated into this Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials

**APEX, Town of Apex**

Catherine Crosby

Town Manager

DocuSigned by:  
  
C2037E33C2CC4B3...

6/16/2022

Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

Vance Holloman

Finance Director

DocuSigned by:  
  
D6B80595BB1C440...


6/15/2022

Date

**MV TRANSPORTATION, MV Transportation, Inc.**

Marie Meisenbach Gaul

Chief Financial Officer

DocuSigned by:  
  
CC90E4517A6F42E...

6/20/2022

Date

**CARY, Town of Cary**

Shelley Curran

Assistant Town Manager

DocuSigned by:  
  
FD832D7BD2C2497...

6/20/2022

Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

Denisha Harris

Deputy Finance Officer

DocuSigned by:  
  
8AA23C6AF1284D3...

6/22/2022

Date

**Exhibit A**

**Initial Span of Revenue Service**

Monday – Saturday                      6:00 AM to 10:00 PM

**GoApex Route 1 does not operate on the following holidays:**

New Year's Day

Martin Luther King Jr.'s Birthday

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Eve

Christmas Day



**Exhibit C****GoApex Route 1 Initial Bus Stops and Commitments**

<b>Route Order</b>	<b>Bus Stop ID</b>	<b>Bus Stop Name</b>	<b>Direction</b>	<b>Latitude</b>	<b>Longitude</b>	<b>Built by Town of Apex?</b>	<b>Maintained by Town of Apex?</b>	<b>Shared by a regional provider?</b>	<b>Amenities on private property?</b>
1	1452	N Mason St at Old Mill Village Dr (Town Hall (NB))	NB	35.732839	-78.845471	No	Trash removal only	Yes (GoTriangle 305)	
2	1165	Laura Duncan Rd at Vineyard Station (NB)	NB	35.735576	-78.843081	Yes	Yes	Yes (GoTriangle 305)	
3	16005	Apex Peakway at Laura Duncan Rd	WB	35.738116	-78.842433	Yes	Yes		
4	16007	Apex Peakway at Ambergate Station	WB	35.741476	-78.846851	Yes	Yes		
5	16009	N Salem St at Apex Peakway	SB	35.740682	-78.849079	Yes	Yes		
6	11371	N Salem St at Hunter St (Liberty Station (SB))	SB	35.73621	-78.849066	Yes	Yes	Yes (GoCary ACX)	
7	16013	Hunter St at Hillcrest Rd	WB	35.735441	-78.857171	Yes	Yes		
8	1593	W Williams St at Hunter St (NB)	NB	35.736411	-78.862941	No	No	Yes (GoTriangle 311)	
9	16017	W Williams St at Apex Peakway (NB)	NB	35.738837	-78.865363	Yes	Yes		
10	1725	W Williams St at Haddon Hall Dr (NB)	NB	35.743772	-78.870595	No	No	Yes (GoTriangle 311)	
11	16021	Beaver Creek Commons Dr at Chick-fil-A (WB)	WB	35.745855	-78.874754	Yes	Yes		
12	16023	Beaver Creek Commons Dr at Beaver Creek Greenway (WB)	WB	35.7468	-78.878228	Yes	Yes		
13	16027	Beaver Creek Commons Dr at Diamond Dove Ln (WB)	WB	35.741207	-78.893545	Yes	Yes		
14	16029	Kelly Rd at Evening Star Dr (SB)	SB	35.736275	-78.896151	Yes	Yes		
15	16031	Chapel Ridge Rd at Olive Chapel	SB	35.737313	-78.888764	Yes	Yes		

Route Order	Bus Stop ID	Bus Stop Name	Direction	Latitude	Longitude	Built by Town of Apex?	Maintained by Town of Apex?	Shared by a regional provider?	Amenities on private property?
		Professional Park							
16	16033	Olive Chapel Rd at Western Wake Crisis Ministry	WB	35.736819	-78.890092	Yes	Yes		
17	16035	Kelly Rd at Publix Pointe (NB)	NB	35.738028	-78.895671	Yes	Yes		
18	16037	Beaver Creek Commons Dr at Diamond Dove Ln (EB)	EB	35.740821	-78.893927	Yes	Yes		
19	16039	Beaver Creek Commons Dr at Beaver Creek Crossings West	EB	35.745216	-78.888646	Improved	No		Yes
20	16041	Beaver Creek Commons Dr at Regal Cinemas	EB	35.747255	-78.883581	Yes	Yes		
21	16043	Beaver Creek Commons Dr at Beaver Creek Greenway (EB)	EB	35.746706	-78.878278	Yes	Yes		
22	16045	Beaver Creek Commons Dr at Lowe's (EB)	EB	35.745468	-78.874547	Improved	Yes		Yes
23	1731	W Williams St at Haddon Hall Dr (SB)	SB	35.743802	-78.871002	No	No	Yes (GoTriangle 311)	
24	16049	W Williams St at Healthplex Way (SB)	SB	35.740806	-78.867814	Yes	Yes		
25	1723	W Williams St at Apex Peakway (SB)	SB	35.738247	-78.865063	No	No	Yes (GoTriangle 311)	
26	1447	W Williams St at Olive Chapel Rd (SB)	SB	35.736155	-78.863075	No	No	Yes (GoTriangle 311)	
27	16055	W Williams St at Bryan Dr (Post Office)	SB	35.733557	-78.861665	Yes	Yes		
28	16057	W Williams St at Upchurch St	SB	35.728802	-78.85782	Yes	Yes		
29	16059	E Williams St at Salem St	SB	35.727015	-78.8539	Yes	Yes		
30	16061	E Williams St at S Hughes St	SB	35.726105	-78.851297	Yes	Yes		

Route Order	Bus Stop ID	Bus Stop Name	Direction	Latitude	Longitude	Built by Town of Apex?	Maintained by Town of Apex?	Shared by a regional provider?	Amenities on private property?
		(Park and Ride (SB))							
31	16063	E Williams St at Apex Village Center (SB)	SB	35.724946	-78.848173	Yes	Yes		
32	16065	E Williams St at Perry Rd	SB	35.720795	-78.843994	Yes	Yes		
33	16067	E Williams St at Apex Peakway	SB	35.71916	-78.843082	Yes	Yes		
34	1183	Apex Peakway at S Hughes St (Cambridge Village)	SB	35.717491	-78.844572	Yes	Yes	Yes (GoTriangle 305)	
35	16071	Apex Peakway at Norris Park	WB	35.714045	-78.850733	Yes	Yes		
36	16073	Apex Peakway at Shackleton Rd	WB	35.714521	-78.855948	Yes	Yes		
37	16075	Tingen Rd at Baberton Dr	NB	35.716528	-78.857636	Yes	Yes		
38	16077	Tingen Rd at Peace Haven Pl	NB	35.717794	-78.856513	Yes	Yes		
39	16079	Tingen Rd at Sparta Ln	NB	35.720186	-78.855802	Yes	Yes		
40	16081	James St at Germaine St	EB	35.72266	-78.852845	Yes	Yes		
41	16083	James St at E Williams St	EB	35.723031	-78.846483	Yes	Yes		
42	16085	E Williams St at S Mason St (Apex Middle School (NB))	NB	35.725827	-78.8501	Yes	Yes		
43	16087	S Salem St at Williams St	NB	35.727836	-78.853603	Yes	Yes		
44	16089	S Salem St at Moore St	NB	35.728765	-78.852957	Yes	Yes		
45	16091	N Salem St at The Depot	NB	35.732186	-78.85045	Yes	Yes		



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/16/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Fairly Consulting Group, LLC 1800 S. Washington, Suite 400 Amarillo, TX 79102	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (806) 376-4761      FAX (A/C, No): (806) 376-5136 <b>E-MAIL ADDRESS:</b>  
INSURER(S) AFFORDING COVERAGE	
INSURER A : ACE American Insurance Company	
NAIC # 22667	
INSURER B : Gemini Insurance Company	
10833	
INSURER C : Indemnity Insurance Company of North America	
43575	
INSURER D : Lloyd's Syndicate 2623 (Beazley Furlong Limited)	
C2166	
INSURER E :	
INSURER F :	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			HDOG72478575	2/1/2022	2/1/2023	EACH OCCURRENCE \$ 5,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$ 5,000,000
							GENERAL AGGREGATE \$ 5,000,000
							PRODUCTS - COMP/OP AGG \$ 5,000,000
							\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			XSAH25555247	2/1/2022	2/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			GVE100144807	2/1/2022	2/1/2023	EACH OCCURRENCE \$ 5,000,000
							AGGREGATE \$
							General Agg \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below			WLRC68929593	2/1/2022	2/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER \$
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Cyber Security Liab.			W1A99B220701	2/1/2022	2/1/2023	Each incident/Agg 2,000,000
							Each Claim/Agg 1,000,000
A	Professional Liab.			MPBG72478654	2/1/2022	2/1/2023	Each incident/Agg 2,000,000
							Each Claim/Agg 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: GoApex Agreement - GoCary Transit Service

Town of Cary, Town of Apex are additional insureds on a primary and non-contributory basis as respects General Liability, Auto Liability and Umbrella/Excess Liability where required by written contract.

A Waiver of Subrogation applies as respects General Liability, Auto Liability, Workers Compensation and Umbrella/Excess Liability where required by written contract.

MV Transportation, Inc. is self-insured for Auto Liability in the state of North Carolina. The above Auto policy provides coverage excess of a \$3M self-insured retention.

## CERTIFICATE HOLDER

## CANCELLATION

Town of Apex 73 Hunter Street P. O. Box 250 Apex, NC 27502	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE
---	---

**Workers' Compensation and Employers' Liability Policy**

Named Insured <b>MV TRANSPORTATION, INC.</b> <b>2711 N. HASKELL AVE, SUITE 1500, LB-2</b> <b>DALLAS TX 75204</b>	Endorsement Number
Policy Period <b>02-01-2022 TO 02-01-2023</b>	Policy Number Symbol: <del>WLE</del> Number: <b>C68929593</b> Effective Date of Endorsement <b>02-01-2022</b>
Issued By (Name of Insurance Company) <b>INDEMNITY INS. CO. OF NORTH AMERICA</b>	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**Schedule**

**ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT, PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.**

For the states of CA, UT, TX, refer to state specific endorsements.

This endorsement is not applicable in KY, NH, and NJ.

The endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri statutes, a contractual provision purporting to waive subrogation rights against public policy and void where one party to the contract is an employer in the construction group of code classifications.

For Kansas, use of this endorsement is limited by the Kansas Fairness in Private Construction Contract Act(K.S.A.. 16-1801 through 16-1807 and any amendments thereto) and the Kansas Fairness in Public Construction Contract Act(K.S.A 16-1901 through 16-1908 and any amendments thereto). According to the Acts a provision in a contract for private or public construction purporting to waive subrogation rights for losses or claims covered or paid by liability or workers compensation insurance shall be against public policy and shall be void and unenforceable except that, subject to the Acts, a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program.



Authorized Representative

POLICY NUMBER: HDO G72478575

Endorsement Number: 1

**COMMERCIAL GENERAL LIABILITY  
CG 20 26 12 19****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – DESIGNATED  
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):** Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSURED**

Named Insured MV Transportation, Inc.			Endorsement Number 2
Policy Symbol HDO	Policy Number G72478575	Policy Period 02/01/2022 to 02/01/2023	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****COMMERCIAL GENERAL LIABILITY COVERAGE****Schedule****Organization****Additional Insured Endorsement**

Any additional insured with whom you have agreed to provide such non-contributory insurance, pursuant to and as required under a written contract executed prior to the date of loss.

*(If no information is filled in, the schedule shall read: "All persons or entities added as additional insureds through an endorsement with the term "Additional Insured" in the title)*

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to Section IV.4.a:

If other insurance is available to an insured we cover under any of the endorsements listed or described above (the "Additional Insured") for a loss we cover under this policy, this insurance will apply to such loss on a primary basis and we will not seek contribution from the other insurance available to the Additional Insured.

---

 Authorized Agent

POLICY NUMBER: HDO G72478575

1  
Endorsement Number: 8**COMMERCIAL GENERAL LIABILITY  
CG 24 04 12 19****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES  
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

**SCHEDULE**

<b>Name Of Person(s) Or Organization(s):</b> Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.
--

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.
--

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

**NON-CONTRIBUTORY ENDORSEMENT FOR ADDITIONAL INSURED**

Named Insured MV Transportation, Inc.			Endorsement Number 48
Policy Symbol XSA	Policy Number H25555247	Policy Period 02/01/2022 TO 02/01/2023	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:**

**EXCESS BUSINESS AUTOMOBILE POLICY**

**Schedule**

**Organization**

All persons or entities where there is a contractual requirement for a Named Insured's auto policy to respond on either a primary or non-contributory basis, subject to satisfaction of the "retained limit".

For organizations that are listed in the Schedule above that are also an Additional Insured under an endorsement attached to this policy, the following is added to the Other Insurance Condition under General Conditions:

If other insurance is available to an insured we cover for a loss we cover under this policy, this insurance will apply to such loss and is primary (subject to satisfaction of the "retained limit"), meaning we will not seek contribution from the other insurance available to the Additional Insured. Your "retained limit" still applies to such loss, and we will only pay the Additional Insured for the "ultimate net loss" in excess of the "retained limit" shown in the Declarations of this policy.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS**

Named Insured MV Transportation, Inc.			Endorsement Number 40
Policy Symbol XSA	Policy Number H25555247	Policy Period 02/01/2022 to 02/01/2023	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**EXCESS BUSINESS AUTO COVERAGE FORM  
EXCESS TRUCKERS COVERAGE FORM**

We waive the right of recovery we may have against the person or organization shown in the Schedule below because of payments we make for injury or damage arising out of the use of a covered "auto". The waiver applies only to the person or organization shown in the Schedule.

**SCHEDULE**

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

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Authorized Agent

## ADDITIONAL INSURED – DESIGNATED PERSONS OR ORGANIZATIONS

Named Insured MV Transportation, Inc.			Endorsement Number 3
Policy Symbol XSA	Policy Number H25555247	Policy Period 02/01/2022 TO 02/01/2023	Effective Date of Endorsement
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**This endorsement modifies insurance provided under the following:**

**BUSINESS AUTO COVERAGE FORM  
AUTO DEALERS COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
EXCESS BUSINESS AUTO COVERAGE FORM**

Additional Insured(s): Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.

- A. For a covered "auto," Who Is Insured is amended to include as an "insured," the persons or organizations named in this endorsement. However, these persons or organizations are an "insured" only for "bodily injury" or "property damage" resulting from acts or omissions of:
1. You.
  2. Any of your "employees" or agents.
  3. Any person operating a covered "auto" with permission from you, any of your "employees" or agents.
- B. The persons or organizations named in this endorsement are not liable for payment of your premium.

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Authorized Representative



# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

### Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of a Public Hearing for May 28, 2024, on the Question of Annexation - Apex Town Council's intent to annex 27.5221 acres, located at 5125 Jessie Drive - Apex Commerce Center Lot E, Annexation No. 767 into the Town Corporate limits.

### Approval Recommended?

Yes

### Item Details

The Town Clerk certifies to the investigation of said annexation. Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

### Attachments

- CN2-A1: Resolution Directing the Town Clerk to Investigate Petition
  - Certificate of Sufficiency by the Town Clerk
  - Resolution Setting Date of Public Hearing
- CN2-A2: Legal Description - Annexation No. 767
- CN2-A3: Aerial Map - Annexation No. 767
- CN2-A4: Plat Map - Annexation No. 767
- CN2-A5: Annexation Petition - Annexation No. 767





RESOLUTION DIRECTING THE TOWN CLERK  
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-31

Annexation Petition No. 767  
Apex Commerce Center Lot E  
5125 Jessie Drive – 27.5221 acres

WHEREAS, G.S. § 160A- 31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of his investigation.

This the 14th day of May, 2024.

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Jacques K. Gilbert  
Mayor

ATTEST:

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Allen L. Coleman, CMC, NCCCC  
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Annexation Petition No. 767  
Apex Commerce Center Lot E  
5125 Jessie Drive – 27.5221 acres

**To: The Town Council of the Town of Apex, North Carolina**

I, Allen L. Coleman, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. § 160A-31, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 14th day of May, 2024.

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

(Seal)



RESOLUTION SETTING DATE OF PUBLIC HEARING  
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-31 AS AMENDED

Annexation Petition No. 767  
Apex Commerce Center Lot E  
5125 Jessie Drive – 27.5221 acres

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 28th day of May, 2024.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, [www.apexnc.org](http://www.apexnc.org), Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 14th day of May, 2024.

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Jacques K. Gilbert, Mayor

ATTEST:

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Allen L. Coleman, Town Clerk

Attachment: Legal Description

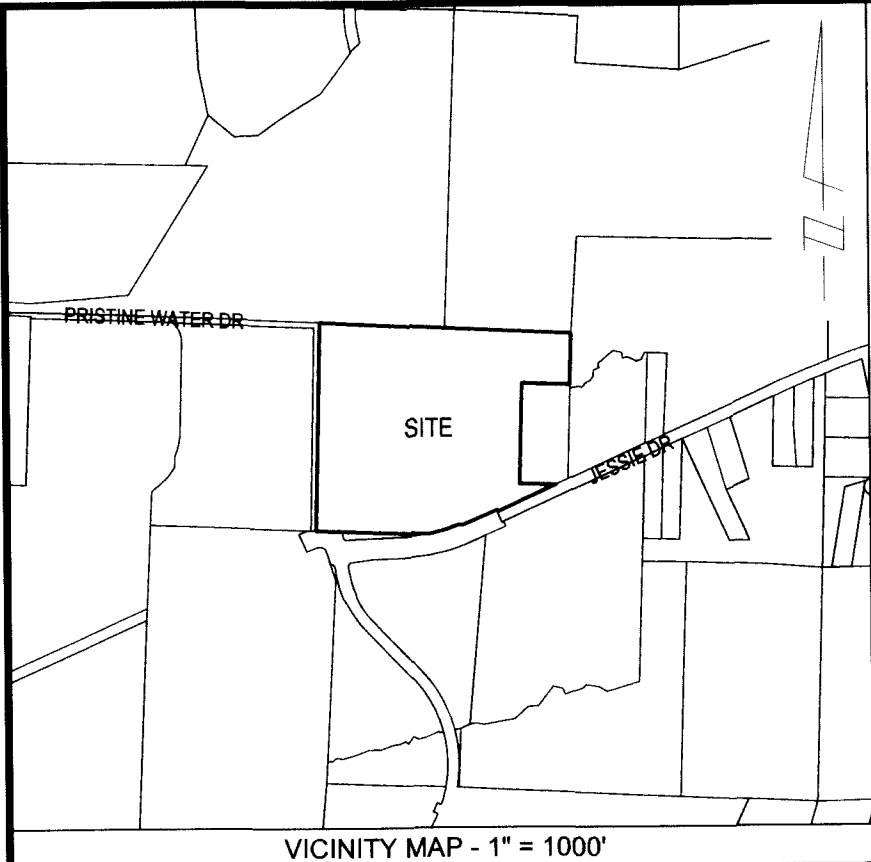
DESCRIPTION OF AREA TO BE ANNEXED:

BEGINNING AT AN EXISTING CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHEASTERN PROPERTY CORNER OF TRACT D AS SHOWN IN BOOK OF MAPS 2021, PAGE 2111, WAKE COUNTY REGISTRY AND ALSO BEING THE SOUTHWESTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OWNED BY CAREY C. JONES MEMORIAL PARK INC. AS RECORDED IN WILL BOOK 3, PAGE 41, WAKE COUNTY REGISTRY AND HAVING NC GRID (NAD '83/2011) COORDINATES OF N: 712,817.717 FEET AND E: 2,053,329.758 FEET; THENCE ALONG SAID SOUTHERN LINE S 87°14'05" E A DISTANCE OF 659.90 FEET TO AN EXISTING CONCRETE MONUMENT, SAID MONUMENT BEING A WESTERN PROPERTY CORNER OF LOT 1A AS SHOWN IN BOOK OF MAPS 1987, PAGE 1199, WAKE COUNTY REGISTRY; THENCE ALONG SAID WESTERN LINE S 01°34'58" W A DISTANCE OF 267.75 FEET TO AN EXISTING IRON PIPE, SAID PIPE BEING THE NORTHEASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OWNED BY MFW INVESTMENTS LLC AS RECORDED IN DEED BOOK 17311, PAGE 557, WAKE COUNTY REGISTRY; THENCE ALONG SAID NORTHERN LINE N 88°25'33" W 250.01 FEET TO AN EXISTING IRON PIPE; THENCE S 01°35'32" W A DISTANCE OF 522.77 FEET TO AN EXISTING IRON PIPE; THENCE S 88°25'34" E A DISTANCE OF 188.07 FEET TO A POINT ON THE NORTHERN RIGHT-OF-WAY OF JESSIE DRIVE; THENCE S 88°25'34" E A DISTANCE OF 61.92 FEET TO A POINT; THENCE S 01°35'40" W A DISTANCE OF 36.49 FEET TO A POINT ON THE SOUTHERN RIGHT-OF-WAY OF JESSIE DRIVE, SAID POINT BEING A NORTHERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OWNED BY HORTON PARK MF LLC AS SHOWN IN BOOK OF MAPS 2023, PAGE 366, WAKE COUNTY REGISTRY; THENCE ALONG AND WITH SAID RIGHT-OF-WAY S 65°28'34" W A DISTANCE OF 373.08 FEET TO A POINT; THENCE LEAVING SAID SOUTHERN RIGHT-OF-WAY N 24°30'10" W A DISTANCE OF 60.00 FEET CROSSING TO A POINT ON THE NORTHERN RIGHT-OF-WAY OF JESSIE DRIVE; THENCE LEAVING SAID RIGHT-OF-WAY N 24°30'10" W A DISTANCE OF 8.98 FEET TO A POINT, SAID POINT BEING THE NORTHEASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OWNED BY HORTON PARK INVESTMENTS LLC AS SHOWN IN BOOK OF MAPS 2022, PAGE 1378, WAKE COUNTY REGISTRY; THENCE S 66°43'02" W A DISTANCE OF 199.17 FEET TO A POINT; THENCE N 87°52'55" W A DISTANCE OF 25.01 FEET TO A POINT; THENCE ALONG AND WITH A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 880.00 FEET, A CHORD BEARING OF S 73°52'27" W AND A CHORD DISTANCE OF 159.71 FEET TO A POINT, SAID POINT BEING THE SOUTHEASTERN PROPERTY CORNER OF LANDS NOW OR FORMERLY OWNED BY STEPHENS ENTERPRISES LLC AS SHOWN IN BOOK OF MAPS 2023, PAGE 366, WAKE COUNTY REGISTRY; THENCE N 87°53'11" W A DISTANCE OF 469.75 FEET TO A POINT; THENCE N 87°55'17" W A DISTANCE OF 112.19 FEET TO A POINT ON THE EASTERN RIGHT-OF-WAY OF PRODUCTION DRIVE; THENCE ALONG AND WITH SAID RIGHT-OF-WAY N 01°22'28" E A DISTANCE OF 1,086.32 FEET TO AN EXISTING IRON PIPE; THENCE S 86°56'41" E A DISTANCE OF 10.00 FEET TO AN EXISTING IRON PIPE, SAID PIPE BEING THE SOUTHEASTERN PROPERTY CORNER OF TRACT C AS SHOWN IN BOOK OF MAPS 2021, PAGE 2111, WAKE COUNTY REGISTRY; THENCE S 86°56'41" E A DISTANCE OF 639.65 FEET TO THE POINT OF BEGINNING, CONTAINING 27.5221 ACRES.





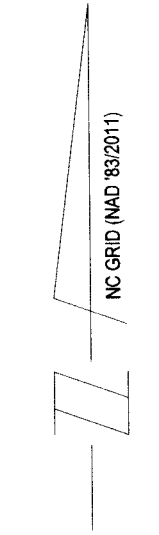




- NOTE:
1. AREAS BY COORDINATE GEOMETRY UNLESS SHOWN OTHERWISE.
  2. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES.
  3. ALL STREETS ARE PUBLIC RIGHTS-OF-WAY UNLESS SHOWN OTHERWISE.
  4. OTHER INSTRUMENTS OF RECORD MAY AFFECT THIS PROPERTY.
  5. NO TITLE SEARCH PERFORMED FOR THIS SURVEY.
  6. NO NCGS MONUMENT WITHIN 2,000 FEET OF PROPERTY.
  7. NO FEMA FLOOD HAZARD AREAS PER FIRM NUMBER 3720075100K DATED JULY 19, 2022.
  8. PROPERTY IS ZONED LI-CZ (CASE #17CZ19).
  9. PROPERTY MAY BE SUBJECT TO NEUSE RIVER BUFFERS.
  10. BUFFER DELINEATION TO BE DETERMINED BY DWR BEFORE FINAL APPROVAL.
  11. THE COORDINATES SHOWN ON THIS PLAT WERE DERIVED BY REAL TIME NETWORK (RTN) GLOBAL POSITIONING SYSTEM (GPS). THIS METHOD RESULTS IN (NAD 1983/2011) (CORS 96) POSITIONS AND NORTH AMERICAN VERTICAL DATUM '88 (MEAN SEA LEVEL) ELEVATIONS USING THE CONTINUOUSLY OPERATING REFERENCE STATIONS (CORS) MAINTAINED BY NORTH CAROLINA GEODETIC SURVEY. CLASS A SURVEY, 0.033 FT POSITIONAL ACCURACY, VRS FIELD PROCEDURE, GEOID12A AND UNITS IN FEET.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 88°25'34" E	61.92'
L2	S 01°35'40" W	36.44'
L3	N 24°30'10" W	60.00'
L4	N 24°30'10" W	8.98'
L5	N 87°52'55" W	25.01'
L6	N 01°35'40" E	30.22'

CURVE TABLE			
CURVE	RADIUS	CHORD LENGTH	CHORD DIRECTION
C1	880.00'	159.93'	S 73°52'27" W



REFERENCES:  
DB. 18554 PG. 2713  
DB. 1568 PG. 336  
DB. 3290 PG. 509  
BM. 2016 PG. 1902  
BM. 2022 PG. 1378

I, DAN GREGORY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION. DEED DESCRIPTION RECORDED IN BOOK, SEE, PAGE, REFERENCES, THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK, SEE, PAGE, REFERENCES, THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

D. THAT THIS PLAT IS OF A SURVEY OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION;

WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS  
16 DAY OF APRIL, A.D., 2024.

DAN GREGORY, PLS L-5240



ANNEXATION # \_\_\_\_\_

I, ALLEN COLEMAN, CMC, NCCCC, TOWN CLERK, APEX, NORTH CAROLINA  
CERTIFY THIS A TRUE AND EXACT MAP OF ANNEXATION

ADOPTED THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BY THE TOWN COUNCIL.  
I SET MY HAND AND SEAL OF THE TOWN OF APEX,

DAY/MONTH/YEAR

\_\_\_\_\_, ALLEN COLEMAN, CMC, NCCCC,  
TOWN CLERK

560 PRISTINE WATER LLC  
PIN: 075122279  
DB. 18157 PG. 868  
BM. 2014 PG. 627

PRISTINE WATER DRIVE  
30' PUBLIC RIGHT-OF-WAY  
BM. 2010 PG. 1053

PRODUCTION DRIVE  
30' PUBLIC RIGHT-OF-WAY  
BM. 2016 PG. 1902  
BM. 2010 PG. 1053

APEX INDUSTRIAL OWNER 2 LLC  
PIN: 0751322322  
DB. 18554 PG. 2713  
BM. 2016 PG. 1902  
1,198,863 SF OR 27.5221 AC

MON  
CONTROL CORNER  
NC GRID (NAD '83/2011)  
COORDINATES  
N: 712,817.717 FEET  
E: 2,053,329.758 FEET

CAREY C. JONES MEMORIAL PARK INC  
PIN: 0751532815  
BY WILL BOOK 3 PAGE 41

LOT 1A  
INDUS REAL ASSOC. LLC  
PIN: 0751426828  
DB. 12215 PG. 930  
BM. 1987 PG. 1199

#### LEGEND

- CP = CALCULATED POINT
- EIP = EXISTING IRON PIPE
- MON = CONCRETE MONUMENT
- XXXX DENOTES ADDRESS
- EXISTING CORPORATE LIMITS

MFV INVESTMENTS LLC  
PIN: 0751421387  
DB. 16734 PG. 206  
BM. 2016 PG. 1677

MFV INVESTMENTS LLC  
PIN: 0751328256  
DB. 17311 PG. 557

JESSIE DRIVE  
60' PUBLIC R/W  
BM. 2016 PG. 1902

AREA TO BE ANNEXED  
1,198,863 SF OR 27.5221 AC

OWNER:

APEX INDUSTRIAL OWNER 2 LLC  
C/O ROCKPOINT GROUP, LLC  
3953 MAPLE AVENUE, SUITE 300  
DALLAS, TX 75219

RECORDED IN  
BOOK OF MAPS \_\_\_\_\_ PAGE \_\_\_\_\_



2 9-12-23 REVISED PER COMMENTS #2  
1 8-29-23 REVISED PER COMMENTS #1

CWC  
CWC

B  
N  
K

BASS, NIXON & KENNEDY, INC.  
CONSULTING ENGINEERS

- 6310 CHAPEL HILL ROAD, SUITE 250  
RALEIGH, NORTH CAROLINA 27607
- TELEPHONE: (919)851-4422 OR (800)354-1879
- FAX: (919)851-8968
- CERTIFICATION NUMBERS: NCBELS (C-0110); NCBLA (C-0267)

AQ  
CWC  
DG

ANNEXATION MAP  
FOR THE  
TOWN OF APEX

7-26-2023 WHITE OAK TWSP. WAKE COUNTY NORTH CAROLINA

## PETITION FOR VOLUNTARY ANNEXATION Town of Apex, North Carolina



**ANNEXATION PETITION SUBMISSION:** Applications are due by 12:00 pm on the first business day of each month. See the "[Annexation Petition Schedule](#)" on the website for details.

**ANNEXATION FEE:** \$200.00

**VOLUNTARY ANNEXATION:** Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, the Town may annex an area either contiguous or not contiguous to its primary corporate limits when the area meets the standards set out under North Carolina General Statutes 160A-31 and 160A-58.1. A petition submitted pursuant to North Carolina General Statute 160A-58.1 need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

### HARD COPY SUBMITTAL REQUIREMENTS:

- Town of Apex Petition for Annexation with original wet ink signatures. No photocopies or scanned images.
- Petition Fee

### ELECTRONIC SUBMITTAL REQUIREMENTS: [IDT Plans](#)

- Town of Apex Petition for Annexation
- Written Metes and Bounds Legal Description: Submit original PDF. Scanned documents will not be accepted.
- Electronic plat submittal (18" x 24")

### REVIEW AND APPROVAL PROCESS:

- **SUBMITTAL:** Submit hard copy application with original wet signatures (no photo copies or scanned images) and fee to the Department of Planning and Community Development and upload an electronic copy of the application, legal description and Annexation Plat via [IDT Plans](#).
- **REVIEW BY STAFF:** The Planning and Community Development Department and Development Services Department review the annexation submission. Comments will be sent to the applicant via email.
- **DESIGNATION OF ANNEXATION NUMBER:** The application is assigned an annexation number once the annexation petition is received.
- **ANNEXATION PLAT SUBMISSION:** After the map and legal description are deemed sufficient by the Town of Apex, the applicant is required to submit three (3) Mylar annexation plats to the Department of Planning and Community Development by the due date on the attached Annexation Schedule.
- **1<sup>ST</sup> TOWN COUNCIL MEETING:** This Town Council Meeting is typically held the second Tuesday of each month. The Town Council will pass a resolution directing the Town Clerk to investigate the annexation petition. The Town Clerk will present to the Town Council a Certificate of Sufficiency indicating that the annexation petition is complete. A resolution setting the date of the public hearing is then approved.
- **LEGAL ADVERTISEMENT:** A legal advertisement will be published on the Town of Apex's website no more than 25 days and no less than 10 days prior to the date of the public hearing.
- **2<sup>ND</sup> TOWN COUNCIL MEETING/PUBLIC HEARING:** This Town Council Meeting is typically held the fourth Tuesday of each month. The Town Council will either adopt or deny an ordinance to extend the corporate limits of the Town of Apex.
- **RECORDATION:** If the annexation is approved by the Town Council, the Town Clerk will have the Annexation Plats recorded at the Wake County or Chatham County Register of Deeds, as appropriate. Wake County or Chatham County will keep one of the recorded plats, one copy will be returned to the Department of Planning and Community Development, and the surveying company is given the remaining recorded Annexation Plat.

### FOR WELL AND/OR SEPTIC FAILURES:

If the purpose of the petition is to connect to public water and/or sewer, contact Water Resources Director Michael Deaton at 919-249-3413 or [michael.deaton@apexnc.org](mailto:michael.deaton@apexnc.org) to confirm that public water and/or sewer is available to the property. In order to receive public water and/or sewer services from the Town of Apex, refer to the checklist of items below to assist with obtaining one or both of these services:

- Apply for a plumbing permit with the Building Inspections and Permitting Department.
- The plumbing permit and associated costs for water and/or sewer will be included with the permit.

Please refer to the [Town of Apex Fee Schedule](#) for the list of current fees.



## PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 2023-017  
Fee Paid \$                     

Submittal Date: 08/01/2023  
Check #                     

### TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, ☒ Wake County, ☐ Chatham County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

### OWNER INFORMATION

Apex Industrial Owner 2, LLC, Rockpoint Group LLC

0751-32-2322, db 18554 pg 2713

Owner Name (Please Print)

Property PIN or Deed Book & Page #

972 934-7400

pmatthews@rockhillmanagement.com

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

### SURVEYOR INFORMATION

Surveyor: Bass, Nixon & Kennedy, Inc.

Phone: 919 851-4422

Fax:                     

E-mail Address: dan.gregory@bnkinc.com

### ANNEXATION SUMMARY CHART

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>27.5221</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>0</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>LI-CZ</u>	Receive Town Services	<input type="checkbox"/>

\*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Department of Planning and Community Development with questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 2023-017

Submittal Date: 08/01/2023

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

_____ Please Print	_____ Signature
_____ Please Print	_____ Signature
_____ Please Print	_____ Signature
_____ Please Print	_____ Signature

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, \_\_\_\_\_, a Notary Public for the above State and County,  
this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

SEAL

My Commission Expires: \_\_\_\_\_

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its  
Secretary by order of its Board of Directors, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SEAL Corporate Name \_\_\_\_\_

Attest: By: \_\_\_\_\_  
President (Signature)

\_\_\_\_\_  
Secretary (Signature)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, \_\_\_\_\_, a Notary Public for the above State and County,  
this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

SEAL

My Commission Expires: \_\_\_\_\_

PETITION FOR VOLUNTARY ANNEXATION

Application #: 2023-017

Submittal Date: 08/01/2023

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, Apex Industrial Owner LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 31 day of July, 2023.

Name of Limited Liability Company Apex Industrial Owner LLC

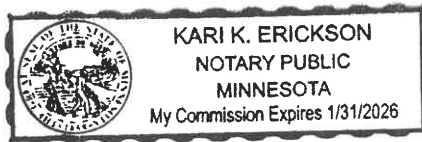
By: \_\_\_\_\_

Signature of Member/Manager

STATE OF ~~NORTH CAROLINA~~ Minnesota  
COUNTY OF ~~WAKE~~ Hennepin

Sworn and subscribed before me, Kari K. Erickson, a Notary Public for the above State and County, this the 31 day of July, 2023.

SEAL



Notary Public

My Commission Expires: 1/31/2026

COMPLETE IF IN A PARTNERSHIP

In witness whereof, \_\_\_\_\_, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name of Partnership \_\_\_\_\_

By: \_\_\_\_\_

Signature of General Partner

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, \_\_\_\_\_, a Notary Public for the above State and County, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SEAL

Notary Public

My Commission Expires: \_\_\_\_\_

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

### Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of a Public Hearing for May 28, 2024, on the Question of Annexation - Apex Town Council's intent to annex 25.68 acres, located at New Hill Holeman Road- Apex YMCA Center, Satellite Annexation No. 779 into the Town Corporate limits.

### Approval Recommended?

Yes

### Item Details

The Town Clerk certifies to the investigation of said annexation. Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

### Attachments

- CN3-A1: Resolution Directing the Town Clerk to Investigate Petition
  - Certificate of Sufficiency by the Town Clerk
  - Resolution Setting Date of Public Hearing
- CN3-A2: Legal Description Tracts 1, 2, and 3 - Satellite Annexation No. 779
- CN3-A3: Aerial Map - Satellite Annexation No. 779
- CN3-A4: Plat Map - Satellite Annexation No. 779
- CN3-A5: Annexation Petition - Satellite Annexation No. 779





RESOLUTION DIRECTING THE TOWN CLERK  
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-58.1

Satellite Annexation Petition No. 779  
Apex YMCA – New Hill Holeman Road – 25.68 acres

WHEREAS, G.S. § 160A- 58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of his investigation.

This the 14th day of May, 2024.

---

Jacques K. Gilbert  
Mayor

ATTEST:

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Allen L. Coleman, CMC, NCCCC  
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Satellite Annexation Petition No. 779  
Apex YMCA – New Hill Holeman Road – 25.68 acres

**To: The Town Council of the Town of Apex, North Carolina**

I, Allen L. Coleman, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the noncontiguous area described therein, in accordance with G.S. § 160A-58.1 (b), as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 14th day of May, 2024.

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

(Seal)



RESOLUTION SETTING DATE OF PUBLIC HEARING  
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-58.2 AS AMENDED

Satellite Annexation Petition No. 779  
Apex YMCA – New Hill Holeman Road – 25.68 acres

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 28th day of May, 2024.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, [www.apexnc.org](http://www.apexnc.org), Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 14th day of May, 2024.

---

Jacques K. Gilbert, Mayor

ATTEST:

---

Allen L. Coleman, Town Clerk

Attachment: Legal Description

TRACT 1

BEING A PORTION OF TRACT 3 AS DESCRIBED IN DEED BOOK 1944, PAGE 319 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT AN IRON PIPE ON THE NORTHERN RIGHT OF WAY OF US HIGHWAY 1, THE SOUTHEAST CORNER OF TRACT 1, AS SHOWN ON BOOK OF MAPS 2011, PAGE 412 OF THE WAKE COUNTY REGISTRY, THE POINT OF BEGINNING; THENCE WITH SAID COMMON LINE NORTH 03°14'00" EAST A DISTANCE OF 844.16 FEET TO AN IRON PIPE, THE SOUTHEAST CORNER OF THE LOT SHOWN ON BOOK OF MAPS 2020, PAGE 2221; THENCE WITH SAID COMMON LINE NORTH 01°06'11" WEST A DISTANCE OF 323.18 FEET TO AN IRON PIPE; THENCE NORTH 01°07'36" WEST A DISTANCE OF 165.72 FEET TO AN IRON PIPE ON THE SOUTHERN RIGHT OF WAY OF CHURCH ROAD; THENCE WITH SAID RIGHT OF WAY, A CURVE TO THE LEFT, A RADIUS OF 5,079.54 FEET, AN ARC LENGTH OF 204.82 FEET, A CHORD BEARING OF NORTH 58°22'44" EAST, A CHORD LENGTH OF 204.80 FEET TO AN IRON PIPE; THENCE A CURVE TO THE LEFT, A RADIUS OF 670.49 FEET, AN ARC LENGTH OF 47.80 FEET, A CHORD BEARING OF NORTH 55°18'20" EAST, A CHORD LENGTH OF 47.79 FEET TO AN IRON PIPE; THENCE A CURVE TO THE LEFT, A RADIUS OF 303.13 FEET, AN ARC LENGTH OF 20.81 FEET, A CHORD BEARING OF NORTH 53°54'36" EAST, A CHORD LENGTH OF 20.81 FEET TO AN IRON PIPE, THE SOUTHWEST CORNER OF MARK MALETTA; THENCE WITH SAID COMMON LINE NORTH 87°20'28" EAST A DISTANCE OF 220.84 FEET TO AN IRON PIPE, THE SOUTHWEST CORNER OF LOT 1 AS SHOWN ON BOOK OF MAPS 2017, PAGE 488; THENCE WITH SAID COMMON LINE NORTH 87°01'51" EAST A DISTANCE OF 309.05 FEET TO AN IRON PIPE, THE NORTHWEST CORNER OF LOT 2 AS SHOWN ON BOOK OF MAPS 2017, PAGE 488; THENCE WITH SAID COMMON LINE SOUTH 13°59'07" EAST A DISTANCE OF 425.04 FEET TO AN IRON PIPE; THENCE NORTH 86°56'19" EAST A DISTANCE OF 374.70 FEET TO AN IRON PIPE, ON THE WESTERN RIGHT OF WAY OF NEW HILL HOLLEMAN ROAD; THENCE WITH SAID RIGHT OF WAY NORTH 86°56'01" EAST A DISTANCE OF 10.47 FEET TO AN IRON PIPE; THENCE SOUTH 13°13'14" EAST A DISTANCE OF 60.84 FEET TO AN IRON PIPE, ON THE NORTHERN RIGHT OF WAY OF US HIGHWAY 1; THENCE WITH SAID RIGHT OF WAY SOUTH 14°23'36" WEST A DISTANCE OF 11.25 FEET TO AN IRON PIPE; THENCE SOUTH 42°00'25" WEST A DISTANCE OF 445.50 FEET TO A CONCRETE MONUMENT; THENCE A CURVE TO THE RIGHT, A RADIUS OF 2,164.19 FEET, AN ARC LENGTH OF 370.44 FEET, A CHORD BEARING OF SOUTH 45°47'33" WEST, A CHORD LENGTH OF 369.99 FEET TO A CONCRETE MONUMENT; THENCE NORTH 25°45'50" WEST A DISTANCE OF 10.30 FEET TO A CONCRETE MONUMENT; THENCE A CURVE TO THE LEFT, A RADIUS OF 11,597.71 FEET, AN ARC LENGTH OF 565.72 FEET, A CHORD BEARING OF SOUTH 58°42'27" WEST, A CHORD LENGTH OF 565.66 FEET TO AN IRON PIPE; THENCE SOUTH 57°18'36" WEST A DISTANCE OF 40.99 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 32°41'24" EAST A DISTANCE OF 10.00 FEET TO AN IRON PIPE; THENCE SOUTH 57°18'52" WEST A DISTANCE OF 256.68 FEET TO THE POINT OF BEGINNING. CONTAINING 1,101,934 SQUARE FEET OR 25.30 ACRES.



TRACT 2

BEING A PORTION OF TRACT 3 AS DESCRIBED IN DEED BOOK 1944, PAGE 319 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT AN IRON PIPE ON THE NORTHERN RIGHT OF WAY OF US HIGHWAY 1, THE SOUTHEAST CORNER OF TRACT 1, AS SHOWN ON BOOK OF MAPS 2011, PAGE 412 OF THE WAKE COUNTY REGISTRY, THE POINT OF COMMENCEMENT; THENCE WITH SAID COMMON LINE NORTH 03°14'00" EAST A DISTANCE OF 844.16 FEET TO AN IRON PIPE, THE SOUTHEAST CORNER OF THE LOT SHOWN ON BOOK OF MAPS 2020, PAGE 2221; THENCE WITH SAID COMMON LINE NORTH 01°06'11" WEST A DISTANCE OF 323.18 FEET TO AN IRON PIPE; THENCE NORTH 01°07'36" WEST A DISTANCE OF 234.68 FEET TO AN IRON PIPE ON THE NORTHERN RIGHT OF WAY OF CHURCH ROAD, THE POINT OF BEGINNING; THENCE NORTH 01°07'36" WEST A DISTANCE OF 67.07 FEET TO AN IRON PIPE, THE SOUTHWEST CORNER OF MARK MALETTA; THENCE WITH SAID COMMON LINE NORTH 87°20'28" EAST A DISTANCE OF 119.26 FEET TO AN IRON PIPE ON THE NORTHERN RIGHT OF WAY OF CHURCH ROAD; THENCE WITH SAID RIGHT OF WAY, A CURVE TO THE RIGHT A RADIUS OF 5,019.54 FEET, AN ARC LENGTH OF 138.39 FEET, A CHORD BEARING OF SOUTH 58°21'31" WEST, A CHORD LENGTH OF 138.38 FEET TO THE POINT OF BEGINNING. CONTAINING 4,042 SQUARE FEET OR 0.09 ACRES.

## CHURCH ROAD

BEING A PORTION OF CHURCH ROAD AS DESCRIBED IN DEED BOOK 8097, PAGE 182 OF THE WAKE COUNTY REGISTRY. MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT AN IRON PIPE ON THE NORTHERN RIGHT OF WAY OF US HIGHWAY 1, THE SOUTHEAST CORNER OF TRACT 1, AS SHOWN ON BOOK OF MAPS 2011, PAGE 412 OF THE WAKE COUNTY REGISTRY, THE POINT OF COMMENCEMENT; THENCE WITH SAID COMMON LINE NORTH 03°14'00" EAST A DISTANCE OF 844.16 FEET TO AN IRON PIPE, THE SOUTHEAST CORNER OF THE LOT SHOWN ON BOOK OF MAPS 2020, PAGE 2221; THENCE WITH SAID COMMON LINE NORTH 01°06'11" WEST A DISTANCE OF 323.18 FEET TO AN IRON PIPE; THENCE NORTH 01°07'36" WEST A DISTANCE OF 165.72 FEET TO AN IRON PIPE ON THE SOUTHERN RIGHT OF WAY OF CHURCH ROAD, THE POINT OF BEGINNING; THENCE NORTH 01°07'36" WEST A DISTANCE OF 68.96 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF CHURCH ROAD; THENCE WITH SAID RIGHT OF WAY, A CURVE TO THE LEFT A RADIUS OF 5,019.54 FEET, AN ARC LENGTH OF 138.39 FEET, A CHORD BEARING OF NORTH 58°21'31" EAST, A CHORD LENGTH OF 138.38 FEET TO A POINT; THENCE NORTH 87°20'28" EAST A DISTANCE OF 114.17 FEET TO A POINT ON THE SOUTHERN RIGHT OF WAY OF CHURCH ROAD; THENCE WITH SAID RIGHT OF WAY, A CURVE TO THE RIGHT, A RADIUS OF 303.13 FEET, AN ARC LENGTH OF 20.81 FEET, A CHORD BEARING OF SOUTH 53°54'36" WEST, A CHORD LENGTH OF 20.81 FEET TO A POINT; THENCE A CURVE TO THE RIGHT, A RADIUS OF 670.49 FEET, AN ARC LENGTH OF 47.80 FEET, A CHORD BEARING OF SOUTH 55°18'20" WEST, A CHORD LENGTH OF 47.79 FEET TO A POINT; THENCE A CURVE TO THE RIGHT, A RADIUS OF 5,079.54 FEET, AN ARC LENGTH OF 204.82 FEET, A CHORD BEARING OF SOUTH 58°22'44" WEST, A CHORD LENGTH OF 204.80 FEET TO THE POINT OF BEGINNING; CONTAINING 12,427 SQUARE FEET OR 0.29 ACRES.



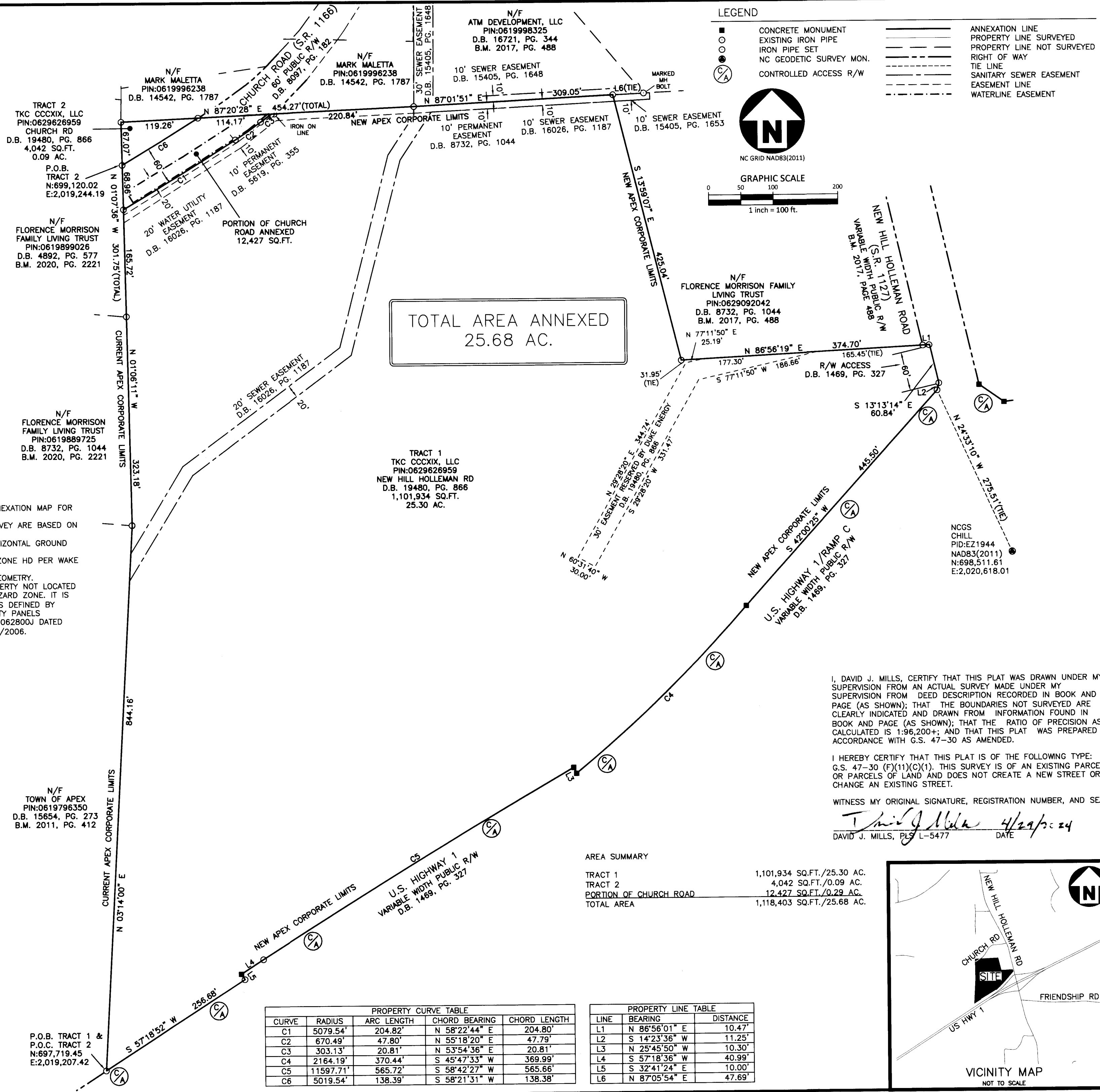




\\jrm-rd-01\drive\Projects\LIT\LIT23001-02-Geomatics\Survey\Plats\LIT23001-F1\_Annex.dwg, 4/29/2024 10:16:40 AM, David Mills

#### GENERAL NOTES

1. THIS IS A SATELLITE ANNEXATION MAP FOR THE TOWN OF APEX.
2. BEARINGS FOR THIS SURVEY ARE BASED ON NC GRID NAD 83(2011).
3. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES.
4. ZONING: WAKE COUNTY ZONE HD PER WAKE COUNTY GIS
5. AREA BY COORDINATE GEOMETRY.
6. FLOOD NOTE: THIS PROPERTY NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE "X" AS DEFINED BY F.E.M.A F.I.R.M COMMUNITY PANELS 3720060800K AND 3720062800J DATED 2/2/2007 AND 5/2/2006.
7. REFERENCES: AS SHOWN



## PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: \_\_\_\_\_  
Fee Paid \$ \_\_\_\_\_

Submittal Date: \_\_\_\_\_  
Check # \_\_\_\_\_

### TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, ☒ Wake County, ☐ Chatham County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

### OWNER INFORMATION

TKC CCCXIX, LLC

Owner Name (Please Print)

704-365-6000

Phone

Book: 019480 Page: 00866-00874

Property PIN or Deed Book & Page #

bbaker@thekeithcorp.com

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

### SURVEYOR INFORMATION

Surveyor: McAdams

Phone: 919-361-5000

Fax: \_\_\_\_\_

E-mail Address: jtaylor@mcadamsco.com

### ANNEXATION SUMMARY CHART

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>25.68</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>0</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PC-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

\*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department with questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: \_\_\_\_\_

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

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, TKC CCCXIX a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 22 day of January, 2024.

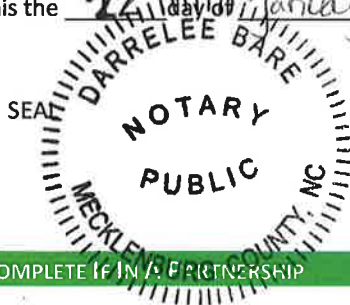
Name of Limited Liability Company TKC CCCXIX, LLC

By: \_\_\_\_\_

Signature of Member/Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, Darrelle Bare, a Notary Public for the above State and County, this the 22 day of January, 2024.



Notary Public

My Commission Expires: 7/10/26

COMPLETE IF IN A PARTNERSHIP

In witness whereof, \_\_\_\_\_, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name of Partnership \_\_\_\_\_

By: \_\_\_\_\_

Signature of General Partner

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Sworn and subscribed before me, \_\_\_\_\_, a Notary Public for the above State and County, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

SEAL

My Commission Expires: \_\_\_\_\_

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Jenna Shouse, Senior Long Range Planner

Department(s): Planning

### Requested Motion

Motion to adopt Budget Ordinance Amendment No.16 and Capital Project Ordinance Amendment 2024-18 allocating additional funding for the GoApex CDBG Bus Stops Improvement and Sidewalk Project.

### Approval Recommended?

Yes

### Item Details

The Town of Apex is collaborating with Wake County on a project to improve four bus stops along GoApex Route 1 and complete a sidewalk connection to one bus stop. Wake County is using Community Development Block Grant (CDBG) funding for this project. Per the agreement, the Town is responsible for any costs exceeding the committed CDBG funding. Town Council previously-approved a budget amendment to cover costs associated with the lowest construction bid. A change order request has been received from Wake County for additional funds to cover costs from a combination of utility conflicts found on the site, design updates, and an increased construction contingency. \$152,841.68 is being requested to cover these costs.

Budget Ordinance Amendment 16 and Capital Project Ordinance Amendment 2024-18 reallocates \$72,900 already in the capital project fund from GoApex Bus Stops to the GoApex CDBG project and appropriates additional interest earning of \$79,942 from the General Fund.

### Attachments

- CN4-A1: CDBG Wake County Additional Funding Request April 2024
- CN4-A2: Budget Ordinance Amendment 16
- CN4-A3: Capital Project Ordinance Amendment 2024-18





## Housing Affordability & Community Revitalization

tel 919 8056633  
fax 919 7434801

South Wilmington Office  
1430 S Wilmington Street  
Raleigh, NC 27603  
www.wakegov.com

April 24, 2024

Attn: Shannon Cox  
Long Range Planning Manager  
P.O. Box 250  
Apex, NC 27502

Dear Ms. Cox,

Wake County is prepared to manage the construction of bus stop and sidewalk infrastructure improvements for the Town of Apex. Due to combination of utility conflicts found on the site and required design updates, as well as an increased construction contingency, Wake County received a Change Order to cover the additional incurred costs. In alignment with the funding agreement between Wake County and the Town of Apex for this project, the Town agrees to contribute an additional funding in the amount of **\$152,841.68** to support the completion of the project.

<b><u>Pacos Construction – Costs Incurred from Utility Conflict Design Change:</u></b>		
Solid Junction Boxes with Frame & Cover	8 each at \$5,018	\$40,144.00
Off Set Catch Basin with Frame & Grate	8 each at \$8,644	\$69,152.00
Signal Loops on James St. and E. Williams St.		\$7,862.00
Relocate Water Service Line on James St.		\$640.00
Excavate and Move Existing Copper Cable for Installation of RCP		\$450.00
Traffic Control Required for Installation of Signal Loops and Additional Time for the Construction of Offset Catch Basins		\$8,700.00
Estimated Cost for Hand Excavation for Utility Location While Excavating for Storm Drainage Pipe, Structures		\$8,314.00
Dominion Energy, McDonalds Gas Service Location		\$1,066.80
Bid Boxes Credit		-\$31,500.00
<b><u>Construction Costs Sub-Total:</u></b>		<b>\$104,828.80</b>
Additional 10% Contingency		\$10,482.88
<b>Construction and Contingency Costs Sub-Total:</b>		<b>\$115,311.68</b>
<b><u>The Wooten Company – Costs Incurred from Supplemental Design Work:</u></b>		
Sidewalk/Switchback Design Fee Incurred from Apex and NCDOT Direction to Redesign Switchback		\$5,900.00
Utility Conflict Design Fee Incurred from the Redesign of Drainage Structures and Sidewalk Due to Utility Conflicts		\$8,500.00
Previously Incurred Design Fee for Easement Plat Maps, Surveys, Conceptual Updates and PROWAG Updates Requested by the Town of Apex		\$23,130.00
<b>Design Costs Sub-Total:</b>		<b>\$37,530.00</b>
<b>Total Funds Requested</b>		<b>\$152,841.68</b>

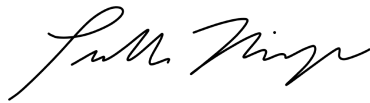


Please make payable to Wake County Department of Housing Affordability and Community Revitalization a check in the amount of **\$152,841.68**. Check(s) should be mailed to:

Attn: HACR Business Team  
Housing Affordability & Community Revitalization Department  
Wake County Office Building, Suite 449  
PO Box 550  
Raleigh, NC 27602

For questions, please contact me at (919) 508-0726 or [isabella.niemeyer@wake.gov](mailto:isabella.niemeyer@wake.gov). Thank you in advance.

Respectfully,



Isabella Niemeyer  
Community Development Specialist  
Equitable Housing & Community Development Division  
Housing Affordability & Community Revitalization Department | Wake County Government

CC: Jenna Shouse, Senior Long Range Planner, Town of Apex  
Richard Campbell, Real Estate Specialist, Wake County Government



# Town of Apex

## Budget Ordinance Amendment No. 16

BE IT ORDAINED, by the Council of the Town of Apex that the following Budget Amendment for the Fiscal Year 2023-2024 Budget Ordinance be adopted:

### **General Fund**

#### **Section 1. Revenues:**

10-0000-36100: Interest Earned	79,942
<b>Total Revenues</b>	<b>\$79,942</b>

#### **Section 2. Expenditures:**

10-9030-49661: Transfer to General Capital Project Fund	79,942
<b>Total Expenditures</b>	<b>\$79,942</b>

**Section 3.** Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 14th day of May, 2024.

Attest:

\_\_\_\_\_  
Jacques K. Gilbert, Mayor

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk



# Town of Apex

## CAPITAL PROJECT ORDINANCE AMENDMENT 2024-18

### General Capital Project Fund

BE IT ORDAINED, by the Council of the Town of Apex that the Capital Project Ordinance previously entitled "General Capital Project Fund" be amended as follows:

**Section 1. The revenues anticipated for the projects are:**

61-9225-0113- 37088 Wake Transit Reimbursement	40,000
61-9225-0101-337088 Wake Transit Reimbursement	(40,000)
61-9225-0113-36710 Transfer from General Fund	112,842
61-9225-0101-36710 Transfer from General Fund	(32,900)
<b>Total Revenues</b>	<b>\$79,942</b>

**Section 2. The expenditures anticipated are:**

61-9225-0101 GoApex Bus Stop Project	(72,900)
61-9225-0113 GoApex CDBG Project	152,842
<b>Total Expenditures</b>	<b>\$79,942</b>

**Section 3.** Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 14th day of May, 2024.

Attest:

\_\_\_\_\_  
Jacques K. Gilbert, Mayor

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Erika Sacco, Director

Department(s): Information Technology

### Requested Motion

Motion to approve Capital Project Ordinance Amendment 2024-19 allocating funding and grant award for cybersecurity model project.

### Approval Recommended?

Yes

### Item Details

The Town of Apex was awarded a grant of \$99,971 from the State of North Carolina earlier this fiscal year. The grant is to implement cybersecurity maturity model framework best practices, guidelines, and controls to provide our organization with a road map for creating effective and compliant security. This Capital Project Ordinance Amendment allocates funds currently in the IT operating budget to the Capital Project budget and offsetting grant revenues based on the grant award. This allows for all expenses for the grant to be captured in one place and will ensure accurate reporting and close out of the project.

Capital Project Ordinance Amendment 2024-19 reallocates \$120,000 already in the operating budget fund and accounts for the state grant fund revenue.

### Attachments

- CN5-A1: Capital Project Ordinance Amendment 2024-19 - Cybersecurity Model Grant





# Town of Apex

## CAPITAL PROJECT ORDINANCE AMENDMENT 2024-19

### General Capital Project Fund

BE IT ORDAINED, by the Council of the Town of Apex that the Capital Project Ordinance previously entitled "General Capital Project Fund" be amended as follows:

**Section 1. The revenues anticipated for the projects are:**

61-9225-0119-3340 State Grants	99,971
61-9225-0119-36710 Transfer from General Fund	20,029
<b>Total Revenues</b>	<b>\$120,000</b>

**Section 2. The expenditures anticipated are:**

61-9225-0119: Cybersecurity Maturity Model	120,000
<b>Total Expenditures</b>	<b>\$120,000</b>

**Section 3.** Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 14th day of May, 2024.

Attest:

\_\_\_\_\_  
Jacques K. Gilbert, Mayor

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Michael S. Deaton, P.E., Director

Department(s): Water Resources

### Requested Motion

Motion to approve Contract Amendment No.2 between the Town of Apex and Itron Inc., to extend the Field Deployment Manager (FDM) Field Tools Mobile Device Software Agreement (CONT-2022-059) for one year, effective until June 09, 2025, and authorize the Town Manager to execute on behalf of the Town.

### Approval Recommended?

Yes

### Item Details

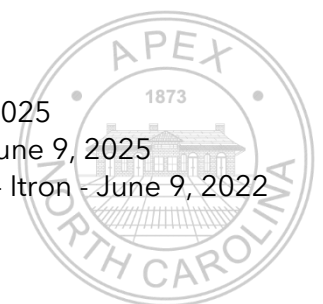
Town Council action is required to approve this Amendment No.2 to FDM Tools and Field Tools Solution Contract # 2022-00000213 dated June 9, 2022 because the Contractor (Itron) did not delete the indemnity language as requested by the Town's Legal Department.

Field Deployment Manager (FDM) software is required to obtain water and electric meter reads and receive meter data such as consumption and meter health. This Amendment No.2 extends the Contract for a period of one year to received continued support for FDM functions. The total subscription fees for this service is \$7,792.90.

The FDM Tools and Field Tools Solution are required for an additional year as the Meter Upgrade Project will not be fully implemented for another year. The software is instrumental in ensuring consumption is billed accurately to our customers.

### Attachments

- CN6-A1: Contract Amendment No. 2 - Itron - June 9, 2022 through June 9, 2025
- CN6-A2: Itron Quote - Contract Amendment - Itron - June 9, 2022 through June 9, 2025
- CN6-A3: Contract Agreement Itron CONT-2022-059- Contract Amendment - Itron - June 9, 2022 through June 9, 2025



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

Contract # 2022-00000213  
AMENDMENT #2 TO FDM TOOLS AND  
FIELD TOOLS SOLUTION AGREEMENT

THIS AMENDMENT is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between Itron, Inc. (“Itron”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”).

P R E M I S E S:

WHEREAS, the Parties entered into FDM Tools and Field Tools Solution Agreement dated June 9<sup>th</sup>, 2022 (the “Agreement”), which includes in Paragraph 3 the contemplation of an amendment to the Agreement whereby the Parties agree to extend the Subscription for Mobile Device Software; and

WHEREAS, the Parties desire to extend the Agreement for one (1) year.

W I T N E S S E T H:

The Town and Itron, for the consideration stated herein, agree to amend the Agreement as follows: In Paragraph 3, the first and second sentences are deleted and hereby replaced with the following sentence: The term of this Agreement expires on June 9<sup>th</sup>, 2025.

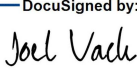
In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_ day of \_\_\_\_\_, 2024.

Itron, Inc.

Town of Apex

Name: Joel Vach


Randal E. Vosburg, Town Manager

By:   
D4BB7D03A24E4BB...  
(Signature)

Attest:

Title: VP Tax, Treasury, MD&A

Allen L. Coleman, CMC, NCCCC Town Clerk

Attest:   
C5FC3B1B0170470...  
(Secretary, if a corporation)

*This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.*

Antwan Morrison, Finance Director



Date Printed: 18-MAR-2024

Service Pricing

Page: 1 of 1

Customer Name: Town of Apex, North Carolina  
Customer Number: 1397  
Bill To Contact: Michael Mote  
Customer Address: PO Box 250  
Apex,NC 27502-0250

Contract Number: SC00000668  
Description: Town of Apex, North Carolina - FCS / FTA

Contract Duration: 01-AUG-24 - 31-JUL-25

Description	Serial Number	Start Date	End Date	Quantity	Total Amount
SOFTWARE					
FCS SFTW MAINTENANCE, 25001-50000 ENDPOINTS, ELECTRONIC DELIVERY		01-AUG-24	31-JUL-25	1	5,753.57
			Subtotal :	1	5,753.57
	SOFTWARE		Subtotal :	1	5,753.57
FIELD TOOLS ADVANCED, 25001-50000 ENDPOINTS, SUBSCRIPTION		01-AUG-24	31-JUL-25	1	2,039.33
			Subtotal :	1	2,039.33
			Subtotal :	1	2,039.33
Contract Grand Total:				2	7,792.90



## FDM Tools and Field Tools Solution Agreement



### FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT

**THIS FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES, AS DEFINED IN THE DEFINITIONS SECTION BELOW, THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”).**

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and *Town of Apex*, an entity organized under the laws of North Carolina, having an address at 73 Hunter Street, Apex, NC 27502 (“Customer”) and is effective as of the date of the last signature (the “Effective Date”).

#### 1. Definitions.

**Affiliate** means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

**Annual Adjustment** means Itron’s annual price increase.

**Billing Cycle** means a period of one year beginning on the Effective Date or any anniversary thereof.

**Claim** means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

**Client Services Guidelines Documents** means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

**Confidential Information** means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a

reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party. Confidential Information shall not include "public records" as defined by Chapter 132 of the North Carolina General Statutes.

**Covered Product** means Software.

**Customer** means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

**Customer Data** means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

**Defended Party** means a Party entitled to defense and indemnification from the other Party under Section 11 ("Third-Party Claims") of this Agreement.

**Defending Party** means a Party obligated to provide defense and indemnification to the other Party under Section 11 ("Third Party Claims") of this Agreement.

**Documentation** means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services or Software provided by Itron, which Itron customarily makes available to its customers.

**Endpoint** means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device which Customer will configure and/or manage as part of a Service Offering.

**Error** means a material failure of Software to comply with applicable published Itron specifications.

**Fees** means all amounts payable to Itron by Customer for Services provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

**Fix** means a correction or workaround for an Error.

**Global Support Services** means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

**Improvement** means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

**Intellectual Property** and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

**M&S Commencement Date** means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be the Service Offering Commencement Date.

**Maintenance Services** means maintenance and support services described in Section 8 ("Maintenance Services") of this Agreement.

**Mobile Device Software** means Itron's FDM Tools or Field Tools mobile application for FDM Tools or Field Tools, as applicable.

**One-Time Setup Fee** means the one-time setup fee(s) for each Service Offering (if any) identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

**Operating Condition** means performance in accordance with applicable published Itron specifications.

**Party** means Customer or Itron and **Parties** means Customer and Itron.

**Primary Services Contacts** means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

**Quote** means a valid quote for Services provided to Customer by Itron.

**Release** means a collection of Fixes and/or Improvements made available by Itron to Customer.

**Service Offering** means the FDM Tools or Field Tools software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

**SaaS Software** means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

**Servers** means the physical computer hardware owned by Itron or its designated provider on which SaaS

Software will be installed, operated, and maintained by or on behalf of Itron.

**Service Offering Commencement Date** means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

**Service Levels** means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

**Services** mean the Service Offering(s) and Maintenance Services.

**Software** means Mobile Device Software and SaaS Software.

**Subscription Fees** means annual fees identified in the applicable Quote or, if no Quote, Itron's then- current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

**Subscription Term** means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

**Territory** means the country in which Itron provides Services to Customer.

**2. Purchase Order Requirement.** Customer shall purchase Services by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

**3. Term.** The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Prior to the expiration of the Subscription for the Mobile Device Software, the Parties will sign an amendment that extends the Subscription for the Mobile Device Software for one (1) year. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 14 ("Termination") of this Agreement.

#### **4. Fees, Invoicing, Taxes and Payment**

**4.1. . Fees.** Itron offers a basic Service Offering and a premium Service Offering under this Agreement. The basic Service Offering is provided free of charge and the premium Service Offering is provided at the initial fees set forth in Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. Fees for Software Maintenance Services are included in the Subscription Fee, if any, for the applicable Service Offering. Itron reserves the right to add, remove and/or change features within a Service Offering at Itron's sole discretion and will notify Customer of such changes at least sixty (60) days in advance of implementing such changes within Service Offering.

**4.2. Invoicing.** Customer shall pay Subscription Fees (if any) in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

**4.3. Payment.** Customer shall pay the Itron entity designated in the applicable invoice. Unless otherwise specified in the applicable invoice, Customer shall pay such Itron entity in USD. Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

**4.4. Invoice Disputes.** Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

**4.5. Late Payment.** Except for invoiced payments that Customer has timely disputed, all late payments

shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

**4.6. No Setoff.** Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

**4.7. Taxes.** All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer shall indemnify and hold Itron harmless from any tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein .

**5. Documentation.** Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

## **6. Service Offerings**

### **6.1. Access Rights and Restrictions.**

**6.1.1. Access Rights.** Subject to Customer's compliance with this Agreement, including payment of all applicable Fees (if any), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

**6.1.2. Restrictions on Use.** Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related

Documentation to provide services to third parties, or otherwise use any Service Offering on a “service bureau” or “timesharing” or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron’s or its providers’ Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron’s or its providers’ Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron’s or its providers’ systems or networks; (m) merge any Service Offering with any other product or service without Itron’s prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

**6.1.3. Content Restrictions.** Customer may not distribute, download, or place on any Itron or its providers’ website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “Prohibited Content”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys’ fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers’ website or Server or used with any Service Offering by Customer.

**6.2. Breach of Restrictions.** Customer’s breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer’s breach of these restrictions.

**6.3. SaaS Software Availability.** Itron will endeavor to make the SaaS Software available to Customer

through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

**6.4. Third-Party Radio Devices.** Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

**6.5. Sizing of Software-as-a-Service.** Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

**6.6. Application Upgrade and Fixes.** SaaS Software is updated regularly using a continuous delivery method.

**6.7. Conditions on Use of Service.** Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

**6.8. Suspension or Restriction of Service.** Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.



**6.9. Incident Management.** Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

**6.10. Customer Technical Responsibilities.** Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense.

**6.11. User IDs and Passwords.** Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

**6.12. Maintenance.** System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

**6.13. Business Continuity.** Application data is fully backed up weekly and differentially backed up daily unless backup is prevented by loss of datacenter or datacenter connectivity or other circumstances outside Itron's reasonable control. Itron's hosted environment is on fault tolerant systems with specific mechanisms for high availability.

**6.14. Recovery of Customer Data.** At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service ("Closure Confirmation"). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

## **7. Mobile Device Software License.**

**7.1. License Grant.** Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "Mobile Device")

strictly in accordance with the Documentation.

**7.2. License Restrictions.** Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

**7.3. Updates.** Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

**7.4. Compatible Mobile Devices.** Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

**7.5. Disclaimer of Liability.** Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

## **8. Maintenance Services.**

### **8.1. Primary Services Contacts.**

**8.1.1. Designation by Customer.** Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall

promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

**8.2. Training of Principal Services Contacts.** Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer- proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section. Global Support Services & Service Requests.

**8.2.1. Global Support Services.** Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

**8.2.2. Service Request Process.** Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its

urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

**8.2.3. Field Support.** At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

### **8.3. Software Maintenance.**

**8.3.1. Fixes.** Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

**8.3.2. Improvements.** Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

**8.3.3. Exclusions.** Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

**8.3.4. Customer Responsibilities.** Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

**9. Warranty Disclaimer.** ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT, AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

**10. Intellectual Property.**

**10.1. Reservation of Intellectual Property.** Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

**10.2. Customer Suggestions.** Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into any products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

## 11. Third-Party Claims.

**11.1. General Claims.** The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

**11.2. Infringement Claims.** Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("IP Claims"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

**11.3. Conditions to Defense.** As a condition to the Defending Party's obligations under Section 11.1 or Section 11.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

**11.4. Exclusions to Infringement Claim Defense.** Itron will have no obligation under Section 11.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative

of Itron , (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

**11.5. EXCLUSIVE REMEDY.** THIS SECTION 11 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

**12. Data Protection.** The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party..

**13. Confidentiality.** Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

**14. Termination.** Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

**15. Survival.** The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 6.1.2 ("Restrictions on Use"), 6.2 ("Breach of Restrictions"), 9 ("Warranty Disclaimer"), 10 ("Intellectual Property"), 12 ("Data Protection"), 13 ("Confidentiality"), 15 ("Survival"), 16 ("Limitation of Liability"), 17 ("Disputes"), 18 ("Governing Law and Venue"), 23 ("Force Majeure"), and 24 (Miscellaneous).

**16. Limitation of Liability.** Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under this Agreement during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

**17. Disputes.** The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("Executive(s)"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "Escalation to Mediation Date"), either



Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may proceed in accordance with the provisions of Section 18 (Governing Law and Venue). Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

**18. Governing Law and Venue.** This Agreement and all related documents, including all addenda attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Western District of Texas, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Travis County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the United States District Court for the Eastern District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina sitting in Wake County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**19. Legal Compliance.** Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other

applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

**20. Publicity.** Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent.

**21. Sub-contractor and Outsourcer.** Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

**22. Independent Contractor.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

**23. Force Majeure.** Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) left blank (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

**24. Miscellaneous.** (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular section of this Agreement will be deemed to include reference to any and all subsections thereof. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

**25. Public Records Requirements.** To the extent applicable, Itron will comply with the public records requirements in Customer's state. Itron recognizes that Customer is subject to public records laws under which Customer is required to disclose all records characterized as public under state law, unless an exemption applies. For that reason, Customer agrees that if a record regarding Itron software and/or documentation is requested under public records laws, Customer will provide Itron with prompt written notice of such request prior to producing any records so that Itron has an opportunity to seek court protection of the requested records. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such software and/or documentation to the extent requested by Itron and allowed by applicable public records laws.

In witness thereof, the Parties, by their authorized agents, affix their signatures and seals this 9th day of June, 22

Itroth

DocuSigned by:

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

Joel Vach

D4BB7D03A21E4BB...

(type or print)

By: Joel Vach

(Signature)

Title: VP-Tax and Corporate Treasurer

Attest: \_\_\_\_\_

DocuSigned by:

Chris Ware

7AF489604F544EB...

(Secretary, if a corporation)

CLIENT (Town of Apex)

Catherine Crosby, Town Manager

Attest: \_\_\_\_\_

Town Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Vance Holloman  
Vance Holloman, Finance Director

**Attachment A****– Software Maintenance & Support Service Levels –**

<b>Severity Level</b>	<b>Response Times</b>	<b>Effort Level and Restoration</b>	<b>Escalation</b>
<p><b>Business Impact:</b>  <b>Critical Impact / System Down.</b> A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue.</p> <p><b>Example:</b> a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down</p>	<p>During regular business-hours Itron will begin the Service Request process during Customer's initial call.</p> <p>During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process.</p> <p>Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response.</p> <p>Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties.</p> <p>Customer will respond to an Itron inquiry or request within three (3) hours.</p>	<p>Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to:</p> <p>i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4.</p> <p>Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.</p>	<p>An unresolved Service Request shall be escalated to Itron management as follows:</p> <p><b>After 30 minutes:</b>  Technical Customer Support Team Lead</p> <p><b>After 8 hours:</b>  Manager, Technical Client Services</p> <p><b>After 16 hours:</b>  Director, Global Support Services</p> <p><b>After 48 hours:</b>  Service Request. Vice President, Services and Delivery</p> <p><b>After 72 hours:</b>  President, Itron</p>

**Severity Level 2\*****Business Impact: Major****impact, degraded**

**Operation.** An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.

**Example:** a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.

**Severity Level 3\*\*****Business Impact:****Minor Business Impact, compromised operations.**

An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.

Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.

During regular business-hours Itron will respond

to Customer regarding Service Request within one (1) business day.

While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within one (1) business day.

Itron will make diligent efforts during normal

business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.

An unresolved Service Request shall be

escalated to Itron management as follows:

**After 1 hours:**

Technical Customer Support Team Lead

**After 8 hours:**

Manager, Technical Client Services

**After 24 hours:**

Director, Global Support Services

**After 30 Days:**

Vice President, Services and Delivery

During regular business-hours Itron will respond

to Customer regarding Service Request within two (2) business days.

While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within two (2) business days.

Itron will work during normal business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4

<b>Severity Level 4 Business Impact: Standard Operations intact.</b> A low or no- impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.	During regular business- hours Itron will respond to Customer regarding  Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.
--	---	---

\* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

\*\* Service Request opened on Non-production servers / environments are entered as a Severity Level 3.



Electric / Gas / Water  
Information collection, analysis and application

2111 N. Molter Rd.  
Liberty Lake, WA 99019  
fax: 866-787-6910  
[www.itron.com](http://www.itron.com)

**Pricing Summary for**  
**Town of Apex, North Carolina**

BMR# 24686-22 Ver1 Apr  
April 25, 2022

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
<b>Itron Cloud Services</b>						(1,2)
<b>Setup Fees</b>						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
<b>Annual Subscription Fees</b>						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
<b>Itron Cloud Services Total</b>					<b>\$2,024.00</b>	

**Notes and Assumptions**

- (1) Every new Field Tools Advanced customer must have Itron setup their Business Unit to make the Advanced Value-add features available to the Field Tools app or mobile client.
- (2) Subscriptions are an annual fee shown in List Price, to gain access to the Advanced Value-add features of Field Tools. Quantity pricing is based on the total number of distinct endpoints owned by the utility.
- (3) Unless otherwise agreed by the parties, Itron reserves the right to renew Recurring Services after the first year at the then-current price list.
- (4) Pricing is based on existing agreements or Itron's standard terms and conditions.
- (5) Freight and taxes are not included. Prices are in US dollars. Prices are valid for 60 days.

Confidential





## MINUTES - REGULAR TOWN COUNCIL MEETING

May 10, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

### WELCOME AND COMMENCEMENT

Mayor Jacques Gilbert called the meeting to order and welcomed the community to the meeting of the Town Council. Nathan Mariner provided the Invocation. The Mayor then asked all attending to join him in the Pledge of Allegiance.

#### *Town Council and Administration:*

In attendance were Mayor Jacques K. Gilbert, and Mayor Pro Tem Killingsworth, Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

### CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

### CONSENT AGENDA

A motion was made to approve the consent agenda items as submitted. (Motion: Mayor Pro Tem Killingsworth/Second: Council Member Gray/Vote: 5-0)

- CN1 Approved the minutes of the April 26, 2022 meeting of the Regular Town Council Meeting.
- CN2 Approved the Apex Tax Report dated April 3, 2022.
- CN3 Approved a 3-year contract renewal with LexisNexis.
- CN4 Set the Public Hearing concerning the proposed Fiscal Year 2022-2023 Budget including expenditures for Economic Development (pursuant to NCGS 158-7.1), for Tuesday, May 24, 2022 at 6:00 p.m. at the Apex Town Hall.
- CN5 Approved the contract for audit services for the 2022 fiscal year with Cherry Bekaert LLP of Raleigh, North Carolina.
- CN6 Approved award of contract to National Transformer Sales for 3 Phase Pad Mount and Single Overhead Transformers.
- CN7 Approve award of contract to Crossroads Ford of Apex for the purchase of a 2022 F750 Chipper Truck.

- CN8 Appointed Sarah Soh as a new Planning Board member to serve the remaining term of Tommy Pate, December 31, 2022.
- CN9 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #22CZ01 Arden at Summit Pines PUD. The applicant, Collier Marsh, FC Apex, LLC., seeks to rezone approximately 11.74 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8200 Jenks Road.
- CN10 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #21CZ31 Sears Property PUD. The applicant, Jeff Roach, Peak Engineering and Design, LLC., seeks to rezone approximately 26.218 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 2108 Old US 1 Highway.
- CN11 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 24, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the R. Michael Strickland Trustee of Family Trust property containing 13.541 acres located at 8200 Jenks Road, Annexation #727 into the Town’s corporate limits.
- CN12 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Peak 360, LLC property containing 7.6631 acres located at 7825 and 7809 Jenks Road, Annexation #732 into the Town’s corporate limits.
- CN13 Set the Public Hearing for the May 24, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN14 Approved an Agreement with NCDOT for up to \$1,395,356 in federal funds, up to 80% reimbursement, of the total cost of right of way acquisition, utility relocation, and construction of project BL-0047, Downtown Apex Safe Routes to School, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN15 Approved a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0047, Downtown Apex Safe Routes to School, requiring payment of a \$10,000.00 deposit, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN16 Approved the Triangle Area Water Supply Project Phase IX Five-Year Interlocal Agreement and authorized the Town Manager to execute it on behalf of the Town.
- CN17 Approved an agreement with Itron and authorized the Town Manager to execute the agreement on behalf of the Town.

## PRESENTATIONS

The Mayor and Town Council Members read the following proclamations in turn.

- PR1 Presentation of LGBTQIA Pride Month 2022 Proclamation
- PR2 Presentation of Azerbaijan Independence Day Proclamation

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerks Office

### Requested Motion

Motion to approve, as submitted or amended, Meeting Minutes from the following meetings:

- April 9, 2024 - Regular Town Council Minutes
- April 16, 2024 - Town Council Work Session Minutes

### Approval Recommended?

The Town Clerk recommends the Town Council approve the meeting minutes as presented or amended.

### Item Details

In accordance with 160A-72 of North Carolina General Statutes (NCGS), the Governing Board has the legal duty to approve all minutes that are entered into the official journal of the Board's proceedings.

### Attachments

- CN7-A1: **DRAFT** Minutes - April 9, 2024 - Regular Town Council Minutes
- CN7-A2: **DRAFT** Minutes - April 16, 2024 - Town Council Work Session Minutes



**DRAFT MINUTES**  
**TOWN OF APEX**  
**REGULAR TOWN COUNCIL MEETING**  
**TUESDAY, APRIL 9, 2024**  
**6:00 PM**

The Apex Town Council met for a Regular Town Council Meeting on Tuesday, April 9, 2024 at 6:00 PM in the Council Chambers at Apex Town Hall, located at 73 Hunter Street in Apex, North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel. The recording of this meeting can be viewed here: <https://www.youtube.com/watch?v=JkbAOddxMzw&t=14936s>

**[ATTENDANCE]**

Elected Body

Mayor Jacques K. Gilbert (presiding)  
Mayor Pro Tempore Ed Gray  
Councilmember Audra Killingsworth  
Councilmember Arno Zegerman  
Councilmember Brett Gantt (*arrived late*)  
Absent: Councilmember Terry Mahaffey

Town Staff

Interim Town Manager Shawn Purvis  
Assistant Town Manager Demetria John  
Assistant Town Manager Marty Stone  
Town Attorney Laurie Hohe  
Town Clerk Allen Coleman  
Deputy Town Clerk Ashley Gentry  
Planning Director Dianne Khin  
Department of Transportation and Infrastructure Director Chris Johnson  
All other staff members will be identified appropriately below


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3 [SLIDE 1]



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5 [SLIDE 2]

**Public Participation**

- Please sign in with the Town Clerk prior to the start of the meeting for all Public Hearings and Public Forum
- Public Forum speakers are requested to address only items that **do not** appear in the 'Public Hearings' section on tonight's agenda
- The Mayor will recognize those who would like to speak at the appropriate time
- Large groups are asked to select a representative to speak for the entire group and are limited to 9 minutes
- Individual comments must be limited to 3 minutes to allow others the opportunity to speak



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8 [COMMENCEMENT]

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10 **Mayor Gilbert** called the meeting to order, and said he wanted to take time to reflect on the  
11 tragic death of Felicia Barbee-Battle, who was a beloved community member. He honored the family  
12 to show support. He said domestic violence needs to be eradicated in the community, and thanked  
13 the Apex Police Department for their efforts in this. He asked for a moment of silence, and then  
14 asked Pastor Kevin O'Brien, of Apex Baptist Church and who is the Chaplain of the Apex Police  
15 Department, if he would come and deliver a prayer. He also noted that the water tower on Hunter  
16 Street will be illuminated purple this evening in memory of Ms. Barbie-Battle. He then led those in  
17 attendance in the reciting of the Pledge of Allegiance.  
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1 **[CONSENT AGENDA]**

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3 **Councilmember Zegerman** made a request for Consent Items 2 and 3 be moved to new  
4 business.

5 A **motion** was made by **Mayor Pro Tempore Gray** seconded by **Councilmember**  
6 **Killingsworth**, to approve the Consent Agenda, with the continuation of Consent Items 2 and 3 to  
7 new business.

8  
9 **VOTE: UNANIMOUS (3-0), with Councilmember Gantt and Councilmember Mahaffey**  
10 **absent**

11  
12 **CN1 Annexation No. 777 - 2014 Lufkin Road - 2.208 acres (REF: RES-2024-020, RES-2024-**  
13 **021, and OTHER-2024-049)**

14 Council voted to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to  
15 accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of  
16 a Public Hearing for April 23, 2024, on the Question of Annexation - Apex Town Council's intent to  
17 annex 2.208 acres, located at 2014 Lufkin Road, Annexation No. 777 into the Town Corporate limits.

18 **~~CN2 Appointments - Housing Advisory Board (HAB)~~**

19 This item was removed from the Consent Agenda, per Council vote.

20 **~~CN3 Appointments - Housing Advisory Board (HAB) - Chair/Vice-Chair~~**

21 This item was removed from the Consent Agenda, per Council vote.

22 **CN4 Budget Ordinance Amendment No. 14 - Stormwater Fund Equity (REF: ORD-2024-024)**

23 Council voted to adopt Budget Ordinance Amendment No. 14 to transfer stormwater fund equity  
24 from the Water and Sewer Fund to newly established Stormwater Fund.

25 **CN5 Contract - Central Pines Regional Council of Governments - Grant Administration - April**  
26 **1, 2024 through June 30, 2025 (REF: CONT-2024-087)**

27 Council voted to approve a Standard Services Agreement between the Town of Apex and Central  
28 Pines Regional Council of Governments, effective April 1, 2024 through June 30, 2025 for Grant  
29 Assistance, and to authorize the Interim Town Manager, or their designee, to execute on behalf of  
30 the Town.

31 **CN6 Contract - HR&A Advisors, Inc - Housing Data Dashboard - April 9, 2024 through April**  
32 **8, 2027 (REF: CONT-2024-088)**

33 Council voted to approve a three-year contract with HR&A Advisors, Inc, effective April 9, 2024  
34 through April 8, 2027 to implement, host and maintain a data dashboard, and to authorize the  
35 Interim Town Manager, or their designee, to execute the contract on behalf of the Town.

36 **CN7 Contract Amendment No. 6 - Kimley-Horn and Associates Inc. - Beaver Creek Greenway**  
37 **Supplement No. 6 (REF: CONT-2024-089)**

38 Council voted to approve Contract Amendment No. 6 between the Town of Apex and Kimley-Horn  
39 and Associates, Inc, for the Beaver Creek Greenway Extension, and to authorize the Interim Town  
40 Manager, or their designee, to execute on behalf of the Town.

41 **CN8 Council Meeting Minutes - Various Meetings**

42 Council voted to approve, as submitted or amended, Meeting Minutes from the following meetings:  
43 February 15, 2024 - Town Council Retreat Minutes



February 16, 2024 - Town Council Retreat Minutes

February 27, 2024 - Regular Town Council Meeting Minutes

March 12, 2024 - Regular Town Council Meeting Minutes

March 19, 2024 - Town Council Work Session Minutes

**CN9 Fee-in-Lieu (FIL) of Land Dedication - Ashland Subdivision**

Council voted to approve a payment of Fee-in-Lieu (FIL) of dedication for Ashland Subdivision.

**CN10 Interlocal Agreement - Town of Apex and the Capital Area Metropolitan Planning Organization (CAMPO) - Rail Relocation Study (REF: CONT-2024-090)**

Council voted to approve an Interlocal Agreement between the Town of Apex and Capital Area Metropolitan Planning Organization (CAMPO), effective until June 30, 2025, for the Apex Rail Switching Operations Relocation Study, and to authorize by the Interim Town Manager, or their designee, to execute on behalf of the Town.

**CN11 Revisions to Town Standard Specifications & Standard Details (REF: OTHER-2024-051 and OTHER-2024-052)**

Council voted to approve revisions to the Town Standard Specifications and Standard Details.

**CN12 Tax Report - February 2024 (REF: OTHER-2024-050)**

Council voted to approve Apex Tax Reports dated March 7, 2024.

**[PRESENTATIONS]**

**PR1 Presentation - 2023 Pavement Management Report**

**Adam Stephenson**, Transportation Engineering Manager, brought results to their most recent pavement conditions survey and analysis that is conducted every three years. He stated that Consultant Mott MacDonald completed the survey selected from a group of nine firms that provided statements of qualifications. He introduced Tracy Pilson, who presented results.

**[SLIDE-1]**



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[SLIDE-2]

AGENDA


- Pavement Condition Data Collection
- 2023 Network Condition
- Pavement Treatment Toolbox
- Pavement Preservation
- Pavement System Analysis Results
- Conclusions/Recommendations





[SLIDE-3]



Pavement Condition Data Collection



[SLIDE-4]

2023 Pavement Management Project

- The Town of Apex maintains a pavement network consisting of approximately 240 centerline miles of asphalt streets.
- Mott MacDonald completed a pavement management study which included a Pavement Condition Survey (PCS) of all Town-maintained streets and a pavement management system (PMS) analysis.
- Pavement Data was collected in the Summer of 2023.
- Mott MacDonald completed a full pavement management analysis to provide the Town with optimized 10-year work plans.





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[SLIDE-5]

### Pavement Condition Data Collection

#### 1


Studies the performance of in-service pavements.

#### 2

The primary goal is to collect data believed to be most important in characterizing factors that affect pavement performance.

#### 3

Pavement Condition Data is used to model pavement performance and make treatment recommendations to maximize network condition over the long term.



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MOTT  
MACDONALD

[SLIDE-6]

### Visual (Windshield) Pavement Data Collection

Used by Town on the previous two data collection cycles.  
(ITRE, LTPP)

Manual data collection tends to have inconsistencies between different raters.



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MACDONALD

[SLIDE-7]

### Automated Data Collection Vans – ARRB System

Laser Crack Measurement Systems (LCMS) and High-definition cameras

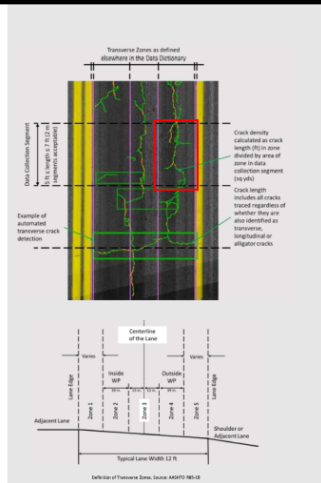


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## [SLIDE-8]

### Crack density approach

- Crack Density= Total length of cracks/unit area (ft/sy)
- Magnitude can indicate:
  - Patterned cracking
  - Non-patterned cracking
- Crack Density Zones:
  - Load-related cracking
  - Non-load related cracking
- Informs decision-making:
  - Patterned cracking → patching/rehab
  - Non-patterned cracking → crack sealing



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## [SLIDE-9]

### Benefits of using crack density

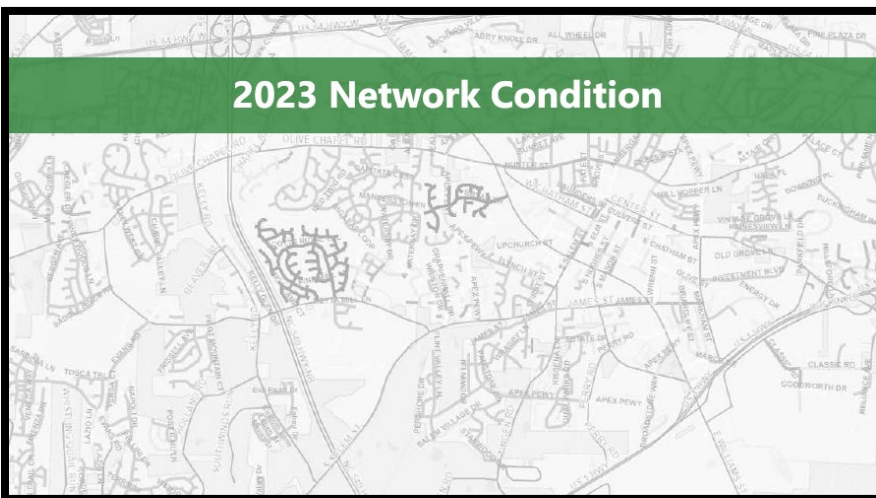
- Independent of data collection vendor's experience/specific technology
- Allows agencies flexibility in aggregating data to condition scores
- Highly repeatable
- Less reliant on subjective definitions of distress types and severities



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## [SLIDE-10]

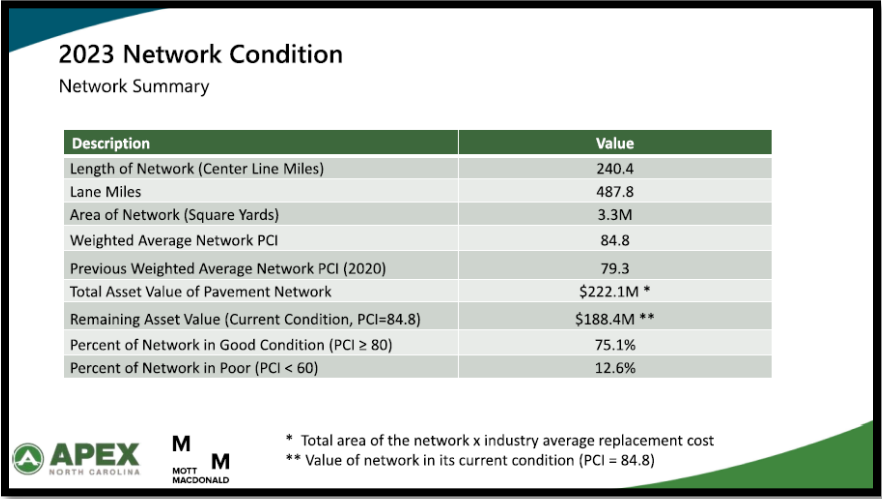
### 2023 Network Condition



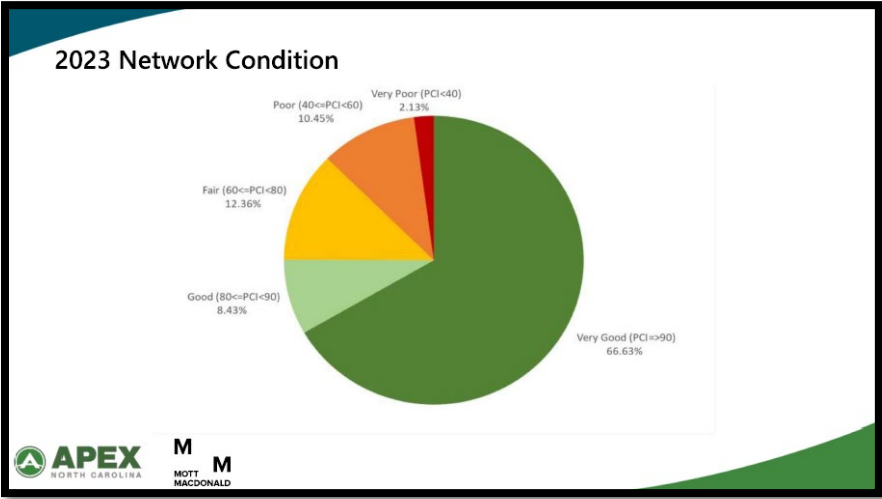
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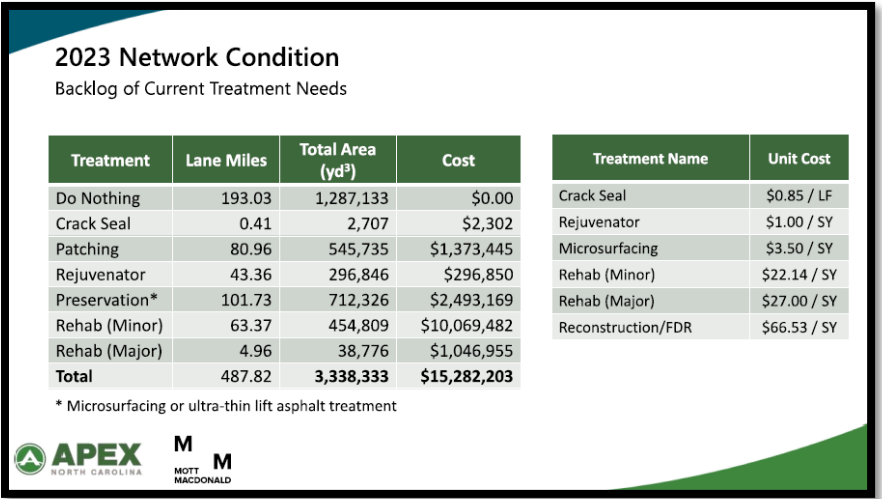
[SLIDE-11]



[SLIDE-12]



[SLIDE-13]



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2 [SLIDE-14]



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4 [SLIDE-15]

**Pavement Treatment Toolbox**

**Crack Sealing** (most cost-effective treatment to preserve pavements)

**Issues addressed:**

- Cracking is inevitable and left untreated will cause pavement failure like potholes and subbase failure.
- Used to treat all types of cracks greater than 1/8".

**Benefits:**

- Slows crack deterioration
- Protects pavement from moisture damage
- Extends pavement life up to 3 - 5 years
- Lowest cost preservation (maintenance) treatment
- Highest benefit for money spent



**APEX** NORTH CAROLINA **M** **M**  
MOTT MACDONALD

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6 [SLIDE-16]

**Pavement Treatment Toolbox**

**Asphalt Rejuvenation**

**Issues addressed:**

- Oxidation (graying of pavement)
- Loss of asphalt elasticity
- Raveling (loss of binder)

**Benefits:**

- Improves flexibility of the asphalt surface
- Restores lost oxidized components of the asphalt binder
- Slows rate of aging and oxidation.



**APEX** NORTH CAROLINA **M** **M**  
MOTT MACDONALD

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[SLIDE-17]

### Pavement Treatment Toolbox

#### Preservation – Microsurfacing/Slurry Seals

**Issues addressed:**

- Surface Defects
  - Oxidation
  - Raveling
- Cracking
- Minor Rutting

**Benefits:**

- Provides skid resistance
- Prevents moisture intrusion
- Protects against oxidation and raveling
- Most economical choice when leveling is required.
- Quick construction times and minimal disruption to the traveling public.





[SLIDE-18]

### Pavement Treatment Toolbox


#### Pavement Rehab (Minor or Major)



**Issues addressed:**

- Pavement rehabilitation completely removes and replaces a portion of the asphalt pavement surface.
- The depth of rehabilitation (minor vs. major) depends on the severity of pavement damage.

**Benefits:**

- Pavement rehabilitation is necessary because it can help extend the life of a pavement.
- Prevents further deterioration and expensive repairs such as Full-Depth Reclamation (FDR) at a later date.





[SLIDE-19]

### Pavement Treatment Toolbox

#### Full-Depth Reclamation (FDR)

FDR is an in-place recycling method for reconstruction of existing flexible pavements using the existing pavement section material as the base for the new roadway-wearing surface.

**Benefits:**

The advantages are considerable compared to remove and replace reconstruction, but FDR is still expensive!

The use of less expensive treatments to preserve the network are recommended!

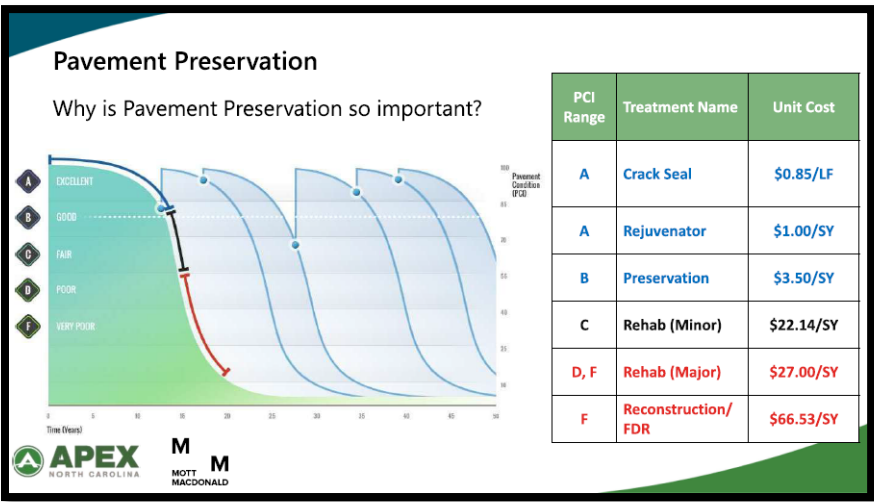






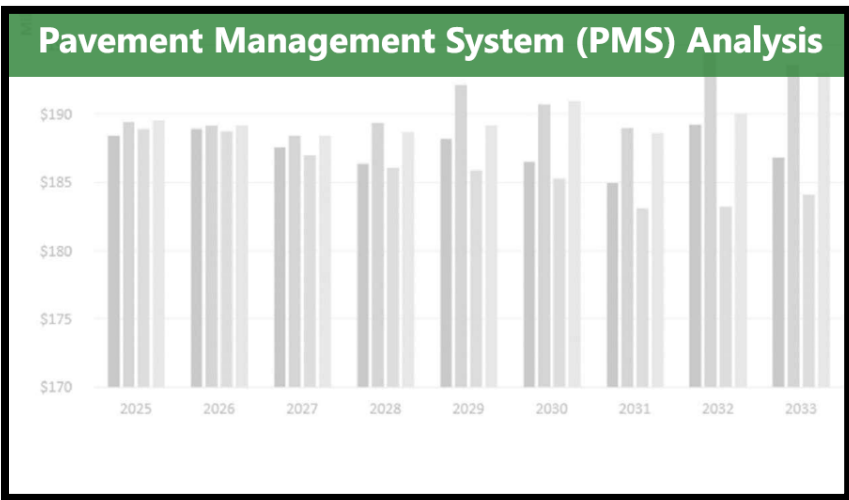
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[SLIDE-20]



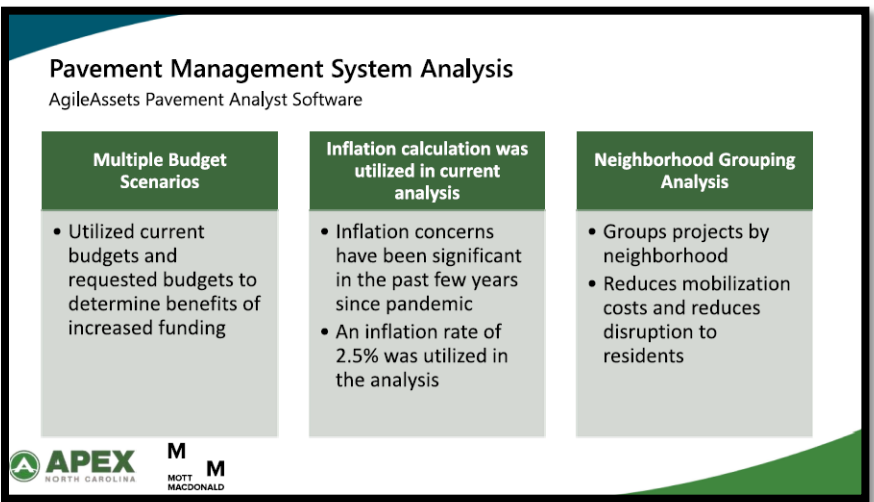
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[SLIDE-21]



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## Pavement Management System Analysis

Two Funding Levels Analyzed

Current Budgets		Requested Budgets (asphalt)		*CIP requests	
FY 23-24	\$2,200,000	FY 24-25	\$2,800,000	FY 24-25	\$3,500,000
FY 24-25	\$2,300,000	FY 25-26	\$2,900,000	FY 25-26	\$3,625,000
FY 25-26	\$2,400,000	FY 26-27	\$3,000,000	FY 26-27	\$3,750,000
FY 26-27	\$2,500,000	FY 27-28	\$3,100,000	FY 27-28	\$3,875,000
FY 27-28	\$2,600,000	FY 28-29	\$3,200,000	FY 28-29	\$4,000,000
Future	\$2,700,000	Future	\$3,300,000	Future	\$4,125,000

\* Includes curb ramp retrofits for Public Right-of-Way Accessibility Guidelines (PROWAG) compliance



[SLIDE-24]

## Pavement Management System Analysis

Scenarios included in PMS Analysis

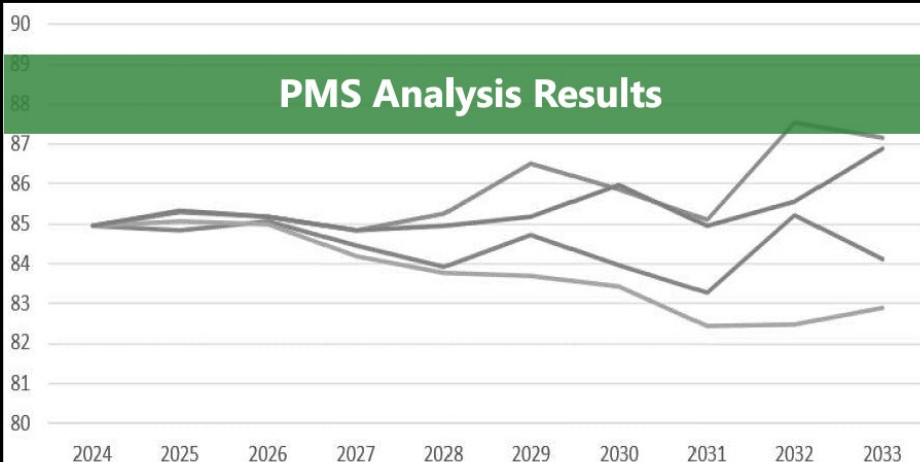
Scenario	Scenario Length	Scenario Type
Current Budgets – No Limit On Preservation	10 years	*NGA - Optimized
Requested Budgets – No Limit On Preservation	10 years	*NGA - Optimized
Current Budgets – 40% Limit On Preservation	10 years	*NGA - Optimized
Requested Budgets – 40% Limit On Preservation	10 years	*NGA - Optimized

\* Neighborhood Grouping Analysis, 2.5% inflation rate used



[SLIDE-25]



## PMS Analysis Results



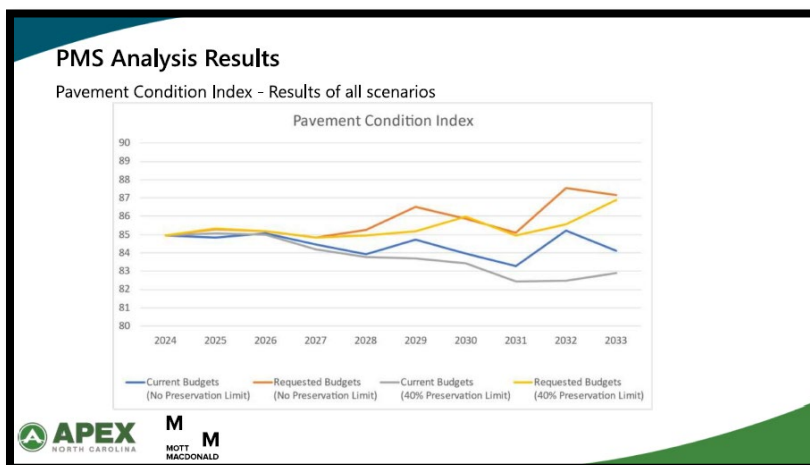
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2 [SLIDE-26]

**PMS Analysis Results**  
Pavement Condition Index - Results of all scenarios

Year	Current Budgets (No Preservation Limit)	Requested Budgets (No Preservation Limit)	Current Budgets (40% Preservation Limit)	Requested Budgets (40% Preservation Limit)
2024	84.95	84.95	84.95	84.95
2025	84.83	85.28	85.06	85.33
2026	85.05	85.18	84.99	85.18
2027	84.46	84.83	84.20	84.83
2028	83.93	85.25	83.78	84.95
2029	84.74	86.51	83.70	85.17
2030	83.98	85.86	83.42	85.98
2031	83.27	85.10	82.43	84.94
2032	85.20	87.54	82.49	85.57
2033	84.12	87.16	82.89	86.89



3  
4 [SLIDE-27]



5  
6 [SLIDE-28]

**PMS Analysis Results**  
Remaining Asset Value - Results of all scenarios

Year	Current Budgets (No Preservation Limit)	Requested Budgets (No Preservation Limit)	Current Budgets (40% Preservation Limit)	Requested Budgets (40% Preservation Limit)
2024	\$ 188,401,929	\$ 189,400,043	\$ 188,919,864	\$ 189,510,870
2025	\$ 188,900,763	\$ 189,192,158	\$ 188,760,841	\$ 189,174,168
2026	\$ 187,579,273	\$ 188,403,705	\$ 187,017,140	\$ 188,416,365
2027	\$ 186,405,922	\$ 189,332,969	\$ 186,078,770	\$ 188,663,784
2028	\$ 188,196,042	\$ 192,130,309	\$ 185,896,871	\$ 189,167,727
2029	\$ 186,514,307	\$ 190,685,997	\$ 185,277,436	\$ 190,959,402
2030	\$ 184,948,951	\$ 189,007,149	\$ 183,072,656	\$ 188,640,685
2031	\$ 189,224,584	\$ 194,421,707	\$ 183,206,360	\$ 190,057,234
2032	\$ 186,833,019	\$ 193,578,618	\$ 184,108,527	\$ 192,977,618
2033	\$ 188,401,929	\$ 189,400,043	\$ 188,919,864	\$ 189,510,870

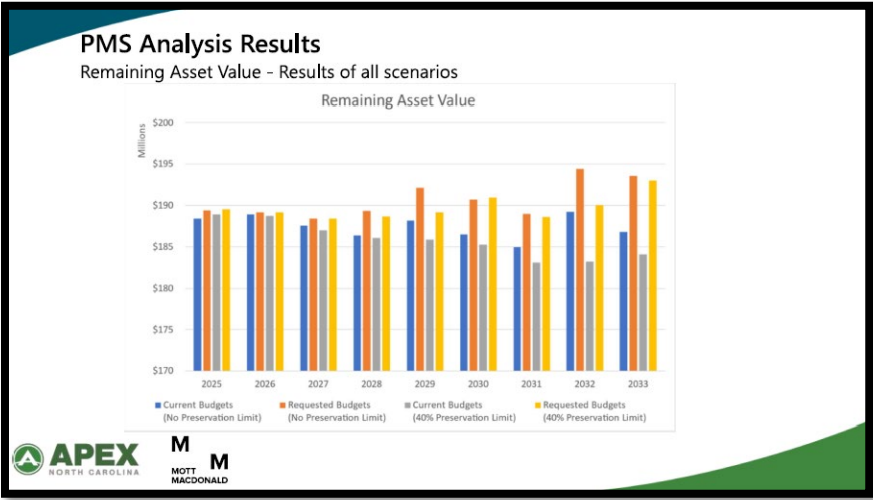
 

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[SLIDE-29]



[SLIDE-30]



[SLIDE-31]

**Conclusions and Recommendations**

- The Town's network continues to grow quickly (up 15% since 2020)
- The Town has spent considerable funds on the resurfacing program which has paid off in increased condition.
- The network is currently in quite good condition with a weighted average network PCI of 84.8 (5.5-point increase since the last survey).
- This 5.5% increase in PCI represents an increase of approximately \$12.2M in the value of the network.

**APEX** NORTH CAROLINA  
**MOTT MACDONALD**

**[SLIDE-32]**

The Town will benefit greatly by increasing the use of preservation treatments.

- Preservation treatments extend the life of asphalt pavements in good condition. Good roads cost less to maintain since less expensive treatments can be applied.
- Rejuvenators help maintain the surface of new asphalt:
  - Delaying oxidation and raveling
  - Slow environmental cracking
- Preservation treatments provide positive long-term impacts by slowing deterioration which may not be fully seen until after the 10-year analysis period.





- If the Town increases annual pavement budgets as recommended, Town should continue to see an increase in overall PCI scores and value of the street network over the next 10 years.
- Additional funding will help preserve and maintain the previous investments made through the 2021 Streets and Sidewalks Bond.

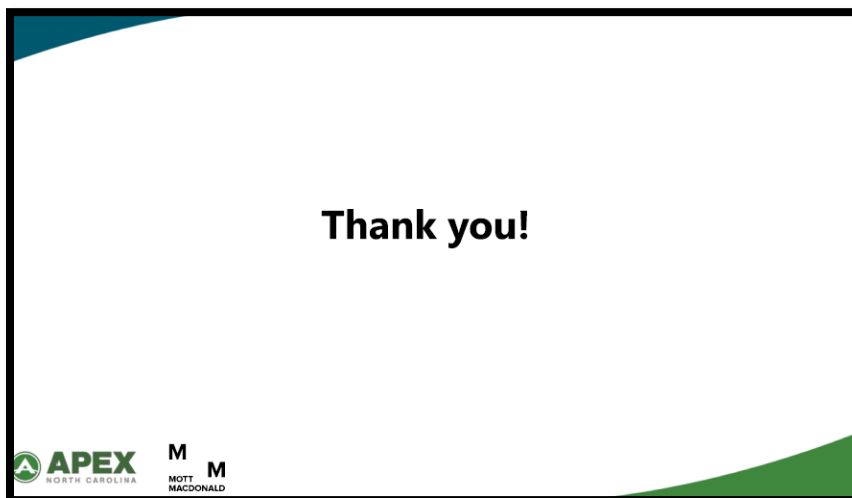


1  
2 **[SLIDE-35]**

Subdivision Street System Resurfacing Candidates	
Ranked by PCI	
Subdivision	PCI
Brookfield	38.4
Waterford Green	40.3
Perry Farms 1&2, Perry Village, Winslowe	42.8
Kelly Glen	43.9
Haddon Hall	47.8
Woodridge	51.7
Shepherds Vineyard Phase 6&7	53.8
Ashley Downs Phase 2&3	55.3
Green at Scotts Mill	55.4
Miramonte	56.7
Whitehall Village & Manor	59.8

3  
4 **[SLIDE-36]**



5  
6 **Tracy Pilson**, thanked the Council for letting them come speak about their recent project  
7 with the town to do a pavement management analysis for the town. She said the town of Apex  
8 maintains 240 centerline miles of road, which is large network for the population. Mott MacDonald  
9 did a pavement management study which included pavement condition survey of all of the towns-  
10 maintained streets and then the pavement management system analysis and the payment  
11 management data was collected last summer in 2023. The purpose of collecting data for pavements  
12 is to characterize the in-service pavements to determine the current condition and then model the  
13 expected performance of those pavements over time. The town transitioned from a manual to an  
14 automated data collection. The purpose of this is to try to eliminate human subjectivity from manual  
15 data collection to automated data collection. She presented a picture of one of ARB systems data  
16 collection vs ARB system, which was the company that did the data collection. On this slide, she  
17 explained how the system collects pictures of the cracking data with cameras used for the study. She  
18 explained what the crack density approach is that was used for this study and the benefits of using  
19 the crack density approach. Ms. Pilson explained treatment options and maintenance treatments  
20 and why payment preservation was so important. She spoke about the analysis that was conducted

1 and the budgetary implementations and the PMS Analysis results. Ms. Toler explained how the Town  
2 could pay with bond money for the treatments.

3 **Mr. Stephenson** gave information to the online tool and that the takeaway was to continue  
4 the funding.

5 **Mayor Pro Tempore Gray** made a comment on the hard work and managing the growth,  
6 and thanked Mr. Stephenson for his work.

7 **Councilmember Zegerman** asked about the difference in the current budget and future  
8 budget. He asked if there would be a digression in maintenance if the levels are maintained rather  
9 than increased.

10 **Mr. Stephenson** said that was why they would request the amount needed annually to  
11 maintain the streets properly.

12  
13  
14 **PR2 Proclamation - Child Abuse Prevention Month - April 2024 (REF: PRO-2024-006)**

15  
16 **Mayor Gilbert** said that Joshalin Williams, Karen Morant, Sandy Wyndham, Allison  
17 Thompson and Kelly McNeil Williams would be receiving the Proclamation. Council read the Child  
18 Abuse Prevention Proclamation in unity. Mayor Gilbert invited each recipient up to receive the  
19 Proclamation and take a picture.

20 **Karen Morant**, Regional Director of Wake County Health and Human Services, said it was an  
21 honor and privilege to be here. She said this is an opportunity for every year in April to raise  
22 awareness for how it is important to all work together collectively. Ms. Morant thanked the Mayor,  
23 Council and Staff for their continued partnership.

24  
25 **Councilmember Gantt** arrived at 6:15 p.m.

26  
27 **PR3 Proclamation - National Telecommunicator Week - April 14 through April 20, 2024**  
28 **(REF: PRO-2024-007)**

29  
30 **Mayor Gilbert** said this Proclamation would be read by Mayor Pro Tim Gray and other  
31 Council members individually. Mayor Gilbert thanked them for their service. Mayor Gilbert invited  
32 Chief Armstrong and other staff members to receive the Proclamation and take a picture.

33 **Chief Armstrong** thanked the Mayor and Council for the recognition. He said these first  
34 responders are the unseen heroes, and the department cannot work without them. He said he is  
35 proud of this team, and they are part of what makes the Apex Police Department the best in North  
36 Carolina.

37  
38 **PR4 Proclamation - Nepal Day 2024 - Saturday, April 20, 2024 (REF: PRO-2024-008)**

39  
40 **Mayor Gilbert** said that the Proclamation would be read by Council members. Mayor Gilbert  
41 invited Bikash Shakya, the President of the Nepal Center of North Carolina, up to receive the  
42 Proclamation.

43 **Mr. Shakya** thanked the town for recognizing Nepal Day. He said it was an honor for Nepali  
44 community, which consists of nearly 10,000 people in the Research Triangle area, to have a

partnership with and support from the Town of Apex. Mr. Shakya invited the members of the Nepali Community in attendance to join in a picture with the Mayor and Council.

**PR5 Proclamation - World Autism Acceptance Month - April 2024 (REF: PRO-2024-009)**

**Mayor Gilbert** said that Cheryl Byrne would receive the Proclamation. The Council read sections of the Proclamation individually. Mayor Gilbert invited Ms. Burns and any families that are affected by autism to come up to receive the Proclamation. Ms. Burns then took a picture with Mayor Gilbert and Council.

**Ms. Byrne** thanked the Mayor, Council and Staff on behalf of families in Apex and the surrounding communities.

**PR6 Presentation - Think Apex Awards - 2024**

**Mayor Gilbert** introduced Barbara Belicic, Small Business Specialist, Economic Development Department. Ms. Belicic welcomed everyone to the Think Apex Awards presentation. Ms. Belicic gave history and information about the Think Apex Awards. She recognized each of the nominees for each category. Ms. Belicic then recognized the top thinker for each category and asked that each come up to receive their award and a picture with the Council. Ms. Belicic thanked all nominees and winners on behalf of the Town of Apex. Ms. Belicic invited all the winners to come up for a group photo.

**Mayor Gilbert** announced a 10-minute recess at 7:07 PM

**Council** returned at 7:17 PM

**[REGULAR MEETING AGENDA]**

A **motion** was made by **Mayor Pro Tempore Gray**, seconded by **Councilmember Zegerman**, to approve the Regular Meeting Agenda as presented.

**VOTE: UNANIMOUS (4-0) - Councilmember Mahaffey absent**

**[PUBLIC FORUM] (NOTE: To view Public Forum and Public Hearing Sign in Sheets, see OTHER-2024-055)**

First to speak was **Beth Bland** of 3724 Friendship Road:

"I just wanted to tell you I felt that the town planning staff did well in their presentation of the Apex Western Big Branch area plan, the 2045 area plan. It was also nice to see a lot of you there and a lot of the staff were there to answer questions and to go over everything. I do have to say that unfortunately none of the three options that were presented works for anything in our neighborhood. So, we are Kill Castle Farm, which is four residential properties and a barn property

1 that has a 15-stall horse barn. We all support that barn, and our covenants don't even allow for our  
2 property to be divided, and our covenants do not expire. I know I've told a number of you that  
3 already, but I just wanted to make sure that I said it here also. Two of the scenarios show a connector  
4 road from Bosco Road going through our neighborhood to connect to Friendship Road, and they  
5 also show our properties being designated as light industrial or commercial use. The third option  
6 shows us as rural transition density, one house per acre which doesn't work when our covenants  
7 don't allow for our properties to be divided. So we as Kill Castle Farm neighborhood have sent our  
8 survey back, as a collective group rejecting the scenarios and asking to remain rural. I also wanted  
9 to point out that Kill Castle Farm is not within the Town of Apex limits and we are not in your ETJ, so  
10 we are Wake County. As an almost 40-year resident, my hope is that some of the Apex that many of  
11 us moved here for which is rural, which you know is land, being able to be out in what I consider to  
12 be you know, the country, but close to a town, can remain and will survive. So, I'm interested in how  
13 the surveys and what will be put out, so I'll look forward to that. Thank you".

14  
15 **Mayor Gilbert** thanked Ms. Bland.

16  
17 Next to speak was **Cynthia Minkov**, owner of 221 North Salem Street:

18  
19 "We greatly appreciate the recent efforts of the Planning staff board and the Town Council to create  
20 additional parking in downtown and to mitigate the impact of the construction process and we are  
21 grateful that our voices have been heard with regards to that mitigation. In new business today on  
22 your agenda, you'll be asked to consider the mitigation plan for the Saunders Street lot construction.  
23 Assuming that the recommendations to the Council are as we discussed in the meeting on March  
24 18<sup>th</sup>, the downtown business owners ask that you listen to the staff, who has listened to the people,  
25 and approve their recommendations for mitigations including the delayed start of the Saunders  
26 Street lot construction for after the holiday season of 2024. At the Town Council meeting on  
27 February 27<sup>th</sup> where the zoning was approved, I heard several of the Council members say, 'I just  
28 want to get this done', well guess what, it's not about you, it is about the business owners who urged  
29 the creation of the downtown plan in the first place, and the constituents who will benefit from it.  
30 Neither of them will benefit from less parking during the holiday season and we've already talked  
31 about why. You can spin the parking availability numbers any way you want to make it look like  
32 parking won't be an issue, but it will be. Some of you said, 'Well we can't guarantee that it won't  
33 impact the holiday season in 2025, we might as well just start in June anyway', no you can't  
34 guarantee it, but at least it's more likely. Plus, you in this case, will be the customer of the contractor.  
35 You should be in the power seat. The comments I heard at Town Council meeting suggested that  
36 the contractors were in charge. With good planning, a good contractor and a mutual understanding  
37 of expectations, this project can be completed between January and August of 2025. Thank you for  
38 your time."

39  
40  
41 Next to speak was **Dawn Cozzalino** of 3632 Bosco Road:

42  
43 "Good evening. It was very refreshing to see the Town Council and the staff at Western Big Branch  
44 open house, really do appreciate that, thought they were well run, it was a positive vibe with the

1 engagement, one-on-one, and it was very important that we had the community engagement.  
2 However, I just want to point out that we again had input from other members that are not part of  
3 our community involved in the process, so that would be my hope in the future, that we could can  
4 just limit really the input to the specific area of the study or the group or the progress in the planning  
5 directives so that it is not open to others that do not live in the area that are not impacted in the  
6 community. As Beth had mentioned, our community has rejected all the options that were put forth.  
7 Some of them it's just really hard to understand, it's very frustrating to see a road through 30  
8 properties when there's no roads of that mass there today. It's a rural community, it's a historic farm  
9 community. It seems that the 3 options are more following a city footprint, so this is very common for  
10 Apex, to kind of use that same look and fell, but we are a rural community and there needs to be a  
11 good transition between us and the bordering communities. We respect the environment, we  
12 respect our trees, we are a critical watershed. We have a lot of complementary businesses to the  
13 area; dog training, horse stables, training, wedding events, koi-fish, could list a dozen of those  
14 businesses contributing to the economy of North Carolina as well as employing many different folks  
15 involved in the agricultural industry: farriers, vets, feed, you know, you name it. So, we are  
16 supporting it two ways, we are giving and we are also supporting those that are supporting us, and  
17 we love our community. Our intentions by responding to the survey were to show you that we want  
18 things to remain rural, we want to be a rural community, that's our identity, and that's what makes us  
19 very, very unique. Thank you very much."

20  
21 **Mayor Gilbert** thanked Ms. Cozzalino

22  
23 Next to speak was **Lama Wafa:**

24  
25 "I'm a Palestinian American and a proud member of the party for Socialism and Liberation, PSL. I  
26 come before you with a heavy heart. We are in the sixth month of Israel's genocidal war on Gaza.  
27 Palestine may seem far away, it may seem unrelated to our lives in North Carolina, but as we sit in  
28 relative safety her in Apex, a genocide is being financed in Gaza with billions of our tax dollars. As  
29 community members, we have to keep raising our voices and say not in our names and not with our  
30 tax dollars. Israel is acting in complete defiance of the international court of justice which has  
31 ordered that Israel take immediate and effective measures to enable the provision of urgently  
32 needed basic services and humanitarian aid. Israel is enacting collective punishment on the entire  
33 population of Gaza, one of the hallmarks of genocide. Israel has mercilessly bombed hospitals killing  
34 sick and injured people, cancer patients, the elderly and newborn babies, along with their mothers.  
35 Israel has massacred lines of people who were waiting for food rations, so their families didn't have  
36 to eat bold grass at least one meal. Israel also killed humanitarian workers in a measure for flagrance  
37 that the Biden Administration has started to change its own tone with Israel. This is just a glimpse  
38 into the suffering inflicted upon the Palestinian people since the start of this war, tens of thousands  
39 of Palestinians have been murdered and more than 77 thousand have been injured. Israel has shown  
40 no signs that it is going to stop. How much more of this do we need to witness until we say enough?  
41 In the words of Dr. Martin Luther King, Jr., there comes a time when silence becomes betrayal. As  
42 Israel commits genocide every moment and complicity is another drop of blood in our hands. It is  
43 sinful for us to sit around and do nothing as Israel continues to commit atrocities. It is our duty as  
44 citizens of a country of plenty, where we have a right to freedom of speech, and we have so many

1 resources to use our platforms and whatever power we have to call for a ceasefire to stop funding  
2 Israel's atrocities and demand an end to the colonial occupation of Palestine. This conflict did not  
3 begin on October 7<sup>th</sup>, this war is a result of the 1948 Nakba where 75 years ago, Israel expelled  
4 750,000 Palestinians from their homes and villages and killed tens of thousands of Palestinians. This  
5 war is the result of 75 years of opposition, 75 years of a hellish apartheid system and of almost two  
6 decades of siege, isolating Gazans from the world and depriving it of necessities like food, water and  
7 medicines and defines of international law and of presidents set at Nuremberg after World War II.  
8 Israel is attempting to erase Palestine by committing genocide in full view of the world. Under these  
9 circumstances calling for a ceasefire is the bare minimum. A ceasefire is only a humanitarian  
10 measure to end Israeli's mass killing in Gaza. Members of the Apex Town Council, I ask you to follow  
11 the leads of millions around the world, including many thousands in our country and state who  
12 continue to stand in solidarity with the Palestinian people. I ask for you to show that we care about  
13 human rights and won't stand for genocide. Our Town Council should say loud and clear, ceasefire  
14 now!"

15  
16 Next to speak was **Alexis Kennedy** of 106 Buck Haven Court.

17  
18 "Good evening, Council members, tonight I would like to talk to you about the things that I have  
19 learned about in the last 185 days. While I'm a scientist by profession, I have the heart of a historian.  
20 As a child I would read deeply into history, always wondering why, why would people not step in for  
21 what is right. I read into the 20<sup>th</sup> century genocides, Rwanda, Native Americans, my own people, the  
22 Mayans in Guatemala, genocide in Bengal India during World War II caused by the British and then  
23 of course the genocide that all of us learned about, the Holocaust, and I thought, why did these go  
24 on for so long? Why did people allow 6 million, 7 million, 8 million, 9 million people to die and I  
25 think it's because people didn't want to cause ripples, they want to put their heads down, do a good  
26 job and keep their families safe. Our society has designed a self-survival. When you stand up to the  
27 government, you also have to stand up to family members and it causes ripples. This causes fights  
28 internally, myself included. People don't want to break the status quo, it's easier to stay in your lane  
29 or ignore it because at least it's not happening to you. Or the hardest one, which is to acknowledge  
30 you actually have a heavy hand in these atrocities, indirectly or directly. We have to dig deep and  
31 think about how our lifestyle is built on the backs of oppression and slaughtering of people, and  
32 that's a really hard thing to think about. How do you make those right and I think I've learned in these  
33 last 185 days that there is a way to make it right, that's by, when you see another group being  
34 oppressed the way many of the people in this room's own family members were oppressed, if they  
35 were Irish, if they were Jewish, if they were Muslim, if they were African-American, if they're Latin  
36 American, we all have history of oppression and the only way to right the wrongs of the world, past  
37 and present, is to protect the people that are being oppressed now, that are being murdered in  
38 their own homes day in and day out with erasure of their culture. I am the daughter of two genocides  
39 and the product of a political coup. As a child, I would dream about how I could have saved my  
40 family or rescued the ones lost in mass murder, but that's all I can do, is dream, but here now I can  
41 be part of a movement that saves the lives of Palestine and other countries like the Congo and  
42 Sudan. Every person has their place in this complex puzzle called the world and here in Apex are  
43 starts with supporting a permanent ceasefire in Palestine. Putting humanity first, rehumanize the lives  
44 that have been dehumanized, people are not numbers, children especially are not numbers, and as



1 14,000 children's lives are gone, we can't get them back, but we can protect the children that are  
2 alive and stop Israel's slaughter, every minute counts. Thank you."

3  
4 **Mayor Gilbert** thanked Ms. Kennedy.

5  
6 Next to speak was **Phil Welch** of 1471 Big Leaf Loop:

7  
8 "First, I thank you for responding to my request a year ago to support Apex's first home repair fair.  
9 Some of you helped spread the word in our neighborhoods, many of you showed up in person at  
10 the fair, your support definitely made the difference. This year the Community Development and  
11 Neighborhood Connections Department is organizing Apex's first full scale housing fair. Its purpose  
12 is to provide existing and aspiring community members with the opportunity to learn about all  
13 things related to housing such as, preparing for home ownership, available resources for first time  
14 home buyers, affordable rental housing options, home rehabilitation programs, housing policy, fair  
15 housing, homelessness prevention, and more. Participating providers will include Rebuilding  
16 Together of the Triangle, resources for seniors, North Carolina Housing Finance Agency, Wake  
17 County's Housing Affordability and Community Revitalization Department, the Town of Apex,  
18 Habitat Wake and many more, about 30 in all. There will be new activities this year as part of Think  
19 Apex Day, which is the same day, volunteers can participate in a supervised project doing minor  
20 home repairs in the Apex Community under the direction of our partner Rebuilding Together of the  
21 Triangle. Also, workshops will be presented on preparing for home ownership by the Truist Bank  
22 and Fair Housing and tenants' rights presented by the North Carolina Human Relations Commission.  
23 The housing fair will be held on Saturday, April 27<sup>th</sup> from 9:00 a.m. to 1:00 p.m. in our beautiful  
24 Senior Center. Once again, I ask for your help in publicizing this community wide event and please  
25 consider stopping by that morning to learn more various housing assistance programs available to  
26 our residents. Together we can help ensure that the peak of good living begins with the opportunity  
27 for all of our residents and essential workers to have their choice of a variety of safe, good quality  
28 homes that cost less than a third of their household incomes. Thank you."

29  
30 **Mayor Gilbert** thanked Mr. Welch.

31  
32 Next to speak was **Daniel Kahana**.

33  
34 "I'm coming here from Durham because of the lies that have been said. As you can see in the graph  
35 over here this the genocide that happened in Rwanda, the number go down, over here this is the  
36 genocide that happened right now for the Muslim in China, the number go down. This is the Jews,  
37 they never come back to the number pre-World War II. You say that those numbers over here when  
38 you see the Arabs in Judea and Samaria, Gaza strip and in Israel, because we have 2 million Israeli  
39 Arabs, increase their numbers by 5 times, it is not a genocide guys, this is a lie, this is just a pressure  
40 that they go and into City Council in order to pressure Israel to stop the war against Hamas, because  
41 Hamas started war on October 7, that he put his end to it, so they grow five times more. Even if you  
42 believe the number of Hamas run Administrative of Health, which is 32,000, they didn't was right  
43 about the numbers, which extremely fabricate the number, the ratio of terrorist vs. civilians is one to  
44 1.5. This is the lowest ratio in warfare in modern. We are talking in open area, 1 to 1.5, this is the

lowest record, better than Afghanistan, better than Iraq. So, one thing you would not hear from those people, the word peace. Those people represent the approach of the Palestinian groups of terror which they had opportunity after opportunity to create peace in the Middle East, all of those ones they said no to all of those instead, they go ahead and put a price tag on my head and on my Jewish family. Every people that they kill, they pay by the like the months that Israel gave them or years of penalty in the prison. They pay attribute for the death of my people and it's time to say this, Jews, as our name suggested, come from Judea. It's in the old in the Quran in the new testimony, in the old Bible. We come from Israel. Judea, those people that come over here and says that we are not native, this is far from the truth. These are the citizens of Gaza, I put over here a QR code for you guys to see that yourself, they are demanding that Hamas will leave them. Video after video, you can see them beg about Hamas to leave them. Why? Cause they steal their humanitarian aid, he give it to the terrorist first, then he sell it in the black market to make more money on the poor people. The leaders of Hamas sit in Qatar with \$11 billion, you want to tell me that with \$11 billion, you cannot create Society? No, they can, there is a better future for the Middle East and it's not with Hamas. Thank you very much."

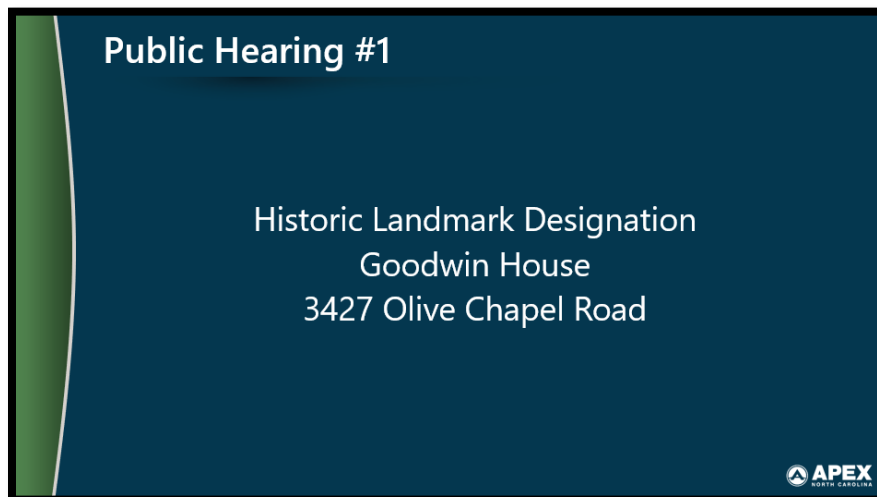
**Mayor Gilbert** thanked all that came out to speak.

## **[PUBLIC HEARINGS]**

### **PH1 3427 Olive Chapel Road - Historic Landmark Designation - Goodwin House**

**Liz Lofton**, Senior Planner gave the following information regarding 3427 Olive Chapel Road - Historic Landmark Designation - Goodwin House.

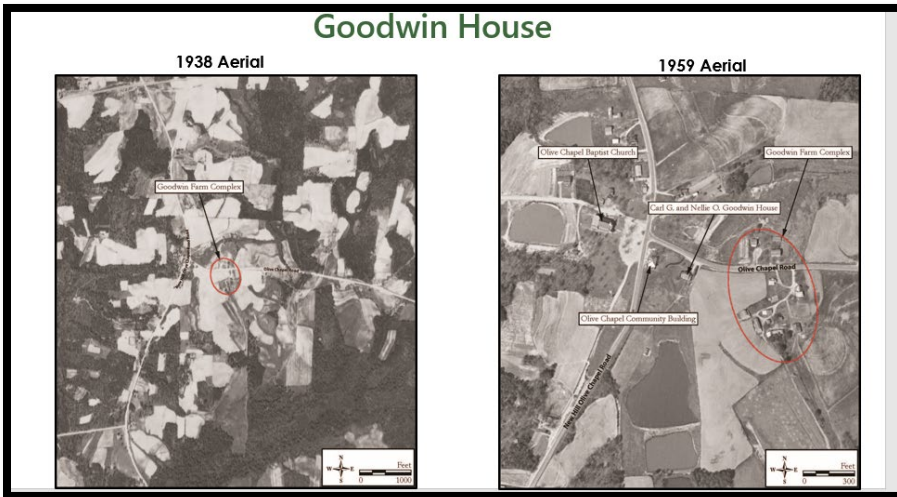
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4 **Jeremy Brad**, Preservation Specialist, Calvary Preservation gave more information and  
5 history.

6 **Jeff Hastings**, Wake County Historic Preservation Commission, Vice Chair presented the  
7 official recommendation to the Council.

8 **Mayor Pro Tempore Gray** said it was important to preserve history, as it gave a reminder of  
9 how far we've come and a milestone for where we are going. He thanked everyone for bringing this  
10 property to their attention.

11 **Mayor Gilbert** then opened up the public hearing. With no sign ups, he closed public  
12 hearing and moved discussion back to Council.

13  
14 A **motion** was made by **Councilmember Killingsworth**, seconded by **Councilmember**  
15 **Gantt**, to approve the Historic Landmark Designation for 3427 Olive Chapel Road - Goodwin House.

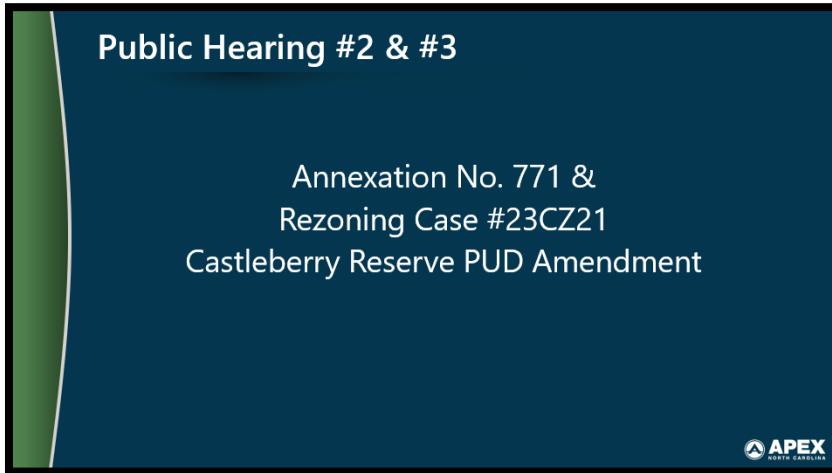
16  
17 **VOTE: UNANIMOUS (4-0), with Councilmember Terry Mahaffey absent**

18  
19  
20 **PH2 Annexation No. 771 - Castleberry Reserve - 13.52 acres**

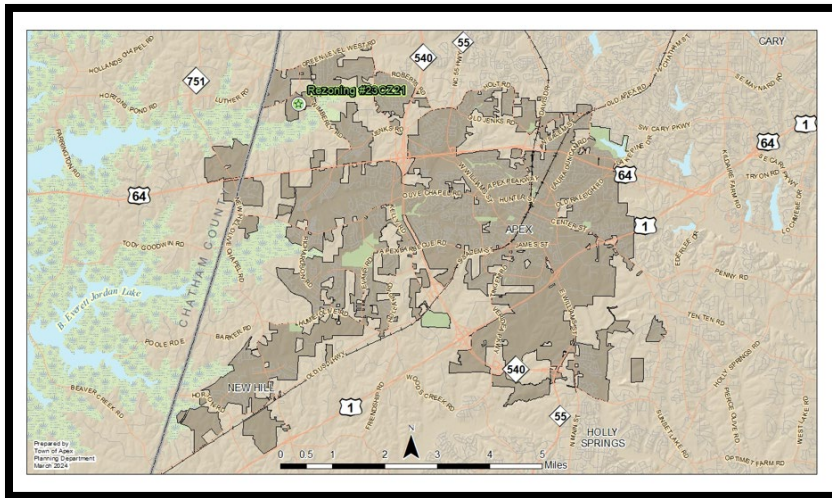
21 **June Cowells** gave the following information regarding Annexation No. 771 - Castleberry  
22 Reservation - 13.52 acres.



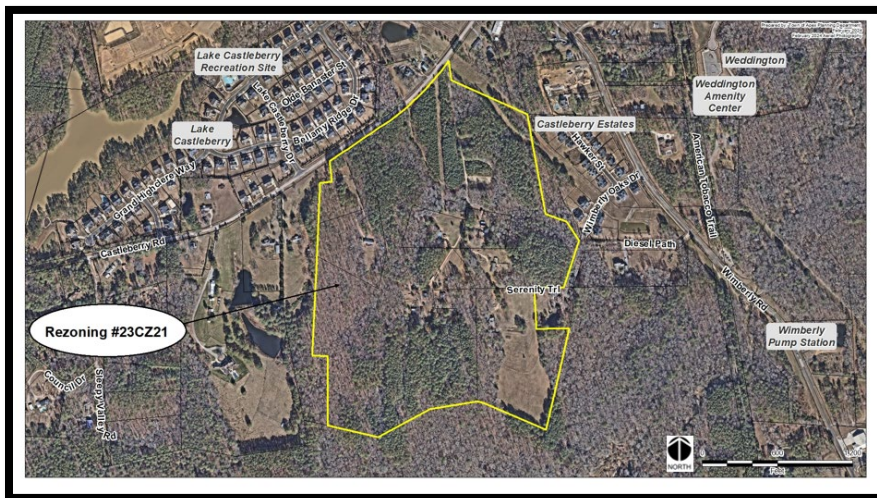
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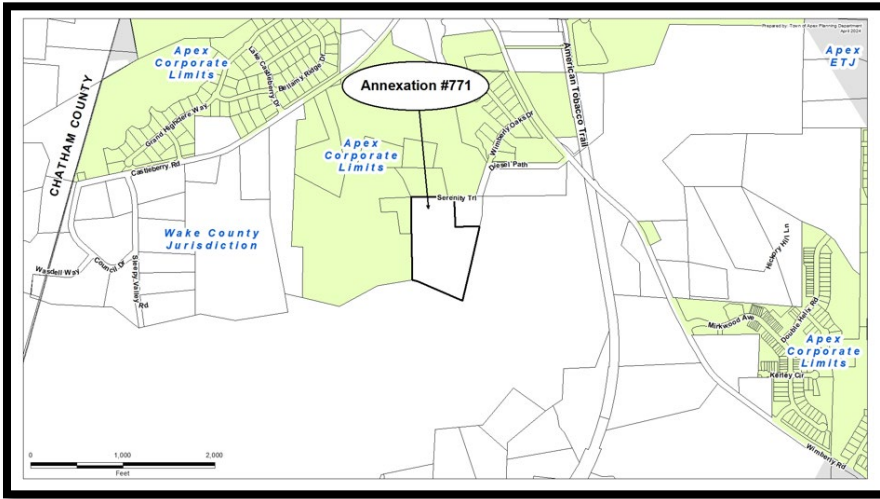


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6 [SLIDE-3]

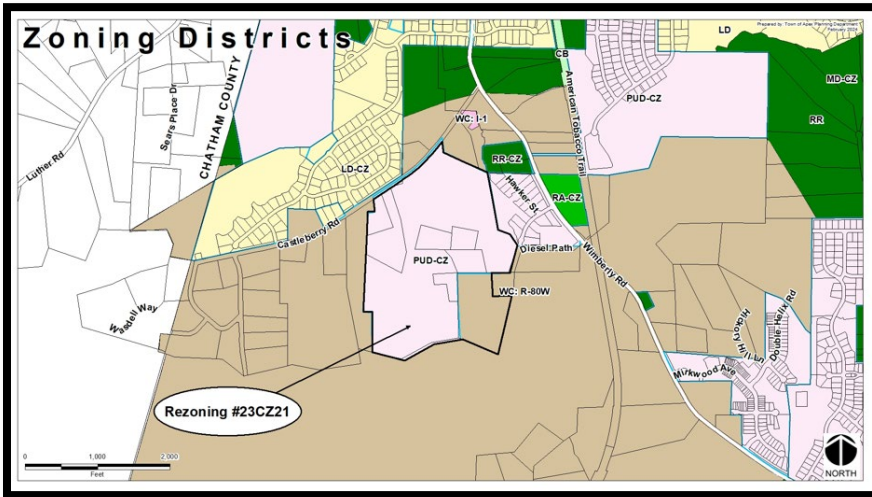


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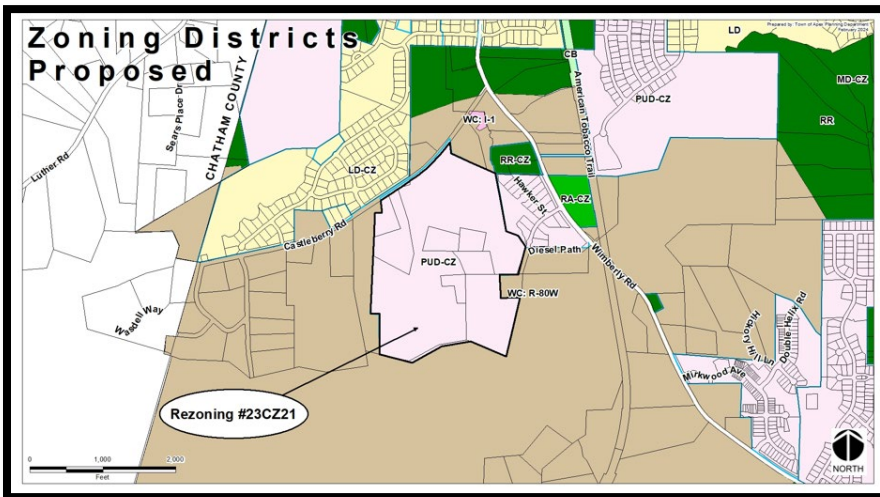
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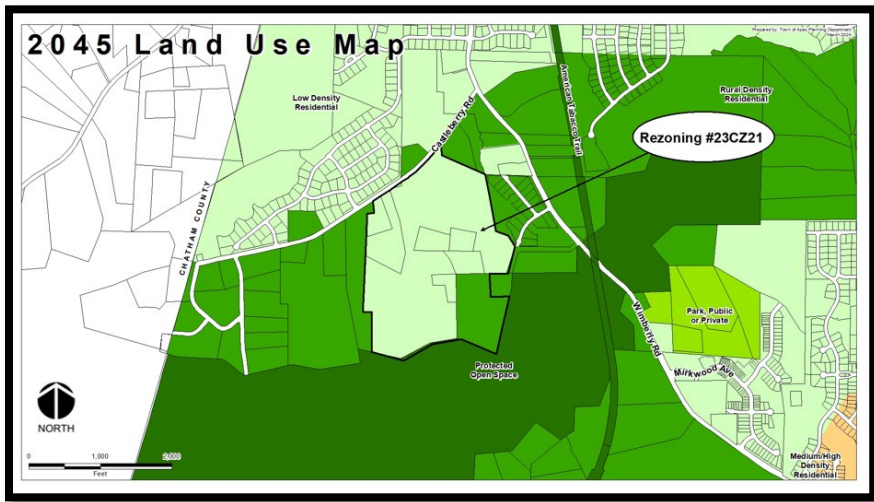
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4 [SLIDE-5]



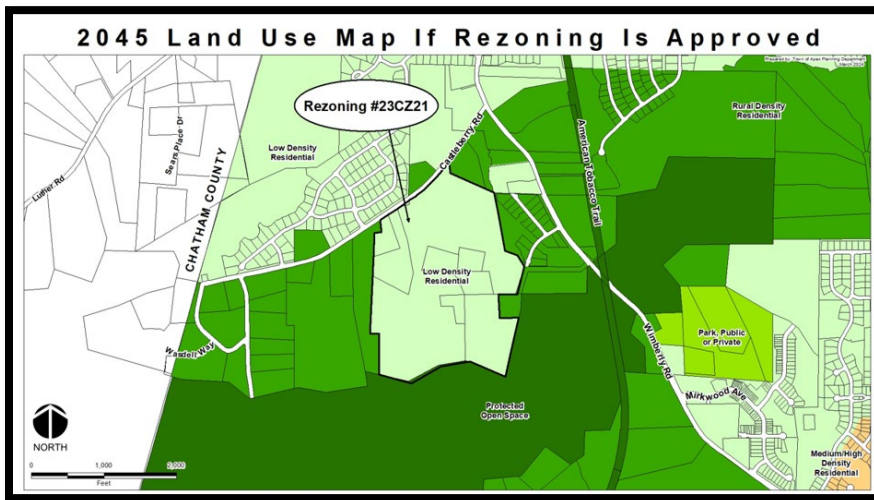
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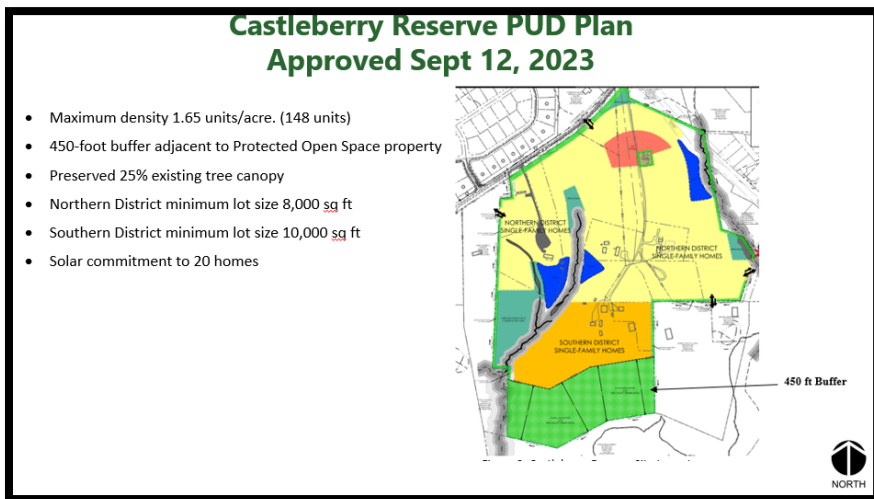
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[SLIDE-10]

**Castleberry Reserve PUD Plan  
Approved Sept 12, 2023**

Upgrade the existing American Tobacco Trail and Wimberly Road Crossing:

- High visibility crosswalk markings and signs.
- Install a push button rectangular rapid-flashing crosswalk beacon system



[SLIDE-11]

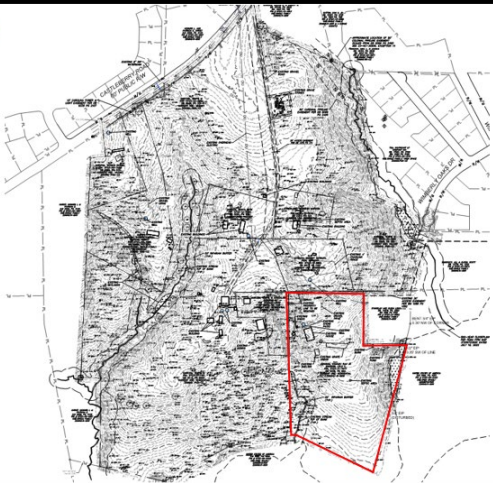
**Castleberry Reserve PUD Plan  
Approved Sept 12, 2023**

- Castleberry Road 2-lane roadway. Install grassed swale and a 5-foot sidewalk south of the grassed swale.
- Construct a 5-foot wide offsite sidewalk along the adjacent property to the existing Lake Castleberry Drive. If the developer cannot attain necessary offsite ROW and/or easements, a fee in lieu for the cost of the sidewalk.



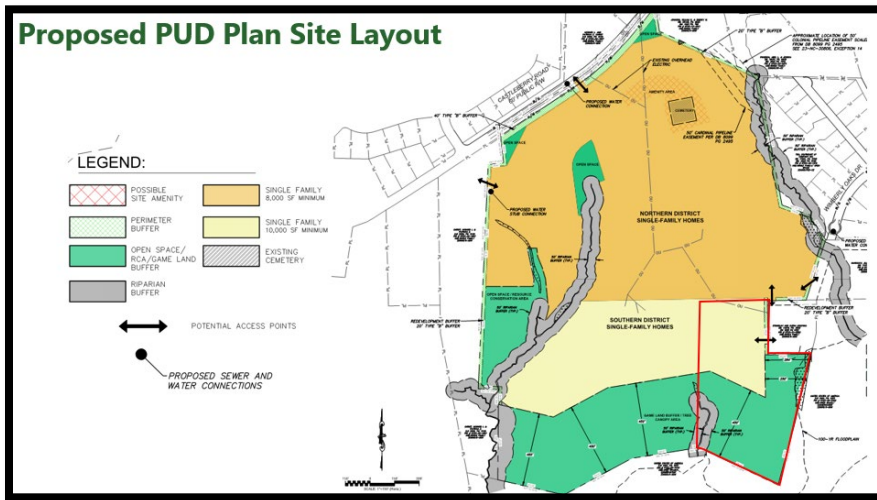
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**Existing Conditions**

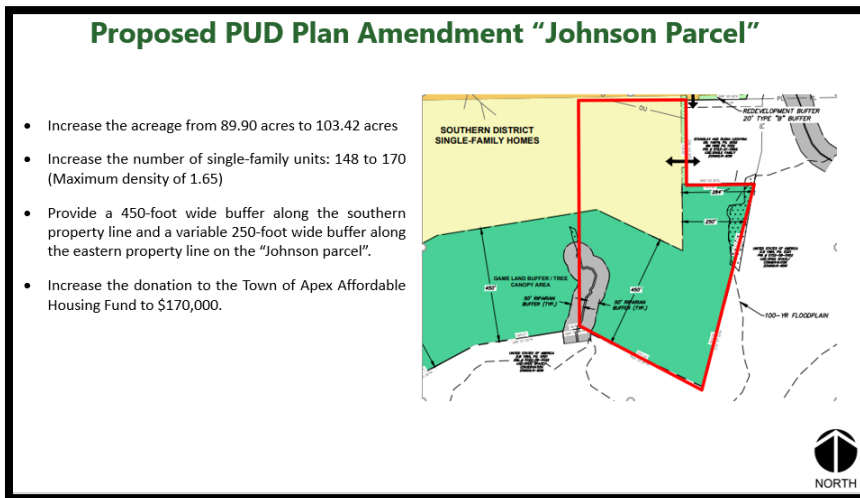




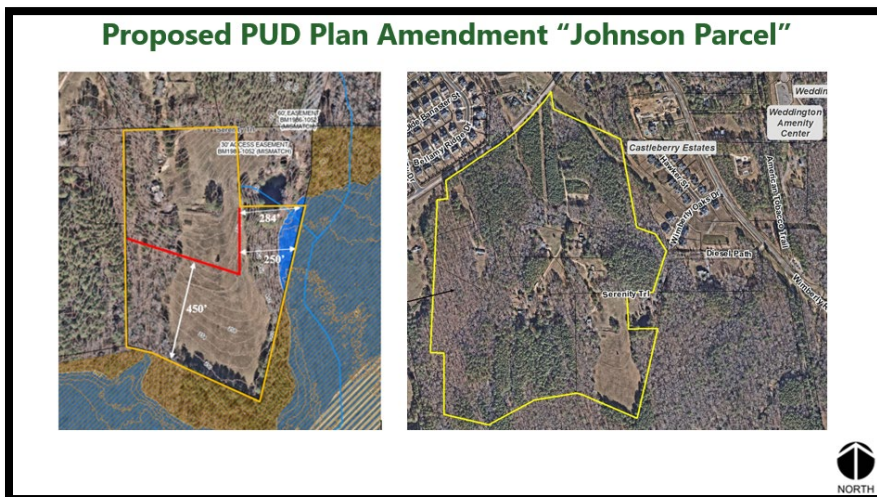
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### Recommendation for Approval of Castleberry Reserve PUD Plan Amendment Rezone

While not consistent with the current Rural Density Residential classification on the 2045 Land Use Map, staff is able to support the rezoning for the following reasons:

- The "Johnson Parcel" includes the 450-foot wide buffer along the southern property line adjacent to the protected Open Space which is consistent with the approved Castleberry Reserve PUD Plan.
- The "Johnson Parcel" includes a variable 250-foot wide buffer along the eastern property line adjacent to the protected Open Space.
- All approved PUD Plan uses and development standards would apply to the "Johnson Parcel".



5  
6 **Matthew Carpenter** of Parker Poe, on behalf of the applicant, gave the following  
7 presentation.

8 **Mayor Gilbert** then opened up the public hearing. With no sign ups, he closed public  
9 hearing and moved discussion back to Council.

10 **Mayor Pro Tempore Gray** said he had an opportunity to watch the Planning Board meeting,  
11 and there were questions. He said that all those questions were vetted out and a lot of questions  
12 were answered during that component. He said he appreciated the staff highlighting a number of  
13 those items. He said it is a great example of how the Planning Board was very skeptical the first time  
14 it came around, and they made the adjustments as necessary. He said that there were some  
15 conversations with Council, and he felt like a lot of what those concerns were being reflected again  
16 within this application, so he felt good about being able to recommend this and thought that the  
17 vetting done by the Planning Board helped Council come to a better conclusion.

18 **Councilmember Zegerman** said that he disagreed. He said he didn't like this development  
19 the first time it came around, and he still doesn't like it. He said it's not that he didn't appreciate all  
20 the concessions that the developer had made but based on the requests and plan feedback back in

1 September. He said he appreciated the 450-foot buffer and the extended buffers along the sides of  
2 the property, he said he wished they were not building it right here. He said that it validated what he  
3 had warned about which was if we rezone the first property, all the other dominoes are going to fall,  
4 and this is the scenario playing out. He said, again, he appreciated a lot of the work that both staff  
5 and the applicant have put into this, but he still could not support this because this is not in line with  
6 the land use designation for this area. He said he believed that they should not have supported the  
7 first land rezoning, but they did. He said he was going to stand with his previous vote and would not  
8 support this.

9 **Councilmember Killingsworth** said that she would make a comment about affordable  
10 housing. She said going from building affordable housing to going to just contributions are a step  
11 backwards from where this needs to go. She said increasing from 148 to 170 total units, increasing  
12 from 2 to 3 affordable units would be what she would like to see for her to support this.

13 **Mr. Carpenter** said that he thought they would feel comfortable moving from two to three  
14 affordable units if that would help.

15 A **motion** was made by **Councilmember Gantt**, seconded by **Mayor Pro Tempore Gray**, to  
16 approve Annexation No. 771 - Castleberry Reserve.

17  
18 **VOTE: 3-1, with Councilmember Zegerman dissenting, and Councilmember Terry**  
19 **Mahaffey absent**

20  
21 **AND**

22 **PH3 Rezoning Case No. 23CZ21 Castleberry Reserve PUD Amendment**

23 **June Cowells** gave the following information regarding Rezoning Case No.  
24 23CZ21 Castleberry Reserve PUD Amendment.

25 **Matthew Carpenter** with Parker Poe gave a presentation regarding Rezoning Case No.  
26 23CZ21 Castleberry Reserve PUD Amendment.

27 **Mayor Gilbert** asked if there were any questions for Mr. Carpenter.

28 **Mayor Gilbert** then opened up the public hearing. With no sign ups, he closed the public  
29 hearing and moved discussion back to Council.

30  
31 A **motion** was made by **Councilmember Gantt**, seconded by **Mayor Pro Tempore Gray**, to  
32 approve Annexation No. 771 - Castleberry Reserve, and Rezoning No. 23CZ21 - Castleberry Reserve  
33 PUD Amendment, with the added condition of increasing the number of affordable housing units  
34 from 2 to 3.

35  
36 **VOTE: 3-1, with Councilmember Zegerman dissenting, and Councilmember Mahaffey**  
37 **absent**

38  
39 **PH4 Annexation No. 778 - Parc at Bradley Farm - 6.69 acres**

40 **Director Khin** gave the following information regarding Annexation No. 778 - Parc at Bradley  
41 Farm - 6.69 acres.

42  
43 **[SLIDE-1]**

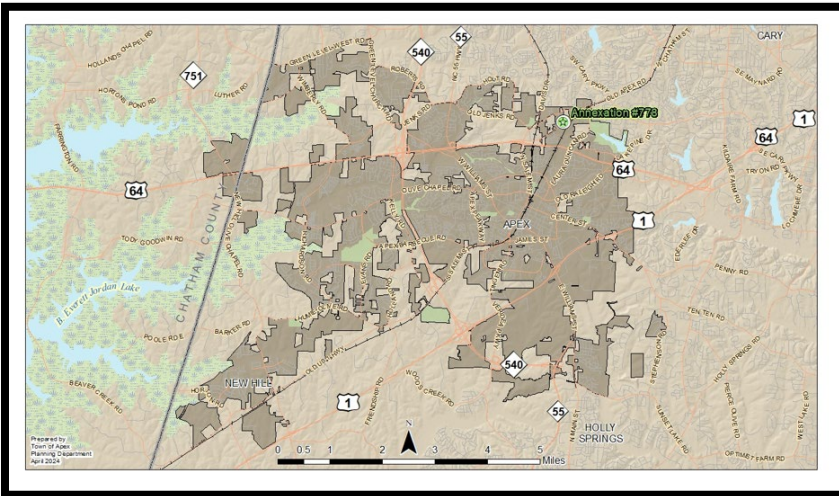


## Public Hearing #4

### Annexation No. 778 Parc at Bradley Farm



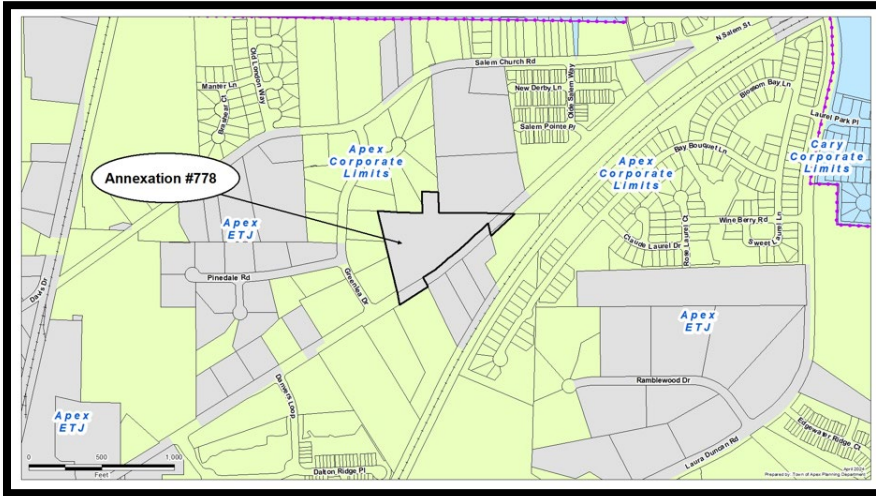
[SLIDE-2]



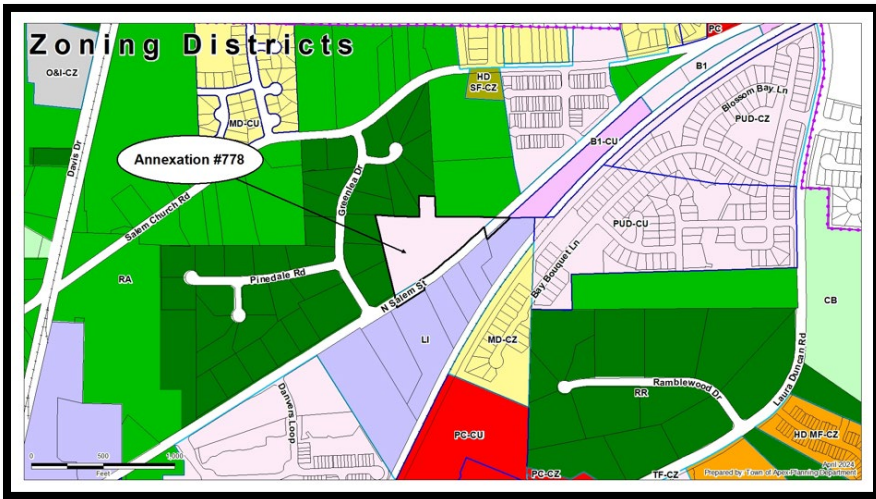
[SLIDE-3]



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6 **Mayor Gilbert** then opened up the public hearing. With no sign ups, he closed the public  
7 hearing and moved discussion back to Council.

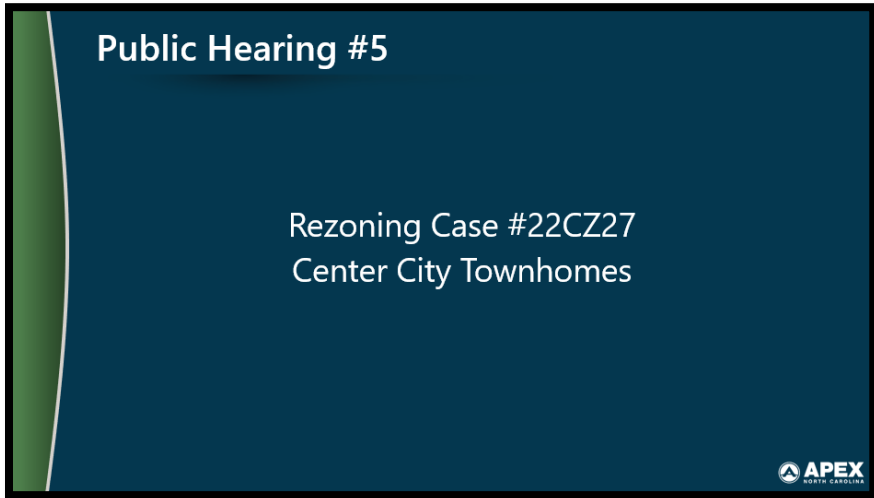
8  
9 A **motion** was made by **Councilmember Killingsworth**, seconded by **Councilmember**  
10 **Zegerman**, to approve Annexation No. 778 – Parc at Bradley Farm – 6.69 Acres.

11  
12 **VOTE: UNANIMOUS (4-0), with Councilmember Terry Mahaffey absent**

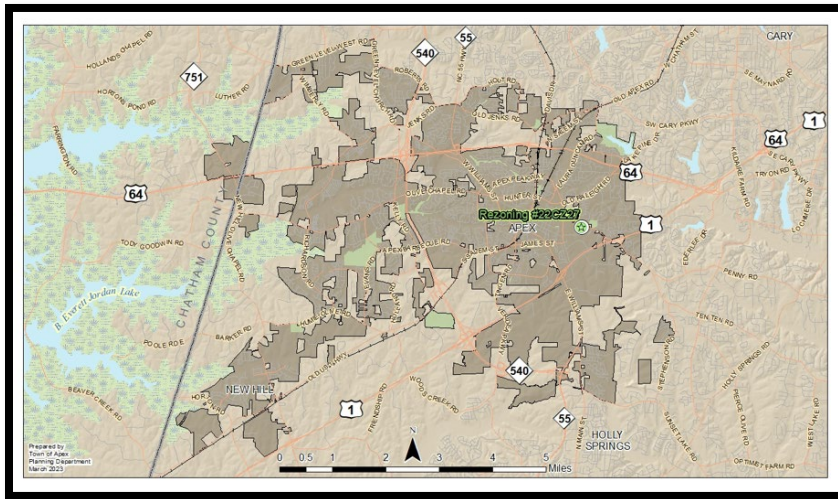
13  
14  
15 **PH5 Rezoning Case No. 22CZ27 Center City Townhomes**  
16 **Lauren Staudenmaier**, Planner II gave the following information regarding the Rezoning  
17 Case No. 22CZ27 Center City Townhomes.



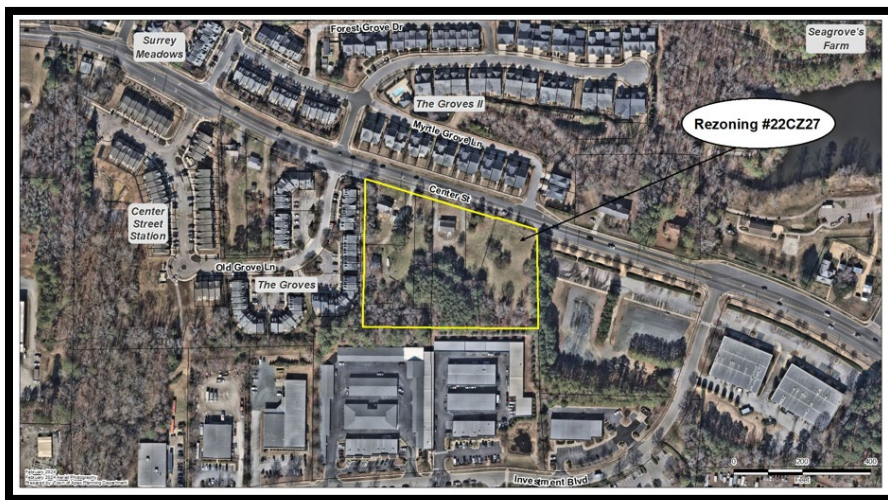
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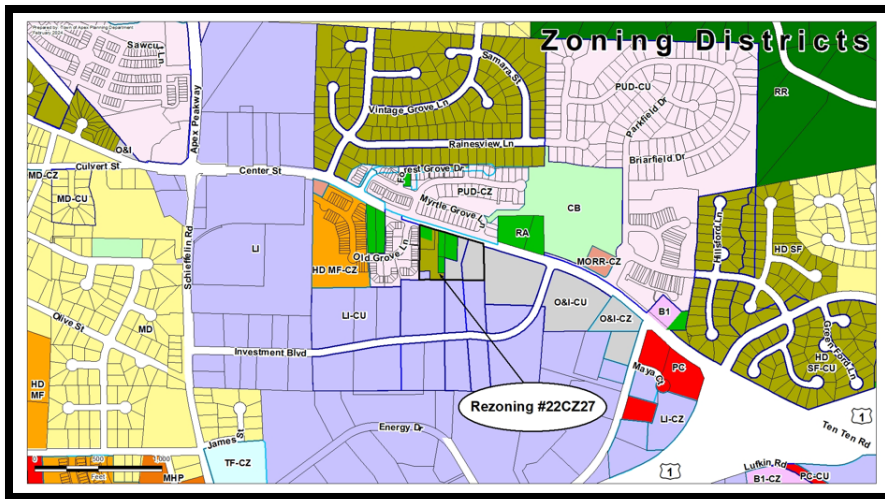
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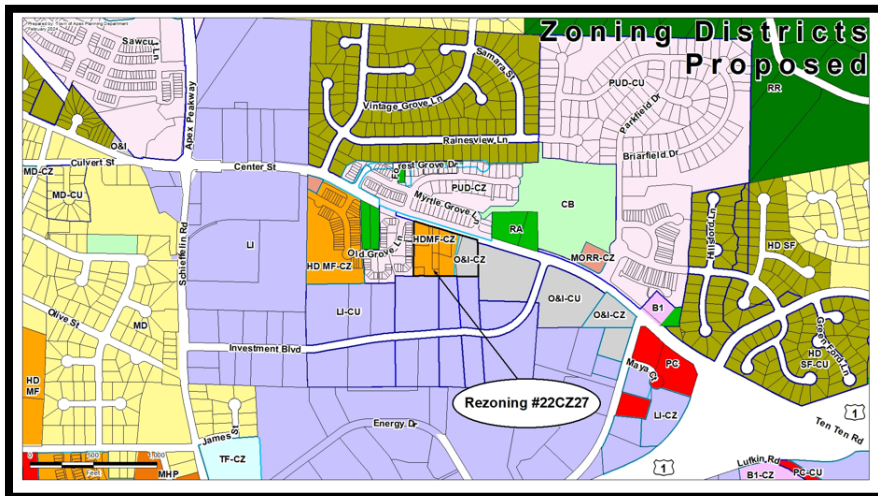
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6 [SLIDE-3]



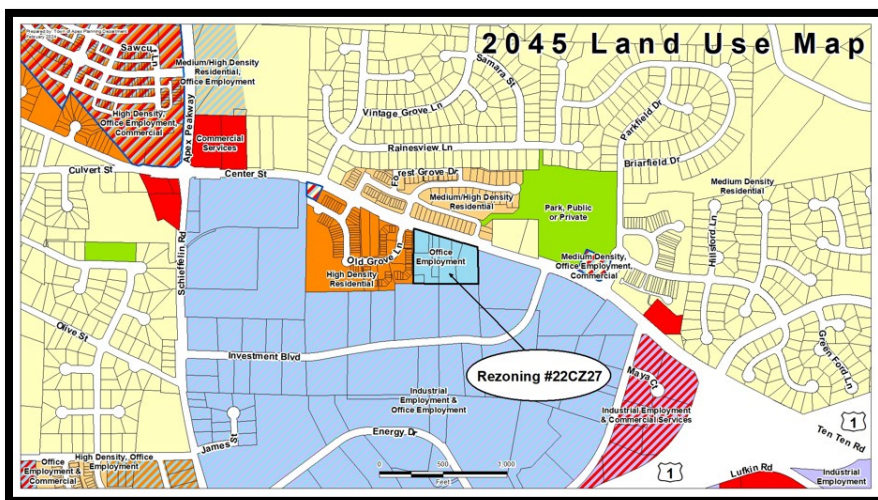
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8 [SLIDE-4]



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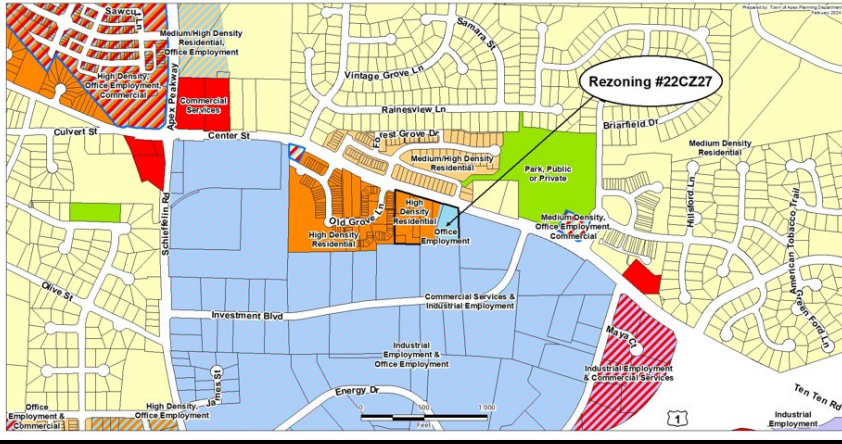
[SLIDE-6]



[SLIDE-7]



## 2045 Land Use Map If Rezoning Is Approved



[SLIDE-8]

## Proposed Uses

### Uses in the HDMF-CZ District

1. Townhouse
2. Park, passive
3. Greenway
4. Recreation facility, private
5. Park, active
6. Utility, minor

### Uses in the O&I-CZ District

1. Park, passive
2. Greenway
3. Park, active
4. Barber and beauty shop
5. Utility, minor
6. Office, business or professional
7. Publishing office
8. Personal Service %
9. Printing and copying service
10. Real estate sales
11. Pharmacy %
12. Studio for art
13. Tailor shop
14. Pet services
15. Health/fitness center or spa
16. Financial institution
17. Floral shop

[SLIDE-9]

## Proposed Conditions

- Maximum of 30 dwelling units proposed
- Provision of at least one (1) affordable housing townhouse ownership unit
  - initial sales price based on the 100% Area Median Income (AMI), adjusted for family size
  - minimum affordability period of 10 years
- The landscape buffer along the N/F Calvary Chapel Cary, Inc. property may be reduced to 20' to provide public street access to Center Street for alignment with Myrtle Grove Lane.



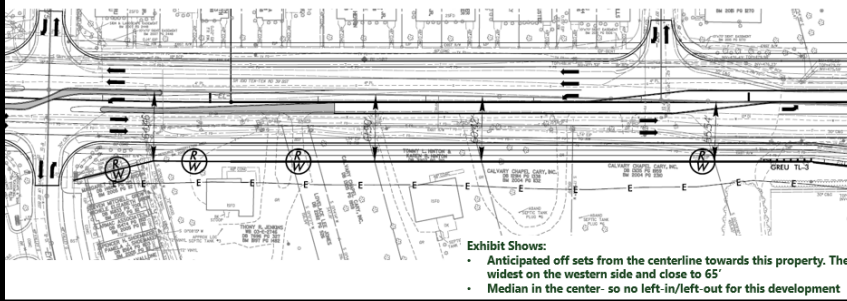
1 [SLIDE-10]

## Proposed Conditions

- Construction and dedication of a public residential street from the intersection of Myrtle Grove Lane at Center Street to the residential parcel(s) is required for the first residential subdivision plat.
  - No additional access points to Center Street shall be permitted.
  - The length of a public street cul-de-sac may be permitted to exceed the requirements of the UDO in order to facilitate the limited access onto Center Street from the subject property.
- Subject to approval by NCDOT and the Town, a 5' concrete sidewalk shall be constructed across the property's Center Street frontage in compliance with Town sidewalk standards.
- A stub street shall be provided on the eastern boundary of the subject property adjacent to Calvary Chapel.

2  
3 [SLIDE-11]

- Development shall include right-of-way dedication of 55 ft from the centerline of Center St and thoroughfare frontage widening consistent with the Town's adopted Transportation Plan (and Apex's UDO, including applicable fee-in-lieu provisions) and typical section for a 4-lane, median divided thoroughfare.
- At the time of construction drawing approval, the applicant shall be required to dedicate additional right-of-way for Center Street consistent with the latest available plans for the DOT Widening Project, subject to the following: the buffer along Center Street required for development of the property shall be reduced on a one-for-one basis for each foot of additional right-of-way needed for the DOT Widening Project, but in no case shall be less than 15' in width.

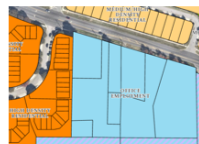


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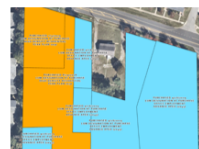
Peak Plan 2030 that was adopted on August 6, 2013 showed the future land use classification as High Density Residential on the west and Office Employment on the east.



Advanced Apex: The 2045 Land Use Update was approved on February 5, 2019. With the approval, all properties were designated as Office Employment.



When the parcels were purchased by Michael Funari and/or Equity Trust Company FBO Michael Funari, the future land use designations were a mix of plans. (Purchase dates were 2018 & 2019)



1 [SLIDE-13]

### Transportation Concerns

- Staff recommended the applicant dedicate right-of-way and easements consistent with the latest-available design of State Transportation Improvement Program (STIP) project U-5825, Improvements to Ten Ten Road. The applicant has addressed this recommendation with a proposal to reduce the buffer along Center Street.
- Applicant proposes that the cul de sac length may exceed that allowed by the UDO.
  - Additional access points to Center Street are not recommended by staff based on the available street frontage and are excluded from consideration by the proposed zoning conditions.
  - Access may be restricted to right-in/right-out when Center Street is widened and a median is constructed by NCDOT in STIP project U-5825.

2  
3 [SLIDE-14]

### Recommendation for Denial of Rezoning #22CZ27 Center City Townhomes

- The HDMF-CZ district is not consistent with the 2045 Land Use Map.
- The change from Office Employment to High Density Residential affects the economic development potential of the area as it would reduce the amount of land available for Tech Flex and/or Office & Institutional near the Investment Boulevard office and industrial park.
- The residential properties would be adjacent to properties zoned Light Industrial and if the Light Industrial properties redeveloped in the future to a higher Light Industrial Land Use Class there could be potential issues and hazards.
- Reduced buffers when NCDOT widens Center Street.
- No connectivity to the residential development to the west.
- Future access will be right-in/right-out due to the future median location and cross access through the Calvary Church's parking lot to reach Investment Boulevard would be advantageous.

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2 **Councilmember Gantt** asked Ms. Staudenmaier why there wasn't a stub road made to the  
3 development from the development to the West originally.

4 **Ms. Staudenmaier** said she was not aware but would find out.

5 **Director Khin** suggested that it may be because it was not a land locked parcel.

6 **Councilmember Gantt** asked if that was normally the policy.

7 **Director Khin** said that they may not have had a Transportation Planner or Transportation  
8 Engineer at the time this was signed.

9 **Ms. Staudenmaier** said that because of the history and not having the future land use maps  
10 and so many changes. She said that it may not have been thought about at the time.

11 **Councilmember Killingsworth** asked how the existing Townhomes would be affected if this  
12 was designated high density.

13 **Ms. Staudenmaier** said that looking at it from a transition purpose from more of a tech flex to  
14 a townhouse, if anything does get redeveloped or developed in the future, it will prohibit any  
15 possible changes that we didn't do for the other townhouses.

16 **Councilmember Killingsworth** said she understands, but there are already properties there  
17 now where there is concern.

18 **Councilmember Gantt** said it would be more people with the concern.

19 **Jason Barron** of Morning Star Law Group, on behalf of the property owners provided  
20 information. He said the proposal for mix use is a combination of town homes and office and  
21 institution spaces. He said the portion of the site that they are seeking to zone for residential is  
22 inconsistent with the towns comprehensive plan. He said a large portion is already zoned for  
23 residential. He said only 2.5 acres he is wanting to zone. He said its not a significant change but  
24 wanted to talk about it since it's not consistent with the plan but also is a case where it fits with their  
25 plan.

26 **Mayor Pro Tempore Gray** asked what was the vision from the non-residential aspect.

27 **Mr. Barron** said that there were a variety of things. He said in the immediate term, they were  
28 working with the owner to relocate the house to the eastern portion of the site or to build something  
29 new and the current owner that is operating a non-residential use of the current house would be  
30 occupying the building that would be constructed or relocated on that site.

31 **Mayor Pro Tempore Gray** asked why in this proposal, for 30 units, there is only 1 at a 100%  
32 AMI.

33 **Mr. Barron** said it is not a large project. He said if they could get 30 units approved, they  
34 would be willing to add a second affordable unit.

35 **Councilmember Killingsworth** asked if that could be made a condition.

36 **Mr. Baron** said yes.

37 **Councilmember Zegerman** asked what the price point was? He said that these were being  
38 classified as affordable.

39 **Mr. Barron** said he was not sure he didn't have a builder at this time. He said without having a  
40 garage the units would be a two-story unit and would be smaller, but at this time he did not know  
41 the exact price point. He said that he would be fine with adding a condition that the 30<sup>th</sup> unit would  
42 be the second affordable unit.

43 **Councilmember Killingsworth** asked if he would be using the same 100% AMI.

44 **Mr. Barron** said yes.

1 **Councilmember Zegerman** asked what was the length of the cul-de-sac.

2 **Mr. Barron** said that he thought they were code compliant but asked Jeff Roach to come up  
3 and give more information.

4 **Jeff Roach**, Peak Engineering and Design, gave information from the presentation. He said  
5 the cul-de-sac was about 520 feet. He said it was a small site, but that they put this in as a condition  
6 in case there were any issues with staff.

7 **Councilmember Zegerman** asked if they were anticipating any non-vehicular connection  
8 from the cul-de-sac to the sidewalk along Center Street.

9 **Mr. Roach** said yes, the cul-de-sac will come up and hit up against the buffer and there will  
10 be lots on the left and right and then a sidewalk connection that is shown on the sketch plane going  
11 right up against the buffer right up to Center Street.

12 **Mayor Gilbert** then opened up the public hearing. With no sign ups, he closed the public  
13 hearing and moved discussion back to Council.

14 **Councilmember Zegerman** said he was conflicted. He said that with there would be only  
15 one point of ingress and egress for street access. He said that he felt like that would be setting up a  
16 problem down the road for coming in and out of the development. He said it is a relatively small site,  
17 but knowing the current 2045 land use plan that this is classified as light industrial and where we are  
18 with our tax base and the regression of the balance between commercial property and tax base and  
19 currently seeing a regression in the balance between commercial property tax and residential  
20 property tax, and it going the wrong way, he said he would like to see more commercial property  
21 tax. He said the little bit of industrial space that we are sacrificing to residential development was not  
22 helping. He said that moving toward a bedroom community wasn't helping to solve the problem. He  
23 said that he sees that what was proposed is probably the best that can be done on this site given  
24 that the site towards the east being available. He said that in a high-density area you expect this  
25 along a transit route would good, but with this the inconsistency with the land use map and the  
26 future transportation consideration gives him some pause.

27 **Councilmember Killingsworth** said she said that if this was a big parcel that she would have  
28 pause, but this is not a huge parcel. She said that it is her understanding that this is not light  
29 industrial but office employment for this particular parcel. She said as long as there is the 30<sup>th</sup> house  
30 triggering the addition affordable housing, this area has connections to Center Street, is walkable  
31 distance to downtown, that it's desirable for residents for this area. She said that it is a decent choice  
32 for this area. She said that there were already townhomes in this area, so she didn't see an issue with  
33 adding more townhomes.

34 **Councilmember Gray** said he was inclined to agree with Councilmember Killingsworth and it  
35 would be a different analysis if the Groves wasn't there already. He said if the entire area were set  
36 aside for non-residential purposes, it may make more sense, but this is going to address some of the  
37 affordable housing aspect and it's walkable. He said that he would love for a business there, but he  
38 didn't know of a business that would fit on the 5 acres. He said he was inclined to vote in approval.

39 **Councilman Gantt** said he was agreed with staff. He said he thinks the developments there  
40 were a mistake, and this would be doubling down on it. He said he wished this area would be for  
41 employment uses. He was also concerned about the traffic concerns, particularly with the entrance  
42 and exit, in the future.

1 A **motion** was made by **Mayor Pro Tempore Gray**, seconded by **Councilmember**  
2 **Killingsworth**, to approve Rezoning No. 22CZ27 – Center City Townhomes, with the added  
3 condition that a 2<sup>nd</sup> affordable housing unit shall be added if there are at least 30 residential units  
4 constructed total.

5  
6 **VOTE: 2-2, with Councilmember Gantt and Councilmember Zegerman dissenting, and**  
7 **with Councilmember Mahaffey absent.**

8  
9 **Mayor Gilbert** noted that as the Chair of the Economic Development Committee, he wanted  
10 to support bringing businesses to Apex, and help shift the balance of the tax burden more towards  
11 businesses. He said he was with staff on this one, but understands the points raised by  
12 Councilmembers that were in support of this development.

13  
14 Pursuant to the Town of Apex Town Charter, **Mayor Gilbert** voted in the negative in order to  
15 break the tie. Motion failed.

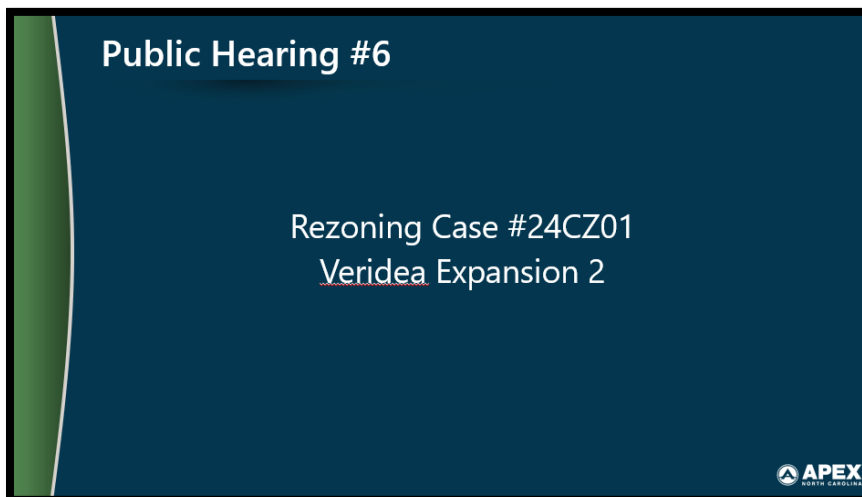
16  
17 **Mayor Gilbert** declared a 5-minute recess at 8:48 PM

18  
19 Council returned at 8:53 PM

20  
21  
22 **PH6 Rezoning Case No. 24CZ01 Veridea Expansion 2**

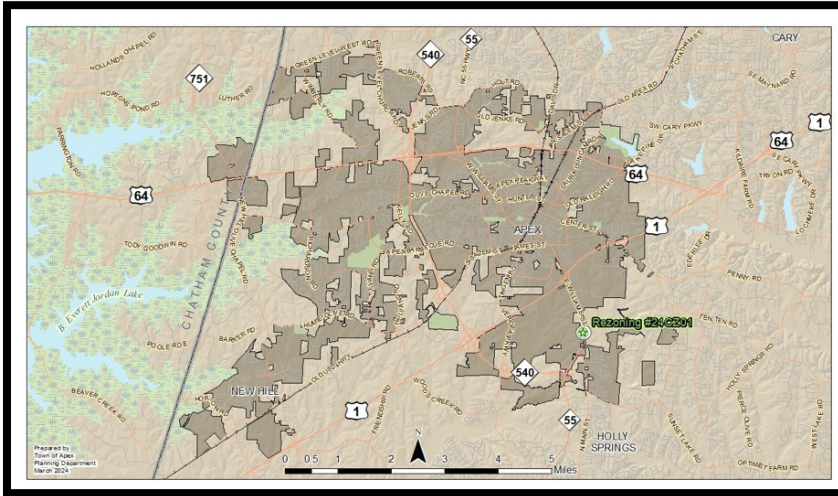
23 **Amanda Bunce**, Planning Manager gave the following presentation regarding Rezoning  
24 Case No. 24CZ01 Veridea Expansion 2

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26  
27  
28  
29 **[SLIDE-1]**





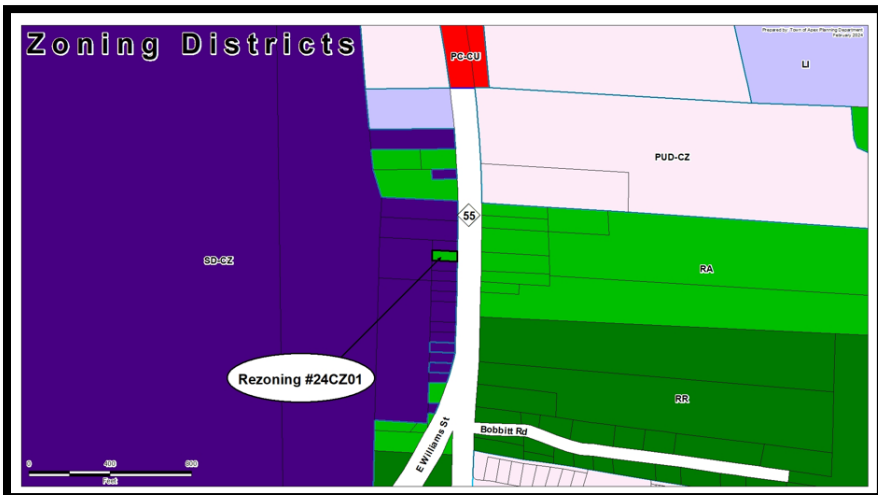
1 [SLIDE-2]



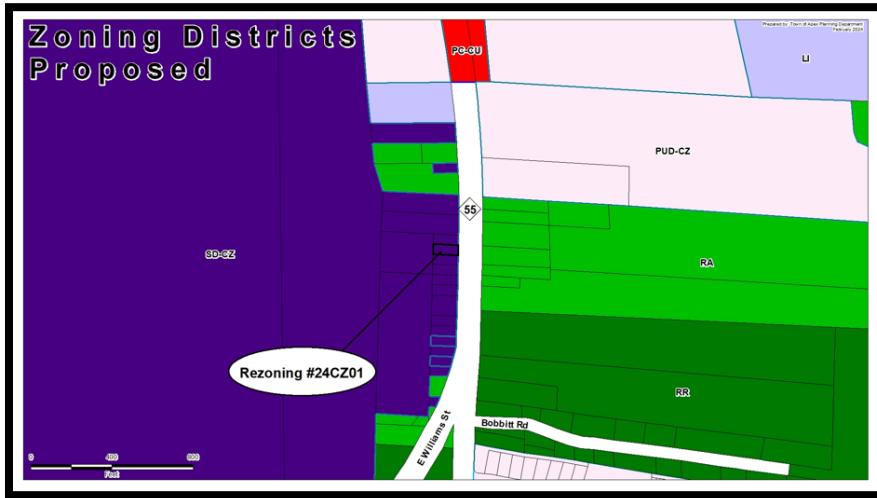
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3 [SLIDE-3]



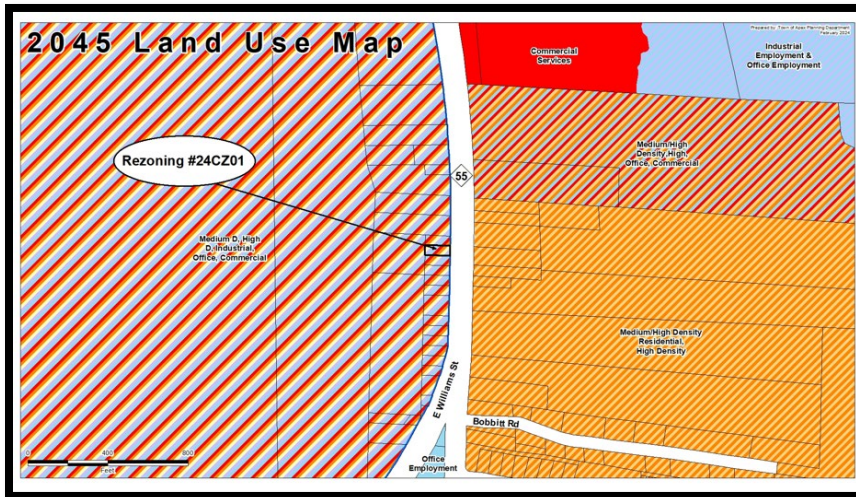
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7 [SLIDE-4]



1 [SLIDE-5]



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3 [SLIDE-6]



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7 [SLIDE-7]



**Mayor Pro Tempore Gray** said he wanted clarification that it was .17 acres.

**Ms. Bunce** answered yes.

**Mayor Gilbert** then opened up the public hearing.

**Mr. Barron** said this is the smallest zoning case he had ever worked on and would be happy to answer any questions Council may have. He said this is a minor piece of a much larger puzzle that Council is familiar with. He said as staff noted, they are not seeking to increase the residential alignment associated with the overall allotment associated with the development as part of the zoning. He said he could answer said he could answer any questions from Council.

**Mayor Gilbert** closed the public hearing and moved discussion back to Council.

A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Killingsworth**, to approve Rezoning No. 24CZ01 - Veridea Expansion 2.

**VOTE: UNANIMOUS (4-0), with Councilmember Terry Mahaffey absent**

#### **[NEW BUSINESS]**

##### **NB1 Downtown Design Project - Saunders Street Lot - Parking Mitigation Strategy**

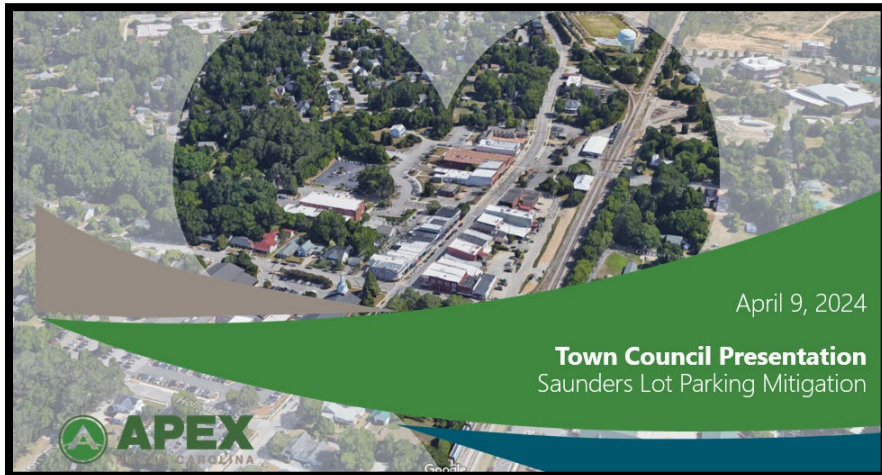
**Shannon Cox**, Long Range Planning Manager gave the following presentation regarding the Downtown Design Project - Saunders Street Lot - Parking Mitigation Strategy.

#### **[SLIDE-1]**

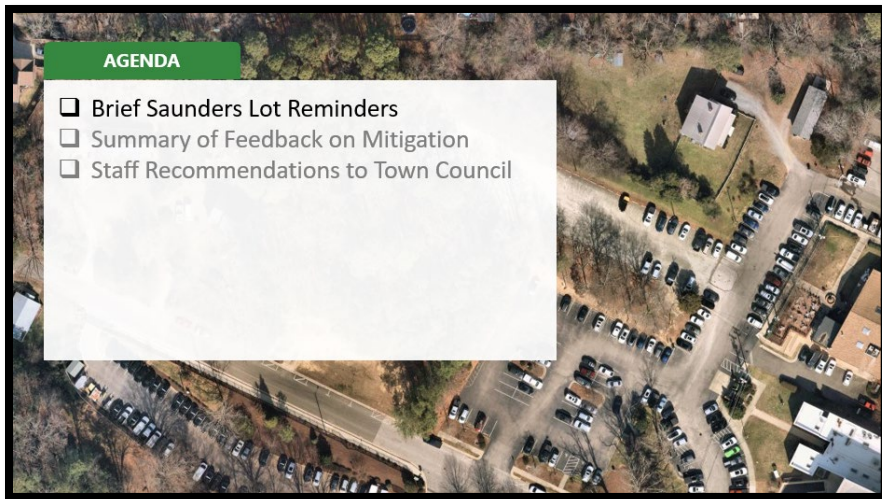




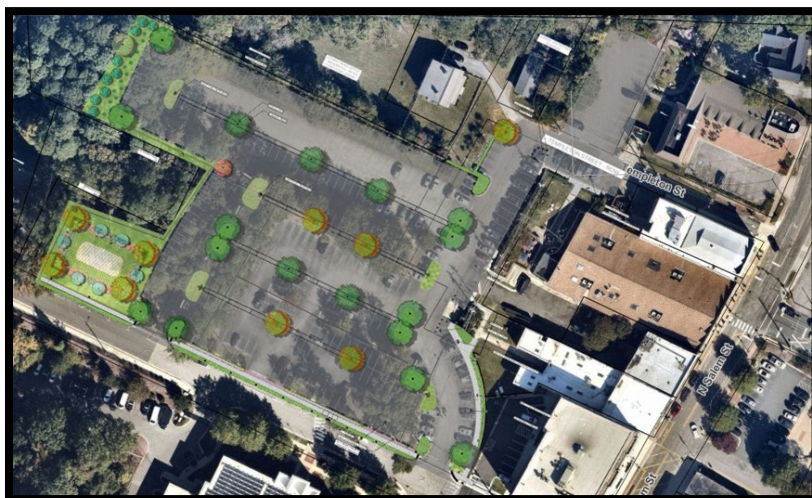
1 [SLIDE-2]



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3 [SLIDE-3]



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7 [SLIDE-4]



1 [SLIDE-5]

### Saunders Lot Project Timeline

2019

- December - Adoption of Downtown Master Plan & Parking Study; Top 10 Projects

2020

- November - Start of *Downtown Design Projects* Final Design Process (Projects 1, 2 & 4)

2021

- January - Focus Group Meetings
- March - Public Survey
- May - Public Workshop
- June - Town Council Work Session
- August - Town Council Special Meeting

**4** Add a net gain of 200 parking spaces within a 5-minute walk, and 100 within a 3-minute walk

#### DOWNTOWN DESIGN PROJECTS

The Town of Apex is working to make the vision of the Downtown Plan a reality! The Downtown Design Projects will result in construction plans for 3 of the top 10 Projects in the Downtown Plan.

##### ENERGIZE THE ALLEYS

##### TRANSFORM SALEM STREET

##### INCREASE PARKING

Learn more and sign up to receive updates!  
[www.publicinput.com/downtowndesign](http://www.publicinput.com/downtowndesign)  
Russell H. Dahen, PE | Traffic Engineering Manager  
 Russell.Dahen@apexnc.org | 919.449.3338

2  
3 [SLIDE-6]

### Saunders Lot Project Timeline

2022

- October - Parking Mitigation Survey
- December - Final Design/Right of Way Meetings & Open House

2023

- November - 1<sup>st</sup> Neighborhood Rezoning Meeting for Saunders Lot

2024

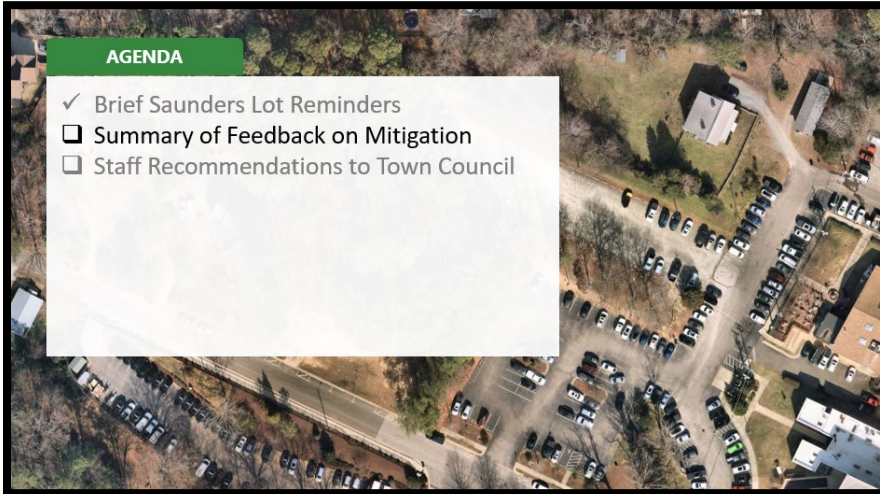
- January - 2<sup>nd</sup> Neighborhood Rezoning Meeting for Saunders Lot
- February - Planning Board Rezoning Hearing for Saunders Lot
- February - Parking Mitigation Information Exchange and Survey**
- February - Town Council Rezoning Hearing for Saunders Lot
- March - Parking Mitigation Information Update**
- Now - Town Council consideration of Parking Mitigation**

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7 [SLIDE-7]

### Saunders Lot Phased Construction

- Anticipate 60% of existing parking will be maintained during most of construction
- Includes areas shown in pink (64 spaces) + about 80 spaces (orange) that will shift during construction
- Temporary loss of 96 spaces

1 [SLIDE-8]



2  
3 [SLIDE-9]

Who we heard from through recent engagement:

Information Exchange	Business Owner Survey
<ul style="list-style-type: none"><li>• 36 attendees<ul style="list-style-type: none"><li>◦ 21 downtown business representatives (58%)</li><li>◦ 7 downtown event representatives (19%)</li><li>◦ 5 broader Apex business representatives (14%)</li><li>◦ 1 resident (3%)</li><li>◦ 2 other representatives (6%)</li></ul></li></ul>	<ul style="list-style-type: none"><li>• 55 respondents<ul style="list-style-type: none"><li>◦ 19 shopping (35%)</li><li>◦ 16 services (29%)</li><li>◦ 10 food and beverage (18%)</li><li>◦ 7 unspecified (13%)</li><li>◦ 3 beauty and wellness (5%)</li></ul></li></ul>

4  
5 [SLIDE-10]

**Mitigation – Definite Strategies:**

- Phased Saunders Lot construction
  - Anticipate 60% of existing parking will be maintained during most of construction, temporary loss of 96 spaces
- New parking supply
  - Most recent addition of 73 spaces on E. Moore Street
- Construction contract provisions
  - Encourage completion in 8 months or less – can't guarantee
  - Temporary parking for construction workers
- Enhanced communications and marketing strategy



1 [SLIDE-11]

### Mitigation – Possible Strategies (as presented in February):

- Parking duration ordinance revisions
  - Encourage turnover in high-demand locations
- Parking duration enforcement
- Safety and security strategies
  - Downtown host, lighting
- Minimize additional parking impacts
  - Limit special uses
- E-bike share
  - 30 bikes, 1-year, ~\$100,000
- Public shared-ride shuttle
  - Geo-fenced area, ~\$260,000
- Smart parking pilot
  - Web-based platform, uses cameras, ~\$95,000 start-up
- Delay construction
  - Target January 2025 start
- Adjust Town employee parking

2  
3 **Councilmember Gantt** asked what the earliest start date would be.

4 **Mr. Purvis** said it would likely be at the end of August or beginning of September.

5 [SLIDE-12]

### Rank your preferences among possible parking mitigation options:

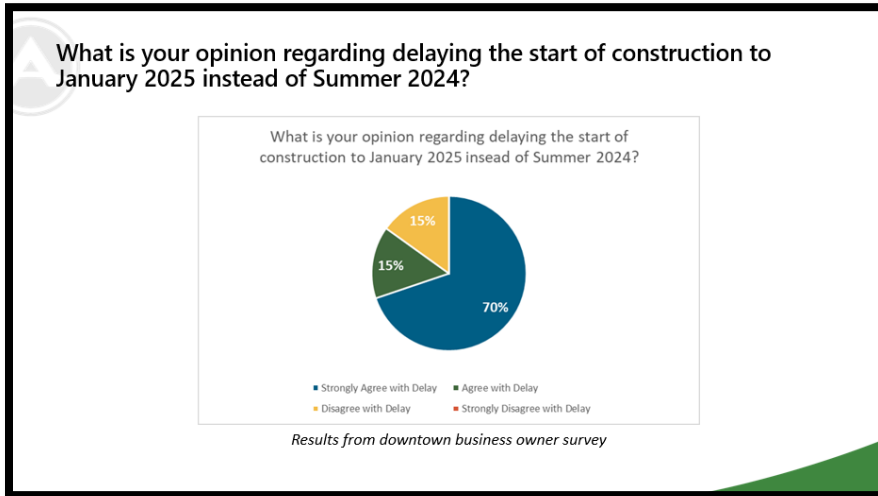


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7 [SLIDE-13]

### General Summary of Additional Comments (In no particular order)

- Conduct a robust marketing campaign
- Install lighting
- Implement permitted parking for businesses
- Add employee parking in Seaboard Lot
- Prioritize a parking deck
- Install parking meters
- Limit parking restrictions to duration of construction
- Against e-bikes
- Doubt that a shuttle would be used
- Support for delaying construction

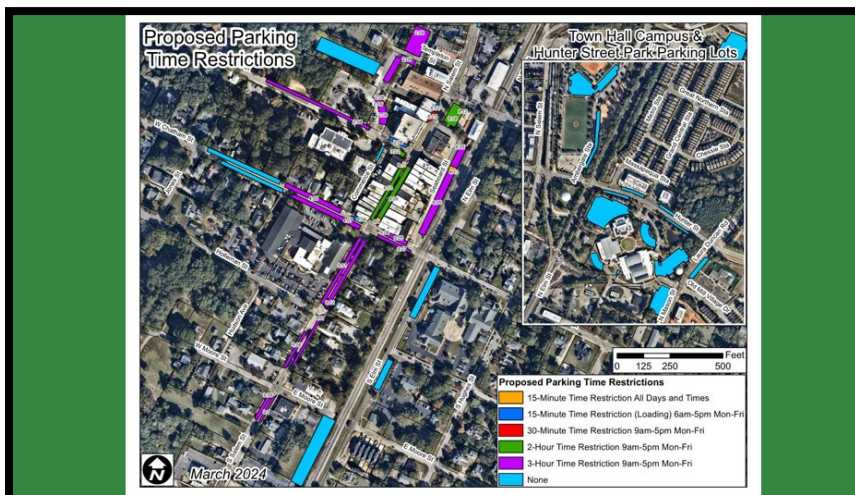
1 [SLIDE-14]



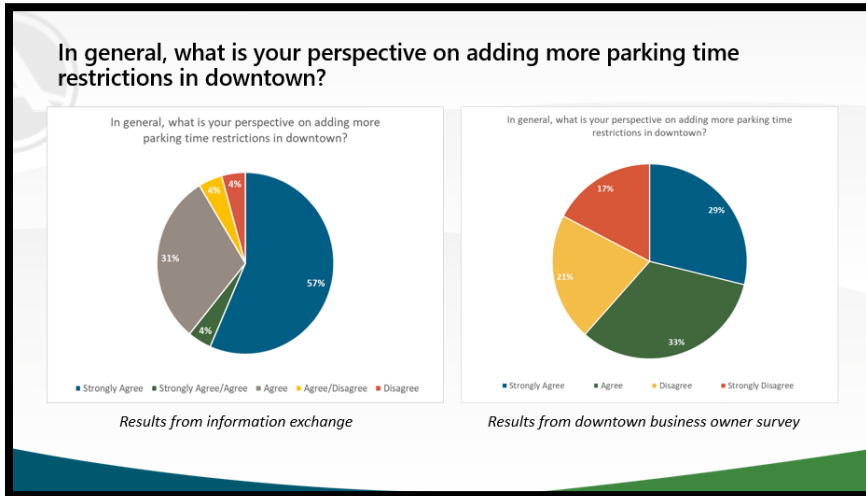
2  
3 [SLIDE-15]

- ### General Summary of Additional Comments
- For Delay
    - Importance of 4<sup>th</sup> quarter sales
    - Importance of Summer and Fall sales
    - Highest number of visitors is around the holidays – construction at that time will make employee parking more difficult
    - Realize construction may not be finished by 4<sup>th</sup> quarter 2025, but starting in January 2025 is the best chance, and allows for planning
  - Against Delay
    - Concern that costs will go up
    - Time to get it over with
    - Likely to take more than 8 months and impact Q4 2025 anyway
    - It will be easier to walk further to parking in Summer months
    - Preschool is not open in the Summer, and that takes substantial parking

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7 [SLIDE-16]



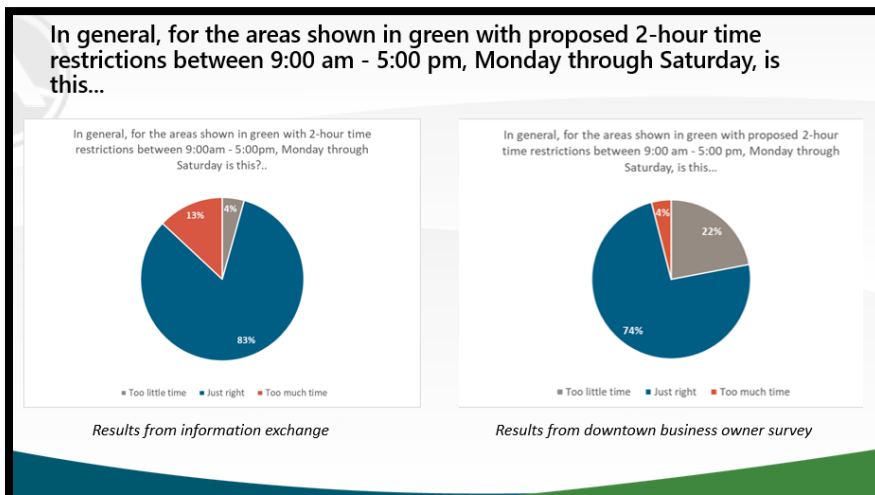
1 [SLIDE-17]



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3 [SLIDE-18]

- General Summary of Additional Comments**
- For Restrictions
    - Business owners and employees currently use highest-demand spots all day
    - Support but...a reasonably-close location for employees to park (Town and business) is needed
    - Only during construction
  - Against Restrictions
    - Revisit after new parking is provided
    - Concerned about employee parking
    - Concerned it will turn visitors away
    - Concerned visitors won't stay as long
    - Concerned about impacts to private parking (note – restrictions are only proposed for public spaces)

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7 [SLIDE-19]

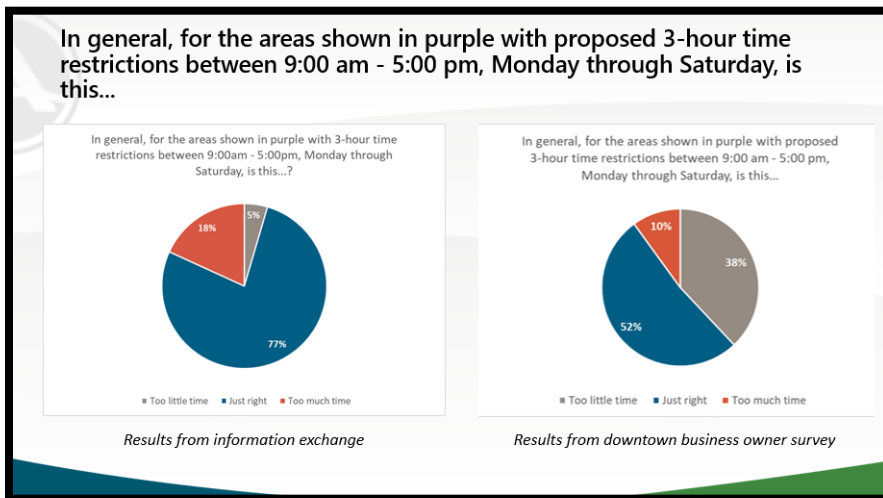


1 [SLIDE-20]

### General Summary of Additional Comments

- Too little time
  - 3-4 hours is more appropriate for all of the activities downtown
  - Consistency with 3-hour parking will be easier to understand and implement
  - 3 hours will allow people not to feel rushed
- Too much time
  - Too little for Saturdays
  - Just right for Monday through Friday

2  
3 [SLIDE-21]



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7 [SLIDE-22]

### General Summary of Additional Comments

- Too little time
  - 4 hours are needed for shift employees
  - Employee parking needs to be addressed
  - Supportive if there was permitted employee parking
- Just right, except...
  - Remove post construction
  - Designate some employee parking in the Seaboard Lot
  - Change Seaboard Lot to 4 hours



1 **[SLIDE-23]**

Are there areas shown without parking time restrictions that should have them?

- The 80 remaining spaces in Saunders Lot (gravel lot)
- West Chatham Street
- Commerce Street
- All downtown parking should have some restrictions
- Add 4-hour restrictions to all unrestricted areas
- Designate a few 15-30 minute spots in the Depot Lot, Saunders Lot, and Seaboard Lot
- Make sure lots with no restrictions won't be used for vehicle storage

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3 **[SLIDE-24]**

Are there areas shown with parking time restrictions that should not have them?

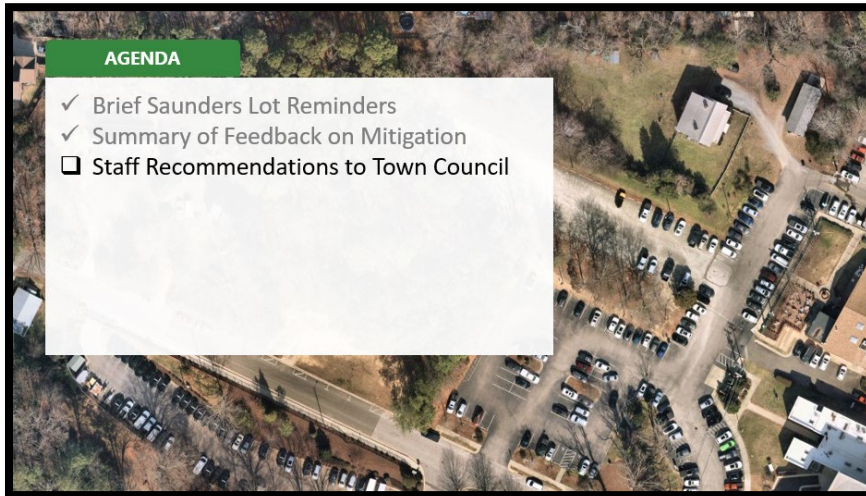
- Seaboard Lot – for employees
- Saunders Street
- E Chatham Street
- Side streets
- Private lots (note, no restrictions are proposed for private lots)
- Accessible parking

4  
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7 **[SLIDE-25]**

**General Summary of Other (different) Comments**

- Town employees must be prohibited from parking in the Saunders Lot during construction
- Request employee parking map
- Construct the lot at night
- Add Uber/Lyft spots
- Concern about Farmers Market parking
- Concern about lack of shared parking agreements
- Add rental bikes/concern about e-bikes
- Comments about existing Saunders Lot (to be addressed with design)

1 [SLIDE-26]



2  
3 [SLIDE-27]

Staff Recommendations on Potential Strategies		
Move Forward	Not at this Time	Investigate Further
<ul style="list-style-type: none"> <li>• Delay construction</li> <li>• Parking duration revisions</li> <li>• Parking enforcement</li> <li>• Safety and security strategies (including lighting)</li> <li>• Town employee parking</li> <li>• Minimize additional impact</li> <li>• Smart parking pilot</li> </ul>	<ul style="list-style-type: none"> <li>• Public shuttle</li> <li>• E-bike share program</li> </ul> <p><i>* New from Survey *</i></p> <ul style="list-style-type: none"> <li>• Parking on Elm Street</li> <li>• Parking at Baucom</li> <li>• Remote construction-worker parking</li> <li>• Parking meters</li> <li>• Nighttime construction</li> </ul>	<ul style="list-style-type: none"> <li>• Employee transportation between lots</li> </ul>

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7 [SLIDE-28]

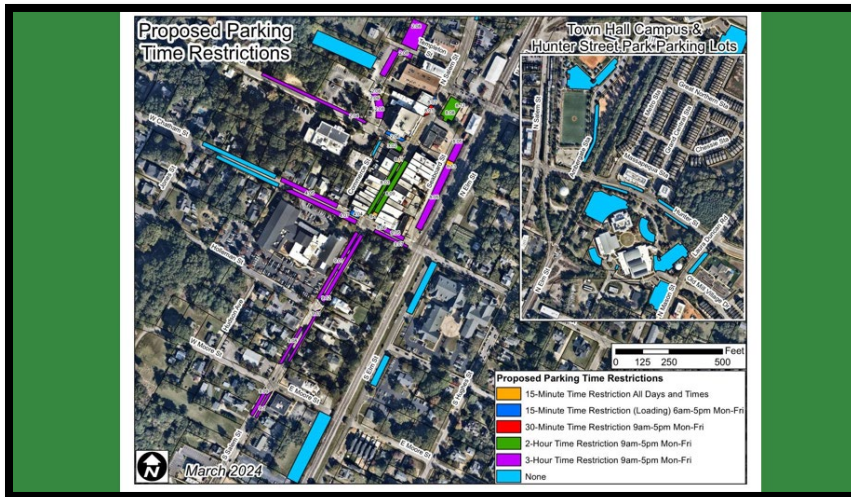
Updates and Notes on Recommended Strategies
<ul style="list-style-type: none"> <li>• Delay construction <ul style="list-style-type: none"> <li>◦ If construction is delayed, the Town cannot guarantee Q4 of 2025 will not be impacted. Provisions will be added to the contract to incentivize early completion and penalize late completion.</li> </ul> </li> <li>• Safety and security strategies <ul style="list-style-type: none"> <li>◦ Police Department to conduct a "Crime Prevention through Environmental Design" (CPTED) analysis from Moore Street to Town Hall as a starting point.</li> <li>◦ Anticipate it will include lighting recommendations.</li> </ul> </li> <li>• Town employee parking <ul style="list-style-type: none"> <li>◦ Town employees who regularly work at The Depot, Police Station, and Halle will not be parking in the Seaboard Lot, Saunders Lot, or Depot Lot during construction (with the exception of loading/unloading).</li> </ul> </li> </ul>

1 [SLIDE-29]

### Updates and Notes on Recommended Strategies

- Parking duration modifications
  - Recommended:
    - Add 3-hour limit to West Chatham Street
    - Add short-term drop-off spots to Depot Lot (1), Saunders Lot (1), Seaboard Lot (2)
    - Change restrictions to 9:00 AM – 5:00 PM, Monday through Friday only (not Saturday)
  - Not Recommended:
    - Add restrictions to gravel/phased section of Saunders Lot
    - Add all-day, employee parking to Seaboard Street
  - Next Step:
    - Public hearing for ordinance revisions

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3 [SLIDE-30]



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7 [SLIDE-31]

### Next Steps

- Requested motion to approve staff-recommended parking mitigation plan to include:
  - Delay construction
  - Parking duration revisions
  - Parking enforcement
  - Safety and security strategies (including lighting)
  - Town employee parking
  - Minimize additional impact
  - Smart parking pilot
- Staff will continue to work on mitigation strategies
- Future updates will be provided

1 [SLIDE-32]



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4  
5 **Mayor Gilbert** thanked Ms. Cox recognized what a long process this was and thanked her for  
6 all of her work.

7 **Mayor Gilbert** said that it was pointed out in the last meeting that there would be education  
8 on parking enforcement.

9 **Ms. Cox** said that was what Chief Armstrong indicated would be education on parking  
10 enforcement, so that people would be aware that this would be happening.

11 **Councilmember Gantt** asked in the bigger picture of all of the projects in the Downtown  
12 plan, would the delay in the construction cause the streetscape of Salem Street be delayed?

13 **Ms. Cox** said it may not, because of the acquisition and easements that would need to take  
14 place.

15 **Councilmember Gantt** said he considers that project as the transformational project in this  
16 series of three. He said parking is an issue that residents and businesses care about, but that's not  
17 the transformational issue. The transformational project is the streetscapes. He asked how all of  
18 these fits together and in the future.

19 **Director Johnson** said the acquisition for the streetscape is being handled separately, so the  
20 construction of the Saunders lot does not necessarily impact the acquisition, so they would continue  
21 working on that acquisition throughout this fall and next year. He said they will continue to move  
22 forward and see how that lines up at the end of construction verses where we are with Commerce  
23 Street and Salem Street, and that he could get more information back to Council, but he said he did  
24 not think it would be a large impact.

25 **Councilmember Gantt** said he was hoping that these projects would be able to align while  
26 still preserving Q4 sales.

27 **Director Johnson** said they would continue to move all of the different phases together as  
28 fast as they can where they align, and he said depending on how fast that acquisition phase will be.

29 **Councilmember Gantt** asked if Salem Street requires acquisition and not just Commerce  
30 Street.

1 **Director Johnson** said yes, all of the projects require acquisitions. He said a lot of times they  
2 are the same owners, especially with Commerce Street and Salem Street, which are the first two, and  
3 then Seaboard Street the town will probably work with them a little bit later.

4 **Mayor Pro Tempore Gray** asked if the town starts with this project in 2025, is there a plan or  
5 consideration to regard of reducing that construction timeline. He asked was there strategies to take  
6 away more parking to fix it faster.

7 **Director Johnson** said the plan will mostly remain the same other than the start date, they  
8 are shifting the time that the project will be advertised. He said although they will be planning with  
9 the January start time, they will be starting the advertising process later this summer. He said that  
10 they can't guarantee things, not just construction, he gave the bidding as an example of when they  
11 could run into time issues, and other examples of reasons that there may be issues. He said some of  
12 these things they won't know until they get into the contract state once they get started that  
13 they could run into unforeseen sight conditions. He said they were hopeful, but it is going to be a  
14 challenge.

15 **Councilmember Zegerman** said for those reasons he did not want to delay the advertising.  
16 He said he would rather delay the mobilization of the contractor than delay the advertising process  
17 because of the unforeseen and we know that in recent times that we have had trouble with attracting  
18 enough bids and have to readvertise projects multiple times. He said if it was going to push us to the  
19 end of the year or into next year, so I don't want to artificially hold back and introduce more delay.

20 **Director Johnson** said it can be a double edge sword, sometimes if you try to award and  
21 then have that long delay, that's introducing more risk to the contractor because now they have to  
22 consider the possibility of pricing and inflation, which could cause the bid could cause those bid  
23 prices to go up. He said the contractor has to take that into account and include it in their bid. He  
24 said so it hard to ever have a crystal ball, so that's why we try to move the contracts forward pretty  
25 quickly. He said that there is a risk in either scenario.

26 **Councilmember Zegerman** said that a lot of the mitigation hinges on enforcement, and  
27 asked how would we do that, and what the enforcement look like.

28 **Ms. Cox** said for most of these strategies, they had limited information to share with Council  
29 at this point, and were asking for direction of support from Council so that they could continue to  
30 allocate staff time towards flushing these out. She said in terms of parking enforcement, the Police  
31 Department is actively working on identifying potential approaches for that, it would include  
32 additional capacity in one way or another, and it could be hired capacity. She said that also they are  
33 looking at how the Smart Parking pilot could inform parking enforcement, and if there are aspects of  
34 that technology that could be used. She said there is more to come for that, and all other strategies  
35 and we would continue to work on that, once direction is given on how to proceed.

36 **Councilmember Zegerman** said that it was his understanding that Apex has an agreement  
37 with the Baptist Church to use their lot, but that the lot is not highlighted as a parking option on the  
38 slide and asked if it was because we are limited on hours. He asked why this wasn't being  
39 considered on our mitigation strategy, because that is a sizeable lot.

40 **Ms. Cox** said the town doesn't currently have a formal agreement with the Baptist Church to  
41 advertise that as public parking. She said they've always welcomed people to park there, and they've  
42 have been very open to that and I think they even have some private signs up about that, but we  
43 don't have a formal agreement that allows us to sign and point people to that direction. She said that  
44 this is something that have been conversations about, but there is no formal agreement at this time.

1 **Councilmember Zegerman** said that as a potential mitigation strategy for the duration of  
2 construction, is that something we could consider, where we temporarily lease part of that lot or  
3 have more of a formal agreement.

4 **Ms. Cox** said that it is something that they have actively been working on and will continue to  
5 work on with the Church.

6 **Mayor Gilbert** said he would also like to add that could become complicated, as the Church  
7 has lots of events.

8 **Councilmember Zegerman** said that maybe they could use it during the week, and that he  
9 was just looking at more parking options. He said it seems that they have ruled out more bus service,  
10 but asked about more park and ride options where we designate more lots having small shuttles,  
11 faring employees and construction employees to the site.

12 **Ms. Cox** said that the public shuttle that was proposed that was included in the 2022  
13 engagement did not show much interest in the 2022 survey as well as the most recent survey.

14 **Councilmember Zegerman** said that they didn't ask the population, and this was asked to  
15 the Downtown business owners.

16 **Ms. Cox** said that 2022 was targeted to both business owners and a public open house and  
17 the meeting that we recently had, the open information exchange, was opened to the public but  
18 mostly downtown businesses. She said there was other options, the geofence area, also a node-  
19 based pickup/drop off, which could be structure that however is preferred. She said they could  
20 extend an agreement with the Town of Cary that could be from a designated lot to downtown. She  
21 said the feedback that they have gotten, for using it for this purpose, has not been positive enough  
22 for them to include in this staff recommendation, but if that is something Council wants staff to do  
23 then they will investigate further.

24 **Councilmember Zegerman** said that he would like to move some of the parking for  
25 employees and construction to offsite.

26 **Ms. Cox** said staff did not recommend having construction contract provisions that require  
27 them to park remotely, and do not think it is in the overall best interests to include that, but will take  
28 the feedback and consider it.

29 **Mayor Gibert** asked if there were any other questions. He said that at the last Council  
30 meeting where there was a rezoning, before the survey was completed, there was a desire to move  
31 forward. He said that he would like to say as the mayor, that the town needs to listen to the business  
32 owners and support the staff recommendation. He said that he did not think the business owners  
33 were against the plan, but the timing and the amount of product that they had ordered for their Q4  
34 had a lot to do with it, and they wanted to be as prepared as possible, so I hope the support is to  
35 delay it and support the business owners and support the staff's recommendations.

36 **Mayor Pro Tempore Gray** said that he has confidence that staff has enough flexibility to  
37 award the contract and address any limiting factors that may come up. He said direction from him  
38 was to start the award with the recommendations that Council has and if there is any possibility of  
39 reducing that original build timeline that had been forecasted as a 6-8-month project. He said he did  
40 not see a reason why he should fight the recommendation of staff.

41 **Councilmember Zegerman** asked how much of the overall timeline is because we are doing  
42 parking mitigation.

43 **Director Johnson** said it was a hard question to answer and that there was already parking.  
44 He said as a 6-month project it may save an extra month to do it all at one time.



1 **Councilmember Gantt** made a comment about the survey. He said he was irritated with how  
2 the Town employees were treated about how they were treated differently verses the business'  
3 employees parking, and they should be treated the same way.

4 **Mayor Pro Tempore Gray** said that was a solid point. He said it was important to consider  
5 the downtown business owners because they have an impact and they are physically there, but we  
6 also have to be very cognizant that we are using the tax dollars of everybody in Apex, so giving them  
7 an opportunity to have a say is important and that they had an opportunity to have a part in the  
8 survey. He said that he felt that this is reflective of what is a community sentiment.

9 **Councilmember Killingsworth** said that if it went out community wide, that they may be  
10 seeing different things.

11 **Councilmember Gantt** said he was hearing 'when are you going to get it done' they want it  
12 done as soon as possible, he said the festivals would like for it to be done as soon as possible too,  
13

14 A **motion** was made by **Mayor Pro Tempore Gray**, seconded by **Councilmember Gant**, to  
15 approve a mitigation plan for the temporary loss of parking in the Saunders Lot during construction.  
16

17 **VOTE: UNANIMOUS (4-0) with Councilmember Terry Mahaffey absent**  
18  
19

20 **NB2 Pulling of Consent Items 2 and 3**

21 **Councilman Zegerman** said that he had asked to pull consent items 2 and 3 which is specific  
22 to the appointment of the Housing Advisory Board's members and the Appointment of the Chair  
23 and Vice Chair of the Board. He said he didn't have much concern with Consent item 3. He said he  
24 wanted to discuss the staffing of the Housing Advisory Board, he said housing affordability is one of  
25 the most concerns in Apex. He said his expectations of the housing advisory board is that they  
26 advise Council on policy to address every tier of the market. He said if they are missing the bottom  
27 tiers in the conversations, he believes the advisors of the Boards should reflect the priorities  
28 stronger. He said he would like to see more of a representation from people representing  
29 organizations, non-profits that have vast experience in that area and to come up with policy for  
30 Council to follow. He said that this is not the ability to those on the Board, or their skill. He said  
31 everyone on the Board brings something to the table and lots of the applicants have very strong  
32 qualifications, his preference would be to use this opportunity while there are 3 positions that  
33 stronger consideration is given to those individuals that represent non-profit and housing  
34 affordability question a little more. He said he wanted to make a motion to defer to reconsider  
35 bringing back candidates and ask the Mayor to reconsider his nominations and bring back  
36 candidates, and if the Mayor doesn't want to do this then the next Motion would be to start striking  
37 names.

38 **Mayor Gilbert** said that he and Council Zegerman have had conversations about this in the  
39 past and it was nothing personal, it is just a philosophical difference. He said that at this time is to get  
40 cooperation of the development community. He said that it would be a waste of time because he  
41 would bring back the same name.

42 **Councilmember Zegerman** said he appreciated the Mayor's point and he understands  
43 keeping the building committee on the Boards. He said he doesn't think they have the same  
44 motivations that we do as we look out to the future of our town.



1 **Mayor Gilbert** said that the point may be missing. He feels that they need to keep them at  
2 the table.

3 **Councilmember Zegerman** said he doesn't disagree. He said that last year put out an  
4 Affordable Housing policy that we have yet to see a single developer pick up and the intent of the  
5 policy was to move in a much bigger scale and we are not seeing the uptick in that. He said so how  
6 do we write policy if the ones that do not want to use it are the ones making the recommendations.

7 **Mayor Gilbert** said this is a work in progress. He said he wanted to support staff and had not  
8 heard any resistance from them.

9 **Councilmember Killingsworth** said as a member of the Housing Advisory Board she had  
10 had many different discussions. She said that there were two people mainly from the development  
11 community on the Board and that one has been super helpful and the other person didn't show up  
12 for a lot of the meetings, so she did not find that him being on the Board to be very helpful and that  
13 is why she did not recommend him being on the Board.

14 **Mayor Gilbert** asked if we are giving constructive feedback to the Board members on  
15 expectations of the individuals on the Committees and Boards. He directly asked was Mr. Rogers  
16 was given feedback about the expectations of serving on the Board.

17 **Councilmember Zegerman** said that was a fair question. He said that when you except a  
18 position on a Board or a Committee, that the expectation is that you should attend the meetings. He  
19 said his desire was to have people that have a stronger focus on housing affordability. He said that  
20 having a representation of on the Advisory Boards that reflect our priorities.

21 **Councilmember Killingsworth** said that they need to think outside of the box because the  
22 things that we are trying to solve have not been solved.

23 **Mayor Gilbert** said he agreed, which is why he asked Elana Money Garmin to serve on the  
24 Board. He said that she completed a project, 30 tiny homes in Chatham County for Veterans, she  
25 thinks outside of the box.

26 **Councilmember Killingsworth** said that there were two mobile home parks that we had to  
27 come up with other solutions for and Habitat has had solutions.

28 **Councilmember Zegerman** said that he would propose to meet the Mayor half way and  
29 strike Mr. Jacob Rogers from the nominations and instead nominate Daniel Sargent who represents  
30 Rebuilding the Triangle Together as a potential replacement for that position. He said that would  
31 lead us to re-appointing Mr. Paul Kane, appointing Elana Money and appointing Daniel Sargent.

32  
33 **Mayor Gilbert** asked for a 10-minute recess at 9:53 p.m.

34  
35 Council returned at 10:07 p.m.

36  
37 **Councilmember Zegerman** said that there was a question about conflict of interest with Mr.  
38 Sargent in his opinion that the nature of his business is very different, he said there was no conflict of  
39 interest with Mr. Sargent. He said he wanted to make a **motion** to strike Jacob Rogers from the  
40 nominations and nominate Daniel Sargent, Paul Kane, and Elaina Money.

41 **Mayor Gilbert** said that as per policy, he would have to be the one to make the nomination.

42 **Councilmember Zegerman** made a motion to strike Jacob Rogers from the nominations.

43 **Mayor Gilbert** said that when they came back, he would bring Mr. Jacob Rogers back.

1 **Councilmember Gantt** said that if we could require things from developers, like affordable  
2 housing it would be a different discussion. He said that developers need to be in the room in these  
3 discussions because if there is a tilted weight toward advocates there may be a policy form that may  
4 be more active. He said crafting incentives and voluntary things needs the input of that Community.  
5 He said he is not going to vote for this action item.

6  
7 A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember**  
8 **Killingsworth**, to strike Jacob Rogers from the nominations.

9  
10 **VOTE: 2-2, Mayor Pro-Tempore Gray and Councilmember Gantt dissenting, with**  
11 **Councilmember Mahaffey absent**

12  
13 **Mayor Gilbert** said his vote is no.

14 **Interim Town Manager Purvis** said nobody has been appointed yet, so a motion needs to  
15 be made.

16  
17 A **motion** was made by **Mayor Pro-tempore Gray** and second by **Councilmember Gantt** to  
18 approve New Business Item No. 2 and previously Consent Item No. 2 and 3, as previously proposed.

19  
20 **VOTE: 2-2, Councilmember Killingsworth and Councilmember Zegerman dissenting,**  
21 **with Councilmember Mahaffey absent**

22  
23 Pursuant to the Town of Apex Charter, **Mayor Gilbert** voted in the affirmative in order to  
24 break the tie.

25  
26 **Motion Passed, 3-2, with Councilmember Mahaffey absent**

27  
28  
29 **[UPDATES BY INTERIM TOWN MANAGER]**

30 **Interim Town Manager Purvis** said last week they got checked off onto the County  
31 Inspection for the Splash pad. He said also Gateway has started construction. He said the third thing  
32 was that everything went well at the Holy Celebration this past Saturday. He said there were 5  
33 straight weeks of events, he said festival season is here. He said he wanted to thank the Recreation,  
34 Public Works and Public Safety staff for all of the work during these festivals.

35 **Councilmember Killingsworth** thanked Mr. Purvis and all the work he has done while filling  
36 in as Interim Town Manager on top of doing his job at the same time.

37 **Mayor Gilbert** thanked Mr. Purvis for the update and thanked Lieutenant Overton for  
38 providing safety and order.

39 **[CLOSED SESSION]**  
40

1 A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Gantt**,  
2 to enter into Closed Session pursuant to NCGS § 143-318.11(a)(5).

3  
4 **VOTE: UNANIMOUS (4-0), with Councilmember Terry Mahaffey absent**

5  
6 Council entered into Closed Session at 10:14 p.m.

7  
8 **CS1 Steve Adams, Real Estate and Utilities Acquisition Specialist**

9  
10 **NCGS § 143-318.11(a)(5)**

11 "To establish, or to instruct the public body's staff or negotiating agents concerning the position to  
12 be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a  
13 contract or proposed contract for the acquisition of real property by purchase, option, exchange, or  
14 lease."

15  
16  
17 Council returned to open session at **10:38 p.m.**

18 **[ADJOURNMENT]**

19 **Mayor Gilbert** adjourned the meeting **10:39 p.m.**

20  
21 Jacques K. Gilbert  
22 Mayor

23 Allen Coleman, CMC, NCCCC  
24 Town Clerk to the Apex Town Council

25 Submitted for approval by Town Clerk Allen Coleman and approved on\_\_\_\_\_.

**DRAFT MINUTES**  
**TOWN OF APEX**  
**TOWN COUNCIL WORK SESSION**  
**TUESDAY, APRIL 16, 2024**  
**3:30 P.M.**

The Apex Town Council met for a work session on Tuesday, April 16, 2024 at 3:30 p.m. at the Apex Town Hall located at 73 Hunter Street in Apex North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel:

<https://www.youtube.com/watch?v=w-1FrNI47uc>

Elected Body

Mayor Jacques K. Gilbert (presiding)  
Mayor Pro-Tempore Ed Gray  
Councilmember Brett Gantt  
Councilmember Terry Mahaffey  
Councilmember Arno Zegerman  
Absent: Councilmember Audra Killingsworth

Town Staff

Town Manager Randy Vosburg  
Deputy Town Manager Shawn Purvis  
Assistant Town Manager Demetria John  
Assistant Town Manager Marty Stone  
Town Attorney Laurie Hohe  
Town Clerk Allen Coleman  
Director Marla Newman

All other staff members will be identified appropriately below.

**[COMMENCEMENT]**

**Mayor Gilbert** called the Work Session in order and welcomed Town Manager Randy Vosburg to his first work session, and led in a recitation of the Pledge of Allegiance.

**[AGENDA ITEM NO. 1 - HOUSING PROGRAM UPDATES]**

**Marla Newman**, Director, Community Development and Neighborhood Connections, said this meeting is an overview of where the new department is at, updates on some existing work that's been going on, as well as bringing in the School of Government, and how to move forward with housing needs.

1 [SLIDE-1]



2  
3 [SLIDE-2]



### Agenda

#### Department Overview

#### Updates

- ❑ Apex Cares
- ❑ 2021 Affordable Housing Plan
- ❑ 2023 Affordable Housing Incentive Zoning Policy


#### Presentation


- ❑ Housing Development Opportunities – Development Finance Initiative (DFI)

#### Challenges


- ❑ Land Availability & Funding

4  
5 [SLIDE-3]






**Darla Bryant**  
Community Connections  
Center Manager





**Lamont Taylor**  
Housing Program  
Manager



**Brianne Gill**  
Community Engagement  
Manager

**Michael Linsenmeyer**  
Senior  
Housing Specialist





**Rebekah Shamberger**  
Housing Specialist

6

1 [SLIDE-4]

## Apex Cares Home Rehab Program

A Housing **Preservation** Strategy

Since inception, 30 homeowners have received services ranging from kitchen and bathroom floor replacement to roof replacement and tub-to-shower conversions.


Total Apex Cares funds - \$554,111

Household average - \$18,470


**Additional funds needed - \$197,825 (raised by RTT)**

Total project costs - \$751,937


Staff has reviewed the following program elements and will recommend increasing the support provided per household and expanding services to other communities struggling with deferred maintenance issues:




Refine list of eligible repairs; include emergency repairs and architectural barriers to aging in place



Increase funding cap per household



Leverage other rehab funding sources, e.g., weatherization, environmental remediation, etc.




Extend services to owners of manufactured housing

2  
3 **Mayor Pro-Tempore Gray** asked what ways are we approaching or dealing with the  
4 gap with homeowners and those that are renters, and how they may be eligible for this type  
5 of funding.

6 **Director Newman** said first is to make sure the town is in compliance with the  
7 requirements. She said some kind of legal agreement where there is a restrictive covenant  
8 put on the property so that it can be continue to be rented and affordable. She said the  
9 department is still working on ideas and will bring to council some ideas after consulting with  
10 the Housing Advisory Board (HAB) and receiving their feedback.

11  
12 [SLIDE-5]

## Plan & Policy Updates



### Affordable Housing Plan

- RFP to select consultant
- Ensure robust community engagement, including the HAB and Planning Board
- Update all relevant data points
- Update and modify, if necessary, existing plan strategies
- Create both development and preservation strategies
- Solicit feedback to plan draft from the HAB, Planning Board, and stakeholders prior to presentation to Town Council

### Incentive Zoning Policy

- Staff reviewing current policy and identifying areas to clarify and enhance – particularly non-financial incentives
- Staff will solicit feedback from HAB and Planning Board
- Staff will draft modifications to the policy based on review and feedback, submit to HAB and Planning Board for additional feedback before final draft presentation to Town Council

13  
14 **Councilman Gantt** asked if the development and preservations was more of an in-  
15 depth strategy.

16 **Director Newman** said yes, beyond simple recommendations and really incentivizing  
17 the zoning policy.

18

1 [SLIDE-6]



## Housing Development Opportunities

New Housing *Development* Strategy

DFI analysis:  
7 acres at S. Hughes St and Perry Rd

2  
3 [SLIDE-7]




## Challenges Land & Funding

The demand for homes affordable to low- and middle wage earners, families, seniors and other-abled persons is far outpacing the current supply, as well as what's proposed in the near term.

As you can see from the DFI presentation, land availability is one of the major local challenges to develop affordable housing.

Related to that is the cost of available land within Town limits, as well as the budget limitations of the Affordable Housing Fund.

Though we are presented with a number of unique challenges to housing affordability in Apex, there are examples of approaches that address affordability for low- and middle-income households in high-cost markets.

-  Land availability
-  Land cost and Town financing for acquisition
-  Programs that work

4  
5 [SLIDE-8]





## Where Do We Go From Here?

*Increasing and Leveraging Investments to Meet Demand*

The Town has shown its commitment to addressing our need through creation of the Affordable Housing Fund (AHF), a significant *first step*.

Opportunities to explore that can better enable the Town to meet demand include:

1. Increasing the AHF
2. Diversifying funding sources
3. Greater leveraging of Town investments
4. Leveraging the Town's expanding footprint due to growth, and
5. Repurposing some existing Town-owned properties.

-  Funding target amount and frequency
-  Partnerships & collaborations
-  Currently available resources to pursue
-  Timeline

6



1 **[AGENDA ITEM NO. 2 - HOUSING DEVELOPMENT OPPORTUNITIES**  
2 **PRESENTATION]**

3 **Sonyia Turner**, Senior Project Manager, UNC-SOG Development Finance Initiative  
4 (DFI), gave a presentation discussing opportunities for affordable housing development in  
5 Apex.  
6

7 **[SLIDE-1]**



8 **[SLIDE-2]**  
9




1 [SLIDE-3]

**UNC** SCHOOL OF GOVERNMENT  
Development Finance Initiative

DFI, a program of UNC Chapel Hill's School of Government (SOG), partners with local governments to attract private investment for transformative projects by providing specialized finance and development expertise.

SOG is the largest university-based local government training, advisory, and research organization in the United States, and serves more than 12,000 public officials each year.

Values: Nonpartisan, policy-neutral, responsive.



**Project Team**

Sr. Project Manager: Sonyia Turner  
Sr. Analyst: Frank Muraca  
Asst. Director Housing: Sarah Odio

2  
3 [SLIDE-4]

DEVELOPMENT FINANCE INITIATIVE

## Opportunity Site Identification

To identify affordable housing development opportunities, DFI conducts:

- Stakeholder Engagement**
  - Goal: inform City's priorities for future affordable housing development
- Housing Needs (Market) Assessment**
  - Goal: determine demand for different housing types based on economic drivers and current housing supply
- Site Suitability Analysis**
  - Goal: identify sites that meet City's priorities for future affordable housing development
- High-Level Site and Financial Feasibility**
  - Goal: determine type and scale of housing development possible, and estimate potential private funding sources and minimum funding gap for each scenario

*Potential Phase 2: Site-specific pre-development services and development partner solicitation.*


4  
5 [SLIDE-5]

DEVELOPMENT FINANCE INITIATIVE

## Potential Housing Priorities

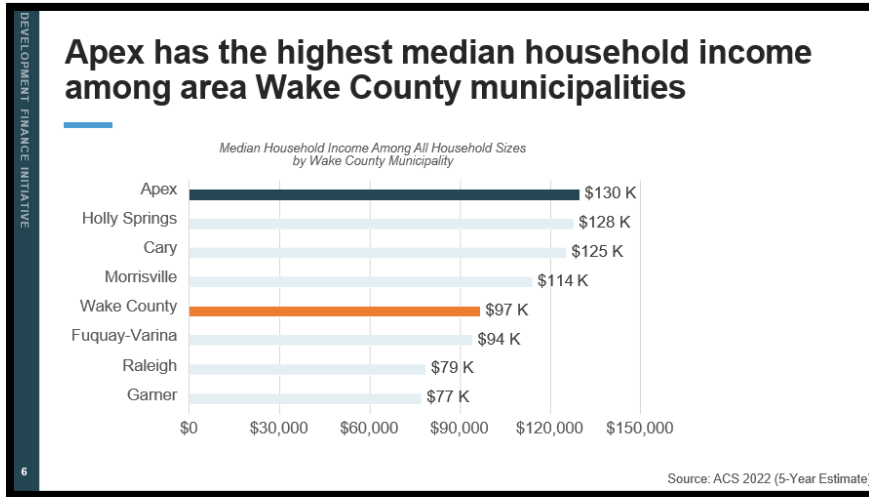
Housing priorities identified from Town staff, stakeholder conversations, and previous housing plans:

- Increase production of affordable units for low-to-moderate income (LMI) households.
  - Rental and homeownership options.
- Build partnerships across the region to meet the housing needs of vulnerable populations.
- Connect affordable housing development with transit service, transportation infrastructure, and amenities.

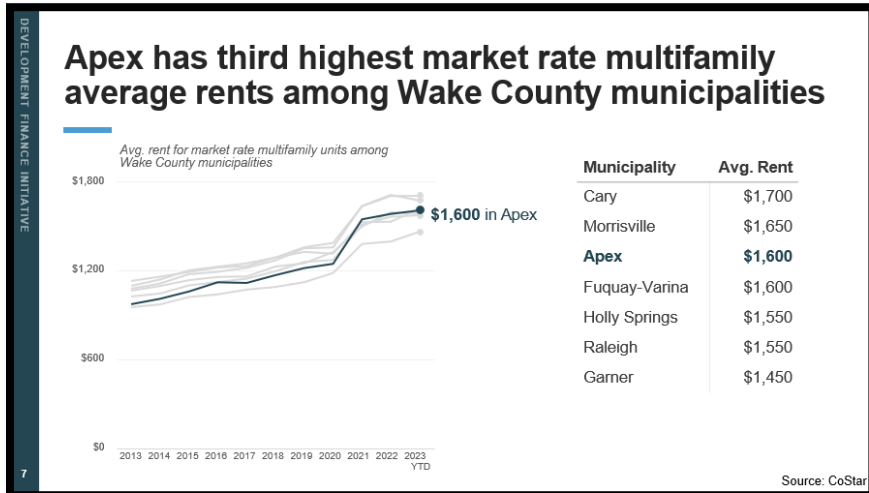


Broadstone Walk Rendering | Apex, NC

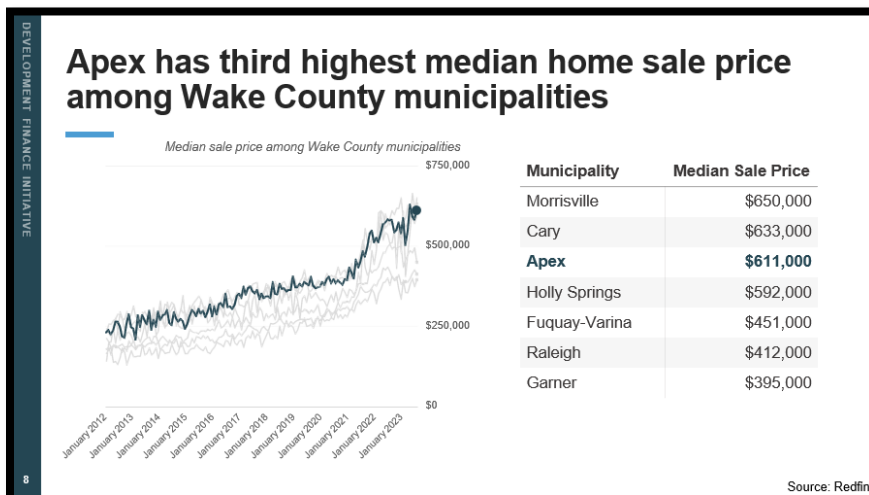
1 [SLIDE-6]



2 [SLIDE-7]



4 [SLIDE-8]



6

1 [SLIDE-9]

DEVELOPMENT FINANCE INITIATIVE

### Households need to earn approx. \$184,000 to afford the median home price on the market

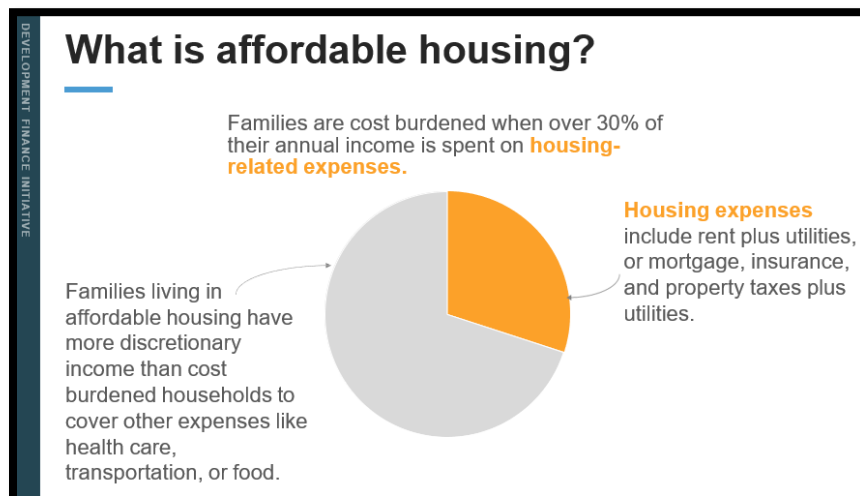
	2020	2023
Interest rate	2.8%	7.2%
Median home price	\$476,000	\$630,000
Down payment	\$33,300	\$44,100
Monthly mortgage costs	\$1,800	\$4,000
Monthly taxes, insurance, utilities	\$600	\$800
<b>Annual income needed</b>	<b>\$93,500</b>	<b>\$184,400</b>

9

Source: Zillow, St. Louis FRED, RS Means, and DFI analysis of JCHS methodology

\*Assumes 30-year fixed rate, 7% down payment with no PMI, credit score >710, maximum 31% housing costs to income

2  
3 [SLIDE-10]



4  
5 [SLIDE-11]

- DEVELOPMENT FINANCE INITIATIVE
- ### Who can the Town assist with the affordable housing development?
- State constitution and statutory requirement:
    - Housing for "low income" or "poor"
      - 20% of units restricted to households earning less than 60% AMI.
    - Serves a public purpose:
      - "only when the planning, construction, and financing of decent residential housing is not otherwise available"
      - Because "private enterprise is unable to meet the need"
    - Can support the development of units that are income restricted up to 80% AMI
    - No authority to aid unrestricted (market) units
  - Funding source requirements
- Source: Tyler Mulligan, *Local Government Support for Privately Owned Affordable Housing*, Coates Canons Law Blog (May 16, 2022).

6

1 **Assistant Town Manager John** asked what could the Town do to cast the Net wider  
2 for the 81% up to 120%.

3 **Ms. Turner** said the nuance of that would be the town to provide an investment or  
4 subsidy for the development project to meet those requirements.

5 **Councilmember Gantt** said he was confused by the restrictions to households in  
6 regards to 60% AMI and 80% AMI.

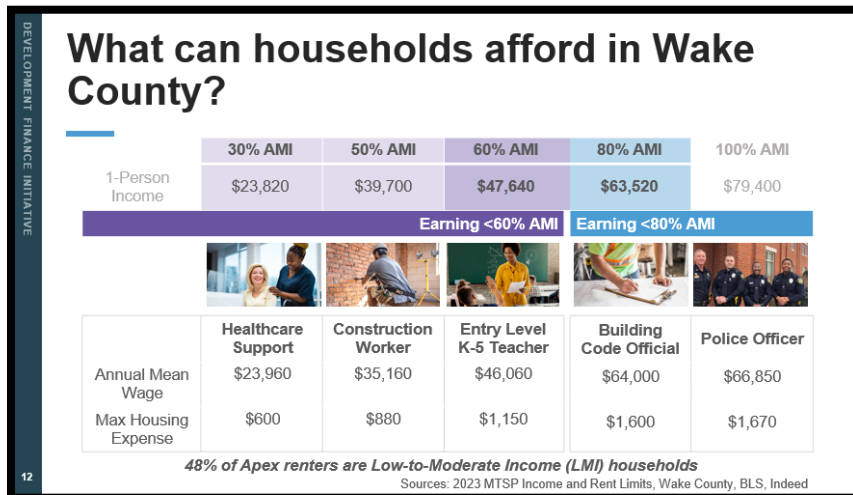
7 **Ms. Turner** said the guidelines are 20% of the units have to serve households earning  
8 60% AMI and the market rate for the rest of the units.

9 **Director Newman** said the greater income mix also helps to underwrite or support  
10 those units that are at the lower income scale.

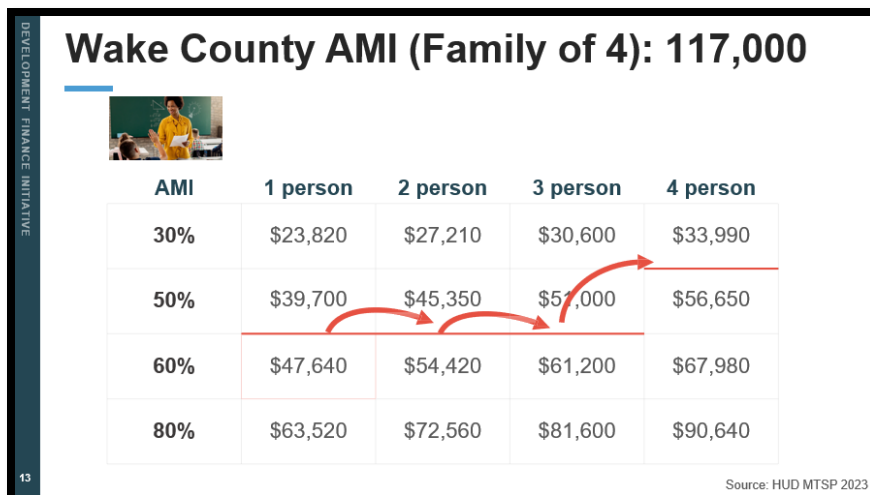
11 **Councilmember Mahaffey** asked if there is a distinction between what types of  
12 support would be subject to 20% limitation.

13 **Ms. Turner** said she would have to defer that question to their attorney, Tyler  
14 Mulligan.

15 **[SLIDE-12]**



16 **[SLIDE-13]**



1 [SLIDE-14]



2  
3 [SLIDE-15]

A presentation slide with a white background. On the left side, there is a vertical dark blue bar with the text "DEVELOPMENT FINANCE INITIATIVE" in white. The title "Site Identification Process" is at the top in a bold black font. Below the title is a list of four numbered items. Item 1 includes a bulleted list of details. Item 4 states "Two sites identified as likely feasible." The number "15" is in the bottom left corner.

**Site Identification Process**

- 1) Examined all publicly and privately owned sites within the Town of Apex that are likely competitive for federal Low Income Housing Tax Credits (LIHTC).
  - Awarded to private developers or non-profits
  - LIHTC is dependent on suitability of site for development.
  - There is a 9% LIHTC (higher subsidy; more competitive) and 4% LIHTC (lower subsidy; less competitive)
  - After a developer has exhausted private loans and LIHTC, there is usually still a funding gap.
    - Low-cost capital is required and often provided by government partner(s).
- 2) For publicly-owned sites, examined existing plans. For privately-owned, evaluated path to site control.
- 3) Identified sites with minimum 2-acres for surface parked LIHTC development.
- 4) Two sites identified as likely feasible.

4  
5 **Councilmember Gantt** asked to explain the criteria requirements.

6 **Ms. Turner** said per state of North Carolina the sites have to have a perfect score to  
7 compete within Low Income Housing Tax Credits (LIHTC).

8 **Assistant Town Manager John** asked to talk about the 9% tax credits since it's so  
9 competitive, in which the 4% is not.

10 **Ms. Turner** said the 9% is more competitive there's an application period which takes  
11 to a year to finalize, then 4% process is a little expedited but the tradeoff is the lower subsidy.

12 **Assistant Town Manager John** said Federal Homeland Bank is usually used as part of  
13 a GAP source.

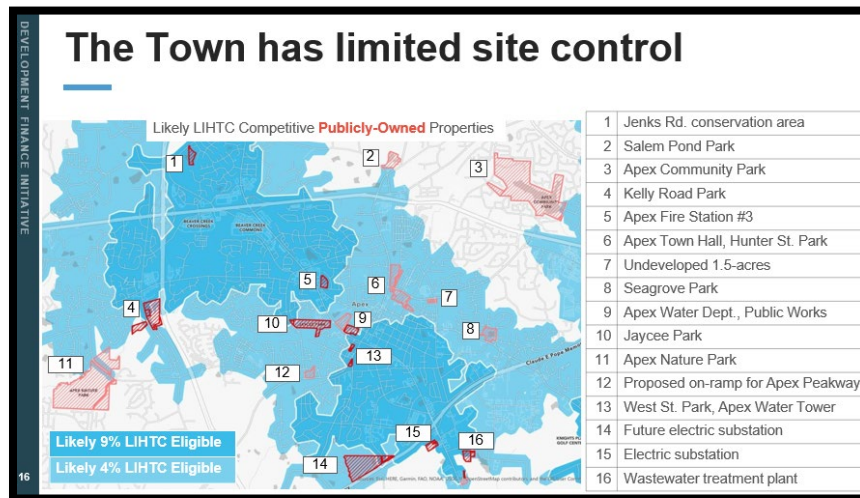
14 **Councilmember Gantt** asked if there was a Cap on number of units that are eligible  
15 for the 9%.

16 **Ms. Turner** said yes.

**Director Newman** said there are ways to still maximize a large parcel even if there may be some caps on how many tax credit funded units. She said you can do other stuff around that on the same parcel just not in that particular case.

**Assistant Town Manager John** said even replotting for commercial space.

[SLIDE-16]

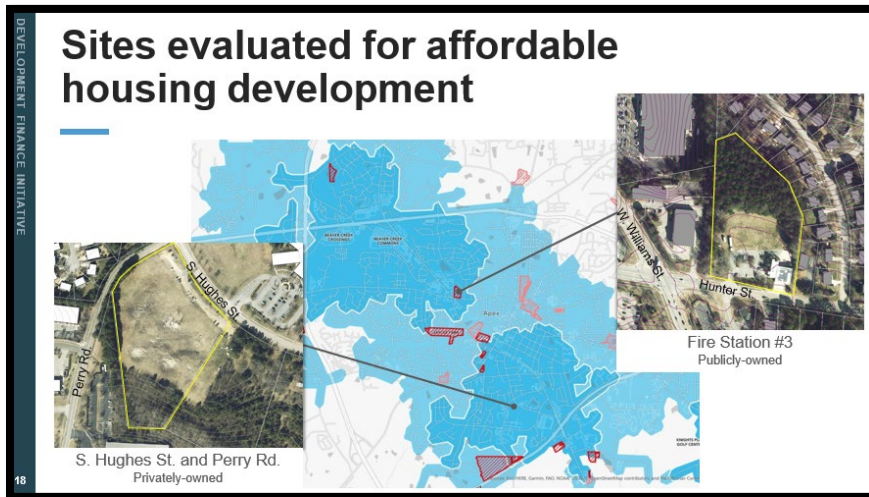


[SLIDE-17]





1 [SLIDE-18]



2 **Councilmember Gantt** said he didn't think the town closed on the housing site.

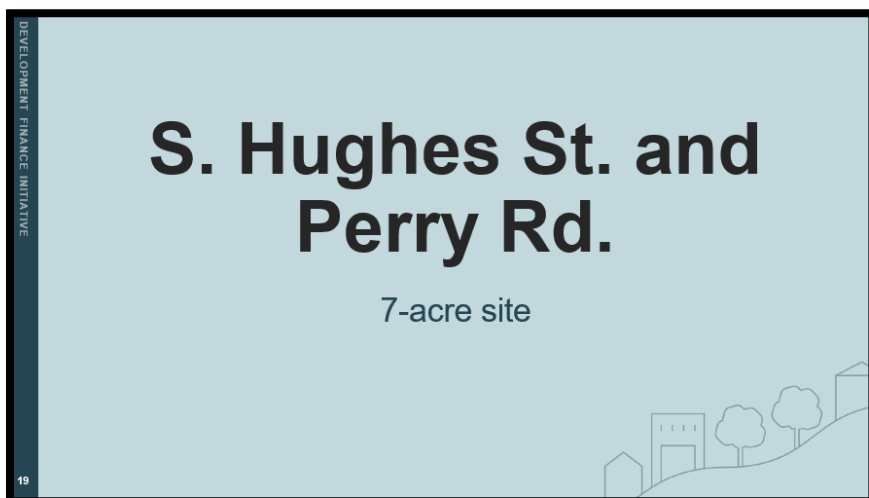
3 **Interim Town Manager Purvis** said the direction was to expand the fire department  
4 on that site.

5 **Director Newman** said there was also consideration about administration being at  
6 that site which would require some additional development.

7 **Mayor Pro-Tempore Gray** asked about property acquisition and what it looks like  
8 from a purchase perspective.

9 **Director Newman** said a number of parcels were looked at over a few months period  
10 of time. She said when they see a parcel, it ends up selling fast. She said its been challenging,  
11 but she hopes to have other conversations later about other opportunities. She said this one  
12 parcel is a good one for us if council chooses.

13 [SLIDE-19]




1 [SLIDE-20]

DEVELOPMENT FINANCE INITIATIVE

## Considerations: S. Hughes St. and Perry Rd

- Likely 9% LIHTC competitive (for projects ≤120 units)
  - Above 120 units would require 4% LIHTC
- Multiple development options possible including, apartments and townhomes, and rental and homeownership opportunities:
  - Est. 7.15 developable acres
  - Potential access from S. Hughes St. and Perry Rd.
  - Potential for phased development approach
- Regardless of approach, there will be a cost to the Town to acquire the property



20

2  
3 [SLIDE-21]

DEVELOPMENT FINANCE INITIATIVE

## Site can support up to 170 units

Site offers flexibility for multiple development options




21

4  
5 [SLIDE-22]

DEVELOPMENT FINANCE INITIATIVE

## Potential public participation ranges from acquisition up to est. \$14M



	136 units	170 units
Est. Financial Gap*	Up to \$14M	Up to \$14M
Gap per unit		Up to \$92,000

22

\*The financial gap is based on current market conditions and an est. construction cost of \$266K per unit.

6

1 [SLIDE-23]

DEVELOPMENT FINANCE INITIATIVE

23

## Affordable Homeownership Opportunity?




- Site offers potential to explore affordable homeownership.
- Providing homes affordable to households earning  $\leq 80\%$  AMI will have a funding gap.
  - Developer: construction costs
  - Homeowner: down payment and closing cost assistance
- Estimated sale price would be ~\$370,000 per unit.
- The total financial gap if 20% (11 units) are set aside for households earning 60% AMI is an est. \$1.7M - \$2.1M.
- Opportunity to explore a land trust.

2  
3 [SLIDE-24]

DEVELOPMENT FINANCE INITIATIVE

24

## Considerations and Next Steps



4  
5 [SLIDE-25]

DEVELOPMENT FINANCE INITIATIVE

25

## Property Acquisition Strategy

Properties come on and off the market quickly. If the Town wants to assemble property for affordable housing, it will need to react to opportunities just as fast:

- Town can establish criteria for future property acquisition:
  - Minimum of 2 contiguous, developable acres
  - Located in a likely LIHTC eligible area
- Town can have funds set aside in preparation for opportunities.

Likely LIHTC Competitive **Publicly-Owned** Properties



Likely 9% LIHTC Eligible  
Likely 4% LIHTC Eligible

6


1 [SLIDE-26]

DEVELOPMENT FINANCE INITIATIVE

26

## Next Steps

1. Select site(s) that best meets local priorities and attain site control (if necessary).
2. Town participation will be necessary to attract private investment for LIHTC (and affordable homeownership) development in Apex.
  - Public investment would cover the funding gap for the development of low-to-moderate income units (rental and homeownership)



2  
3 **Councilmember Gantt** asked is there a way to make a guess on what the LIHTC map  
4 will look like in 5 years.

5 **Director Newman** said that's a part of why the affordable housing plan was updated.  
6 She said the updates include an acquisition strategy so the town doesn't have to look down  
7 the road and question the development process.

8 **Assistant Town Manager John** asked how does the census tract area impact the  
9 town if we go further outward.

10 **Ms. Turner** said the next step would to look at a map and identify what areas are  
11 eligible for LIHTC.

12 **Councilmember Killingsworth** said specifically toward Sweetwater area as that  
13 develops as their plan was grocery store and urgent care type of set up so that could also  
14 open that quarter up a little bit.

15 **Councilmember Gantt** asked it would be difficult but would partial properties that  
16 could be combined with one to get over the 2-acre mount could be viable.

17 **Director Newman** said yes, being able to find those opportunities and replat it as one  
18 parcel.

19 **Assistant Town Manager John** said one thing about Finance State Housing agencies  
20 is for a place like Apex, we would need to get creative with development.

21 **Councilmember Mahaffey** asked about where we are with Apex being its own  
22 entitlement community.

23 **Director Newman** said she has a virtual meeting scheduled on Thursday afternoon  
24 with HUD to talk about the Towns potential eligibility.

25 **Councilmember Mahaffey** said he thinks the town is large enough to do a more  
26 effective job. He asked is the staff looking fir direction from Council today or just talking. He  
27 said it would be awesome to make a move but some additional questions regarding number  
28 of unites with rentals or home ownership opportunities.

29 **Assistant Town Manager John** said we would need to table the discussion around  
30 real estate since that's done in closed session.

1       **Councilmember Gantt** said the rentals are pretty similar across Wake County but the  
2 home values were a wide range. He said he would suggest to go with rentals so the Towns  
3 not skewed too high on comparison.

4       **Councilmember Mahaffey** said he agrees. He said the rental market has also got out  
5 of control the past couple of years. He said the interest rates for mortgages today is  
6 outrageous. He said his prospective is to focus on rental units in the short term and try to get  
7 those online and then eventually moving up to home ownership.

8       **Director Newman** said staff has been in discussion about future development  
9 regarding long term conversations when the town has other developments that are looking  
10 to be rezoned, she asked how much should the town inquire in terms of investment for  
11 affordable units that makes sense for the town. She said those conversations are being  
12 brought to HAB in the next few months.

13       **Assistant Town Manager John** said that also includes conversations with developers  
14 who are interested in building communities here in Apex.

15       **Director Newman** said one of the things she's focused on is having a developer  
16 workshop and bring these developers into the room and have those conversations.

17       **Assistant Town Manager** said she's talking about those individuals who are above  
18 the 80% area median income when it comes to purchasing those homes.

19 **[SLIDE-27]**

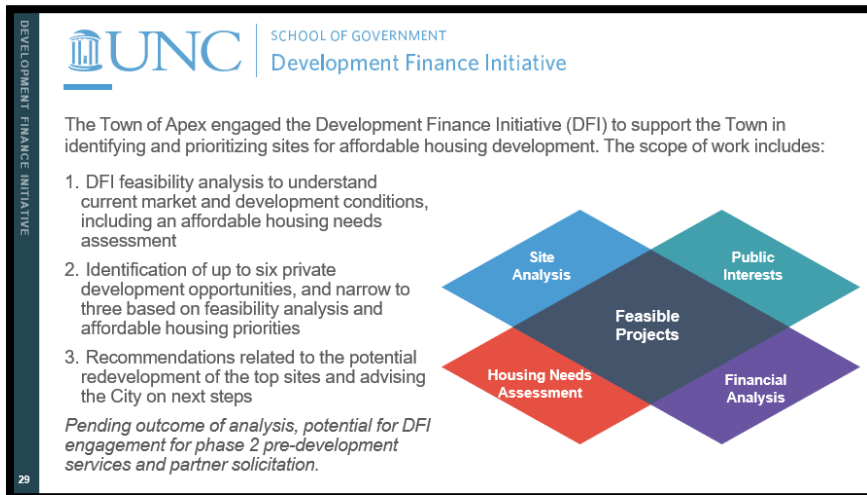




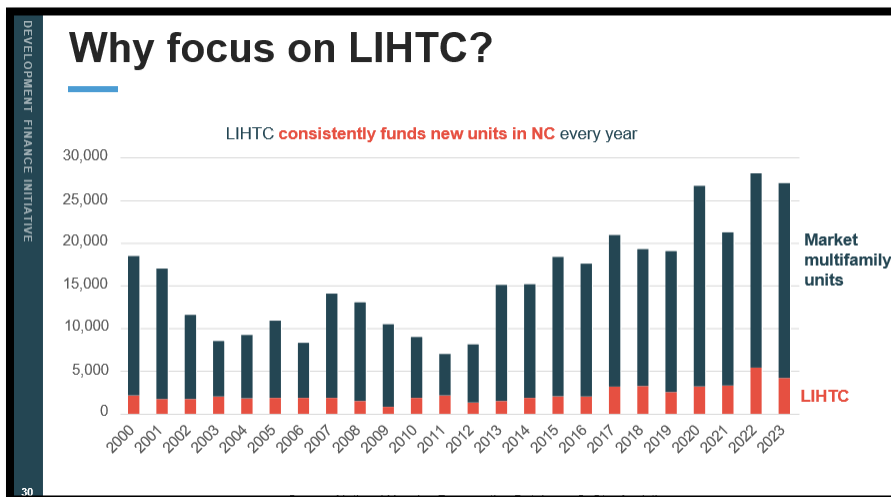
1 [SLIDE-28]



2  
3 [SLIDE-29]



4  
5 [SLIDE-30]



6

1 [SLIDE-31]

DEVELOPMENT FINANCE INITIATIVE

## LIHTC provides equity and a framework for monitoring private development

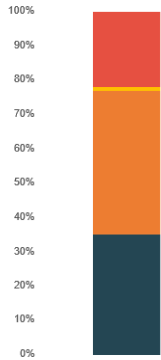
- Low-Income Housing Tax Credit (LIHTC) provides tax credits for acquisition, rehab, or new construction of affordable rental units.
- Awarded to private developers or non-profits, not local governments.
- Contributes equity to a project dependent on suitability of site for development:
  - 9% (high subsidy, highly competitive)
  - 4% (less subsidy, less competitive)
- Project remains affordable for 30 years (privately owned and managed) and monitored by NC Housing Finance Agency.
- Income requirements: 20-80% AMI.



2  
3 [SLIDE-32]

DEVELOPMENT FINANCE INITIATIVE

## Funding for Affordable Rental Development



- Funding Gap**
  - Public or charitable source
- Low-Income Housing Tax Credit (LIHTC) Equity**
  - 9% and 4% Tax Credit: Sold to private investors for equity
    - May cover between 40% and 90% of capital needed
  - Unit affordability must be (on average) affordable to households at 60% AMI
  - Guarantees 30 years of affordability
- Private Loans**
  - Federally-guaranteed → below market interest rates and terms

4  
5 [SLIDE-33]

DEVELOPMENT FINANCE INITIATIVE

## Affordable Rent Limits (2023)

	30% AMI	50% AMI	60% AMI	80% AMI
1-Bed	\$640	\$1,060	\$1,275	\$1,700
2-Bed	\$765	\$1,275	\$1,530	\$2,040
3-Bed	\$880	\$1,470	\$1,770	\$2,340

Source: HUD MTSP 2023

18



1 [SLIDE-34]



2  
3 [SLIDE-35]

A presentation slide titled "Considerations: Fire Station #3". On the left, there is a bulleted list of considerations. On the right, there is a map showing the site location relative to surrounding streets and land use. The map labels include "Commercial", "Residential", "Day Care", and "Fire Station Site".

- Likely 9% LIHTC competitive
- Est. 3 developable acres
- Development can co-locate with the fire station
- Access only from Hunter Street?
- Several unknowns regarding fire department plans and potential environmental considerations.
  - May impact development timeline.
- Est. minimum public investment is the conveyance or lease of the land

4  
5 [SLIDE-36]

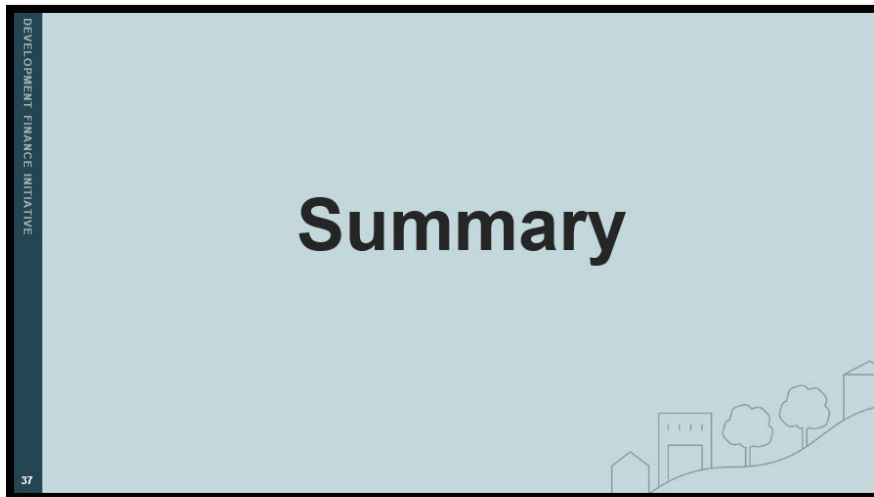
A presentation slide titled "Site can support up to 70 units with 3-story buildings". On the left, there is a table showing financial gap information. On the right, there is an aerial map of the site with building footprints and a fire station.

Est. Max Financial Gap*	\$1.7M
Gap per unit	\$25,000

\*Financial gap is based on current market conditions and an est. construction cost of \$262K per unit. Gap reduces with fewer units.

6

1 [SLIDE-37]



2  
3 [SLIDE-38]

A presentation slide titled "Potential Development Opportunities". It features two aerial photos of potential development sites. The top photo shows a site bounded by W. Williams St. and Hunter St. The bottom photo shows a site bounded by S. Hughes St. and Perry Rd. To the right of the photos is a list of "Key Differences" including Location, Number of units the site can support, Income level of households served, and Potential financial gap. A paragraph above the list states: "Both sites are likely competitive for 9% LIHTC and are either publicly-owned or have path to site control." On the left side, there is a vertical label "DEVELOPMENT FINANCE INITIATIVE" and a small number "38" at the bottom.

### Potential Development Opportunities

Both sites are likely competitive for 9% LIHTC and are either publicly-owned or have path to site control.

**Key Differences**

- Location
- Number of units the site can support
- Income level of households served
- Potential financial gap

4  
5 [SLIDE-39]

A presentation slide titled "Summary: Affordable Housing Development Opportunities". It features three aerial photos of potential development sites. The first photo shows a site bounded by Hunter St. and Perry Rd. The second photo shows a site bounded by S. Hughes St. and Perry Rd. The third photo shows a site bounded by S. Hughes St. and Perry Rd. Below the photos is a table comparing the sites. On the left side, there is a vertical label "DEVELOPMENT FINANCE INITIATIVE" and a small number "39" at the bottom.

### Summary: Affordable Housing Development Opportunities

	Fire Station #3	S. Hughes St. and Perry Rd.
Units	Up to 70	Up to 170
Est. Financial Gap*	Up to \$1.7M	Up to \$14M
Est. Gap per unit	Up to \$25,000	Up to \$92,000

\*The financial gap is based on current market conditions and an est. construction cost between \$262K and \$266K per unit



6

1 [SLIDE-40]

DEVELOPMENT FINANCE INITIATIVE

40

## Development Considerations

	<p>Fire Station #3</p> <ul style="list-style-type: none"><li>• Likely 9% LIHTC competitive.</li><li>• Est. 3 developable acres.</li><li>• Design can co-locate with the fire station.</li><li>• Access only from Hunter St.?</li><li>• Est. minimum public participation is the conveyance of the land.</li><li>• Unknowns regarding fire department plans and potential environmental considerations. May impact development timeline.</li></ul>
	<p>S. Hughes St. and Perry Rd</p> <ul style="list-style-type: none"><li>• Likely 9% LIHTC competitive (for projects less than 120 units). Above 120 units would require 4% LIHTC.</li><li>• Est. 7.15 developable acres.</li><li>• Multiple development approaches possible.</li><li>• Potential for phased development approach.</li><li>• Access from S. Hughes St. and Perry Rd.</li><li>• Regardless of approach, there will be a cost to the Town to acquire the property.</li></ul>

2  
3 **Lamont Taylor**, Housing Program Manager, spoke on funding and what the next  
4 steps look like for Housing Affordability.

5 [SLIDE-1]


## Challenges Land & Funding


The demand for homes affordable to low- and middle wage earners, families, seniors and other-abled persons is far outpacing the current supply, as well as what's proposed in the near term.


As you can see from the DFI presentation, land availability is one of the major local challenges to develop affordable housing.

Related to that is the cost of available land within Town limits, as well as the budget limitations of the Affordable Housing Fund.

Though we are presented with a number of unique challenges to housing affordability in Apex, there are examples of approaches that address affordability for low- and middle-income households in high-cost markets.

Land availability

Land cost and Town financing for acquisition

Programs that work

6  
7  
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17  
18

1 [SLIDE-2]

**Where Do We Go From Here?**  
*Increasing and Leveraging Investments to Meet Demand*

The Town has shown its commitment to addressing our need through creation of the Affordable Housing Fund (AHF), a significant *first step*.

Opportunities to explore that can better enable the Town to meet demand include:

1. Increasing the AHF
2. Diversifying funding sources
3. Greater leveraging of Town investments
4. Leveraging the Town's expanding footprint due to growth, and
5. Repurposing some existing Town-owned properties.

Key factors for success:

- Funding target amount and frequency
- Partnerships & collaborations
- Currently available resources to pursue
- Timeline

2  
3 **Councilmember Gantt** asked has there been discussions of land use and zoning  
4 interaction with this.

5 **Director Newman** said not with Housing.

6 **Assistant Town Manager John** said we want that, though.

7 **Mayor Pro-Tempore Gray** said he thinks it's a necessary conversation to have as were  
8 looking. He said one of his concerns is as the Town grows further and further westward and  
9 the southward and going into the rural residential kind of location, he said it doesn't seem to  
10 make sense talk to developers about low-income affordable housing when it seems like were  
11 saddling somebody with debt. He said he doesn't like to give away that line from the Town's  
12 standpoint. He said he likes the idea of going back and figuring out what's the right mix. He  
13 said, is it Housing dollars or asking for more dollars.

14 **Assistant Town Manager John** said something to think about is how the Town  
15 defines "affordable" and where the income ranges live.

16 **Mayor Pro-Tempore Gray** said he feels the affordable action is a sliding scale. He  
17 said it's got to encompass those residents who are already here in Apex. He suggested  
18 having a range of incomes.

19 **Director Newman** said we have a range of people with range of needs. She said she  
20 wants to make sure that the town serves that entire range. She said possible partnerships with  
21 Wake County's Housing Authority which targets certain income ranges.

22 **Assistant Town Manager John** said there is even more discussions to come on the  
23 manufactured home community.

24 **Director Newman** said she's had conversations with Habitat for Humanity with a grant  
25 opportunity for the manufactured home community called the preservation and reinvestment  
26 inactive for community enhancement.

27 **Councilmember Gantt** asked how are the conversations being made when Garner's  
28 affordability units may be half the price of Apex's units.

29 **Director Newman** said it's a about what Apex brings to the table, and Apex is trying  
30 to be diverse in multiple ways to meet the needs of everyone in Apex.

1       **Councilmember Gantt** asked if they are going to talk to the Wake County Staff and to  
2 share with Council their talking points so maybe that can be shared to the County  
3 Commissioners as well.

4       **Councilmember Killingsworth** said everyone's having to deal with the affordable  
5 housing conversation. She said putting it out there to everyone is going to be helpful when it  
6 comes to doing community surveys on all this information. She said she hopes to keep going  
7 with these partnerships as its beneficial in so many ways whether to the Town or to  
8 development community.

9       **Mayor Gilbert** said he has three quick questions. He said he's happy to hear about  
10 the extended resources and asked are there an additional process that will be put in place for  
11 people who are being displaced or about to be put out of their homes. He asked is there an  
12 opportunity to increase funding for our partners to keep people in their homes and he said  
13 Western Wake Ministries is one and asked has that been considered.

14       **Director Newman** said funding for nonprofit organizations is handled in another part  
15 of operations in city government and not within our office. She said the towns ability to  
16 provide these resources is constrained. She said its more effective for the town to support  
17 these organizations and partnerships in the community.

18       **Mayor Gilbert** asked about the latest project Abby Springs 84-unit project.

19       **Director Newman** said there is a gap they are trying to close and they've been  
20 working closely with Wake County on Abby Springs. She said there are some sources they  
21 have considered and she wants to get back to the table and do more outreach to Evergreen  
22 Construction. She said they had to go back and rework their numbers and discussing some of  
23 the additional sources that can help them.

24       **Mayor Gilbert** said he was curious with Wake County Economic Development if they  
25 discuss housing in their conversations.

26       **Director Newman** said they do in some instances. She said its also important for the  
27 local community to push a conversation about that.

28       **Assistant Town Manager John** said it also depends on if it aligns with the affordable  
29 housing goals.

30       **Councilmember Killingsworth** asked does Council want to call for a Closed Session  
31 on discussion that was talked about earlier.

32       **Town Attorney Lohe** said it would be for the purpose of property acquisition.

33       **Mayor Gilbert** said there is a property on the table.

34  
35 **[CLOSED SESSION]**

36  
37       A **motion** was made by **Councilmember Killingsworth**, seconded by  
38 **Councilmember Mahaffey**, to enter into Closed Session pursuant to NCGS § 143-  
39 318.11(a)(5).

40  
41 **VOTE: UNANIMOUS (5-0)**  
42

Council entered into Closed Session at **5:18 p.m.**

**CS1 Marla Newman, Community Development and Neighborhood Connections  
Director**

**NCGS § 143-318.11(a)(5)**

"To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease."

Council returned to open session at **5:42 p.m.**

**[ADJOURNMENT]**

**Mayor Gilbert** thanked everyone and declared the meeting adjourned at **5:42 p.m.**

Jacques K. Gilbert  
Apex, Mayor

Allen Coleman, CMC, NCCCC  
Apex, Town Clerk

Submitted for approval by Apex Town Clerk Allen Coleman.

Minutes approved on \_\_\_\_\_ of \_\_\_\_\_, 2024.

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Dianne Khin, Director

Department(s): Planning

### Requested Motion

Motion to approve an update to the Historical Marker Program application to change the grant amount to up to \$4,000.

### Approval Recommended?

Yes

### Item Details

The current program limits the grant amount to 50 percent of the sign cost up to \$2,000. To encourage more program participation and expand historic markers in Apex, the program revision includes a grant amount up to \$4,000 with no percentage restriction.

### Attachments

- CN8-A1: Historical Marker Program Update - Increase Grant to \$4,000





# HISTORICAL MARKER PROGRAM APPLICATION

Town of Apex, North Carolina



This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

**For more information on the Historical Marker Program or for assistance in completing this application, please contact the Apex Planning Department at 919-249-3426 or [planninginfo@apexnc.org](mailto:planninginfo@apexnc.org).**

The Historical Marker Program is designed to provide incentive funds to tenants/property owners to install Historical Markers at key locations adjacent to or on historic structures and sites within Apex's jurisdiction. The grant can provide up to ~~50%~~ **\$4,000** of the cost of the marker, ~~up to a maximum of \$2,000.00~~ per property.

1. Application requirements:

- a. Completed application form signed by the property owner.
- b. Photos of the historic structure or site, showing the current condition.
- c. Documentation of historic nature of structure or site.
- d. Detailed content for Historical Marker.
- e. 11" x 17" Site Plan showing location of Historical Marker on site or photograph of building with location noted for markers that will be hung on the structure.
- f. Drawings including colors/finishes of Historical Marker.
- g. Encroachment agreements and/or easements.
- h. Cost estimates from a qualified professional, such as but not limited to [www.sewahstudios.com](http://www.sewahstudios.com) or [www.signsunlimitedusa.com](http://www.signsunlimitedusa.com). Cost estimates must be detailed in a line by line format.

2. Applications must be approved before work begins or no funds will be disbursed.

3. The Planning Staff has been granted authority to administer the Historical Marker Program process by Town Council. Town Council allocates the funding for the grant through the yearly budgeting process.

4. Grant amount shall be paid only when construction is completed and receipts are submitted to the Planning Department. If the actual costs are less than the cost estimates, the maximum amount shall not exceed ~~50% of the actual costs or the \$2,000~~ **\$4,000** limit, whichever is less. In no case shall a grant be issued higher than the original approved grant amount.

5. Eligibility Criteria:

- a. If the tenant will be doing the proposed work, the tenant must obtain the property owner's signature on the application.
- b. Historical Marker Program applications will be reviewed for historical authenticity, relative merit, appropriateness of content, and aesthetics. No funds will be awarded for Historical Markers that are not in keeping with the appropriate content and aesthetic standards of the Town, as deemed by Planning Staff. Requirements include, but are not be limited to:
  - i. Historical Markers can be located on private land with appropriate easements or on Town property with appropriate easements or encroachment agreements. Location of the Historical Markers in NCDOT rights-of-way will generally not be allowed due to maintenance issues with markers being hit by vehicles.
  - ii. Historical Marker shall be the following style (identified by Sewah as "South Dakota") with the Town of Apex seal in the center.

# HISTORICAL MARKER PROGRAM APPLICATION

Town of Apex, North Carolina



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- iii. Historical Marker must have a black background with white lettering (seal to be white as well).
- iv. The post must be black if post mounted.
- v. Lettering shall be appropriate to the location, but shall be no smaller than 1" and no larger than 3".
- c. Historical Marker locations must be within Apex's corporate limits and/or extra-territorial jurisdiction and must comply with all state and local regulations, including obtaining required easements/encroachment agreements from the Town of Apex or easements on private property.

I have read the Historical Marker Program information:

Applicant Signature

Date

Application #:

Submittal Date:

# HISTORICAL MARKER PROGRAM APPLICATION

Town of Apex, North Carolina



This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

## Hard Copy Submittal Requirements: (Submit to Planning Department)

- One (1) copy of Historical Marker Program Application
- 11x 17 Site Plan/Marker Drawings and Colors

## Applicant Information:

Applicant: \_\_\_\_\_ Tax ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## Owner Information:

Owner: \_\_\_\_\_ Tax ID: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## Location Information:

Address: \_\_\_\_\_  
Property PIN: \_\_\_\_\_ Owner or Tenant Occupied? \_\_\_\_\_  
Current Building or Site Use: \_\_\_\_\_  
Cost of Overall Proposal: \_\_\_\_\_ Historical Marker Funds Requested: \_\_\_\_\_

## Historical Marker Content:

1. Please provide the requested Historical Marker content in detail (exactly what it would say on the Marker). Attach a separate sheet if necessary.

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# HISTORICAL MARKER PROGRAM APPLICATION

Town of Apex, North Carolina



This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

2. On a separate sheet, provide a detailed cost estimate for the Historical Marker fabrication and installation. Once the work is completed, please provide the Planning Department with a copy of the receipt(s) for all labor and supplies. Historical Marker funds will not be released without receipt(s).

3. Please describe how this Historical Marker contributes to the historic character of Apex. Provide documentation of historical authenticity and relative merit as attachments to this application.

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## Owner/Applicant Signatures

I understand the limits and requirements of this program and if approved, agree to complete the project according to plan. In addition, I shall indemnify and hold harmless, the Town of Apex from and against any and all claims, actions, causes of action, demands, damages, losses, costs, expenses, and compensation of whatsoever kind and nature which may hereafter accrue on account of or in any way growing out of any and all known or unknown, foreseen and unforeseen bodily and personal injuries and property damage and consequences thereof, which might result from any occurrence in connection with this program.

_____ Applicant Signature	_____ Date
_____ Owner Signature	_____ Date
_____ Staff Approval	_____ Date

Conditions of Approval:

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Shannon Cox, Long Range Planning Manager

Department(s): Planning Department

### Requested Motion

Motion to approve the Memorandum of Understanding (MOU) between Capital Area Metropolitan Planning Organization (CAMPO), Town of Apex, and various municipalities, to reflect the administrative updates of current codes and practices, in cooperation with United States Department of Transportation Agreement No. 2024-04-17 and authorize the Mayor to execute the agreement on behalf of the Town.

### Approval Recommended?

Yes.

### Item Details

A Memorandum of Understanding (MOU) exists between the municipalities, agencies, counties, and the State to establish the role of the Capital Area Metropolitan Planning Organization (CAMPO) in transportation planning. The MOU also establishes CAMPO membership, an Executive Board, Technical Coordinating Committee, and responsibilities. At the April 17, 2024 meeting of the CAMPO Executive Board, an updated MOU was approved for local adoption. The MOU changes include adding the newest CAMPO members (Lillington, Coats, and Chatham County) as well as some administrative updates to reflect current codes and practices. CAMPO has requested that each member municipality or agency approve this MOU at local board meetings by June 30, 2024 in order to facilitate the completion of this work by the start of Fiscal Year 2025 on July 1, 2024. After all parties have locally adopted the MOU, the State will provide the final adoption, thus finalizing the process.

### Attachments

- CN9-A1: Memorandum of Understanding (MOU) between Capital Area Metropolitan Planning Organization (CAMPO), Town of Apex, and Various Municipalities - Administrative Updates



**NORTH CAROLINA  
CAPITAL AREA METROPOLITAN PLANNING ORGANIZATION**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**THE GOVERNOR OF THE STATE OF NORTH CAROLINA,  
TOWN OF ANGIER, TOWN OF APEX, TOWN OF ARCHER LODGE, TOWN OF  
BUNN, TOWN OF CARY, TOWN OF COATS, TOWN OF CLAYTON, CITY OF  
CREEDMOOR, TOWN OF FRANKLINTON, TOWN OF FUQUAY-VARINA, TOWN  
OF GARNER, TOWN OF HOLLY SPRINGS, TOWN OF KNIGHTDALE, TOWN OF  
LILLINGTON, TOWN OF MORRISVILLE, CITY OF RALEIGH, TOWN OF  
ROLESVILLE, TOWN OF WAKE FOREST, TOWN OF WENDELL, TOWN OF  
YOUNGSVILLE, TOWN OF ZEBULON, COUNTY OF CHATHAM, COUNTY OF  
FRANKLIN, COUNTY OF GRANVILLE, COUNTY OF HARNETT, COUNTY OF  
JOHNSTON, COUNTY OF WAKE, TRIANGLE TRANSIT AUTHORITY, AND THE  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
(Hereinafter referred to as the Municipalities, the Agencies, the Counties and the State)**

**IN COOPERATION WITH  
THE UNITED STATES DEPARTMENT OF TRANSPORTATION,**

**Agreement No. 2024-04-17**

**WITNESSETH THAT**

**WHEREAS, Chapter 136, Article 3A, Section 136.66.2(d) provides that:**

*"For MPOs, either the MPO or the Department of Transportation may propose changes in the plan at any time by giving notice to the other party, but no change shall be effective until it is adopted by both the Department of Transportation and the MPO."; and*

**WHEREAS, Section 134(a) of Title 23 United States Code states:**

*"It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities)*

**N. C. Capital Area Metropolitan Planning Organization**

**Memorandum of Understanding (cont.)**

April 17, 2024

*which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems."*; and

**WHEREAS, Section 134(c) of Title 23 United States Code** states:

*Development of long-range plans and TIPs.— To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State; and*

**WHEREAS, Chapter 136, Article 3A, 66.2(a)** of the General Statutes of North Carolina require that:

*"Each MPO, with cooperation of the Department of Transportation, shall develop a comprehensive transportation plan in accordance with 23 U.S.C. § 134. In addition, an MPO may include projects in its transportation plan that are not included in a financially constrained plan or are anticipated to be needed beyond the horizon year as required by 23 U.S.C. § 134. For municipalities located within an MPO, the development of a comprehensive transportation plan will take place through the metropolitan planning organization. For purposes of transportation planning and programming, the MPO shall represent the municipality's interests to the Department of Transportation."*; and,

**WHEREAS, Chapter 136, Article 3A, 66.2(b)** provides that:

*"After completion and analysis of the plan, the plan shall be adopted by both the governing body of the municipality or MPO and the Department of Transportation as the basis for future transportation improvements in and around the municipality or within the MPO. The governing body of the municipality and the Department of Transportation shall reach agreement as to which of the existing and proposed streets and highways included in the adopted plan will be a part of the State highway system and which streets will be a part of the municipal street system. As used in this Article, the State highway system shall mean both the primary highway system of the State and the secondary road system of the State within municipalities."*; and,

**WHEREAS,** a transportation planning process includes the operational procedures and working arrangements by which short and long-range transportation plans are soundly conceived and developed and continuously evaluated in a manner that will:

1. Assist governing bodies and official agencies in determining courses of action and in formulating attainable capital improvement programs in anticipation of community needs; and,
2. Guide private individuals and groups in planning their decisions which can be important factors in the pattern of future development and redevelopment of the area; and,



**N. C. Capital Area Metropolitan Planning Organization  
Memorandum of Understanding (cont.)**

April 17, 2024

**WHEREAS**, it is the desire of these agencies that a continuing, cooperative, and comprehensive transportation planning process as set forth in a Memorandum of Understanding dated January 28, 1993 comply with Title 23 U.S.C. Section 134; and any subsequent amendments to that statute, and any implementing regulations; Title 49 U.S.C. Chapter 53 and any subsequent amendments to these statutes and any implementing regulations; and the Clean Air Act of 1970, as amended, [42 U.S.C.7504 and 7506].

**NOW THEREFORE**, the following **Memorandum of Understanding** is made:

**Section I. Membership**

It is hereby agreed that the Municipalities, the agencies, the Counties and the State in cooperation with the United States Department of Transportation, will participate in a continuing, cooperative and comprehensive ("3-C") transportation planning process with responsibilities and undertakings as related in the following paragraphs:

1. The **N. C. Capital Area Metropolitan Planning Area** (as defined by the Metropolitan Area Boundary, also known as the Planning Area Boundary) will be all of Wake County and parts of Chatham, Franklin, Granville, Harnett, and Johnston Counties.
2. The **N. C. Capital Area Metropolitan Planning Organization (MPO)** shall include the local governments of the Municipalities and the Counties, the North Carolina Department of Transportation, an **Executive Board** hereinafter defined, a **Technical Coordinating Committee** hereinafter defined, and the various agencies and units of local, regional, and state government participating in the transportation planning for the area.
3. The **Urbanized Area Boundary** and the **Metropolitan Area Boundary** shall be periodically reviewed and revised in light of new developments and basic data projections.
4. The continuing transportation planning process will be a cooperative one reflective of and responsive to the programs of the North Carolina Department of Transportation, and to the comprehensive plans for growth and development of the Municipalities and the Counties in the Triangle Region with attention being given to cooperative planning with the neighboring metropolitan and rural planning organizations.
5. The continuing transportation planning process will be in accordance with the intent, procedures and programs of Title VI of the Civil Rights Act of 1964, as amended.
6. The continuing transportation planning process will be in accordance with the intent, procedures, and programs of the Clean Air Act of 1970, as amended.

## N. C. Capital Area Metropolitan Planning Organization

### Memorandum of Understanding (cont.)

April 17, 2024

7. Transportation policy decisions within the planning area are the shared responsibility of the North Carolina Board of Transportation, the Executive Board and the governing bodies of the participating local governments.
8. Transportation plans and programs and land use policies and programs having regional impacts will be coordinated with the applicable regional Councils of Governments.
9. **An Executive Board is hereby established** with the responsibility for cooperative transportation planning decision making for the MPO. The **Executive Board** shall have the responsibility for keeping the policy boards of the participating local governments informed of the status and requirements of the transportation planning process; for assisting in the dissemination and clarification of the decisions and policies of the policy boards; for providing opportunities for citizen participation in the transportation planning process; and all other duties and responsibilities customary for a governing board of a public authority.

The **Executive Board** will be responsible for carrying out the provisions of 23 U.S.C. Section 134 and Title 49 U.S.C. Chapter 53; and 42 U.S.C.; including, but not necessarily limited to:

- a. Establishment of goals and objectives for the transportation planning process.
- b. Review and approval of a **Prospectus** for transportation planning which defines work tasks and responsibilities for the various agencies participating in the transportation planning process;
- c. Review and approval of changes to the **Metropolitan Area Boundary** as well as review and recommendation for changes to the **National Highway System**;
- d. Review and approval of the transportation **Unified Planning Work Program**;
- e. Review and approval of the adopted **Comprehensive and Metropolitan Transportation Plans**. As specified in General Statutes Section 136-66.2(a), the Comprehensive Transportation Plan shall include the projects in the Metropolitan Area's Transportation Plan as well as projects that are not included in the financially constrained plan or are anticipated to be needed beyond the horizon year as required by 23 U.S.C. Section 134. As specified in General Statutes Section 136-66.2(d) certain revisions to the **Comprehensive Transportation Plan** may be required to be jointly approved by the North Carolina Department of Transportation;
- f. Review and approval of the MPO's **Transportation Improvement Program** for multimodal capital and operating expenditures ensuring coordination between local and State capital improvement and operating programs. As specified in 23 U.S.C. Section 134(k), all federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation

## N. C. Capital Area Metropolitan Planning Organization

### Memorandum of Understanding (cont.)

April 17, 2024

- management area (excluding projects carried out on the National Highway System) shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator;
- g. Review and approval of planning procedures for air quality conformity and review and approval of air quality conformity determination for projects, programs, and plans;
  - h. Review and approval of a Congestion Management Process;
  - i. Review and approval of the distribution and oversight of federal funds designated for the Raleigh Urbanized Area under the provisions of IIJA and any other subsequent Transportation Authorizations;
  - j. Review and approval of a policy for public involvement for the MPO;
  - k. Review and approval of an agreement between the MPO, the State, and public transportation operators serving the Metropolitan Planning Area that defines mutual responsibilities for carrying out the metropolitan planning process in accordance with 23 C.F.R. 450
  - l. Development and approval of committee by-laws for the purpose of establishing operating policies and procedures;
  - m. Oversight of the MPO Staff;
  - n. Revisions to membership of Technical Coordinating Committee as defined herein;
  - o. Review and approval of cooperative agreements with other transportation organizations, transportation providers, counties, and municipalities.

The membership of the **Executive Board** shall include:

- One member of the Angier Town Board of Commissioners
- One member of the Apex Town Council
- One member of the Archer Lodge Town Council
- One member of the Bunn Town Council
- One member of the Cary Town Council
- One member of the Clayton Town Council
- One Member of the Coats Board of Commissioners
- One member of the Creedmoor Board of Commissioners
- One member of the Franklinton Town Board of Commissioners

## **N. C. Capital Area Metropolitan Planning Organization**

### **Memorandum of Understanding (cont.)**

April 17, 2024

- One member of the Fuquay-Varina Town Board of Commissioners
- One member of the Garner Town Council
- One member of the Holly Springs Town Council
- One member of the Knightdale Town Council
- One member of the Lillington Board of Commissioners
- One member of the Morrisville Town Council
- One member of the Raleigh City Council
- One member of the Rolesville Town Board of Commissioners
- One member of the Wake Forest Town Board of Commissioners
- One member of the Wendell Town Board of Commissioners
- One member of the Youngsville Town Board of Commissioners
- One member of the Zebulon Town Board of Commissioners
- One member of the Chatham County Board of Commissioners
- One member of the Franklin County Board of Commissioners
- One member of the Granville County Board of Commissioners
- One member of the Harnett County Board of Commissioners
- One member of the Johnston County Board of Commissioners
- One member of the Wake County Board of Commissioners
- Four members of the North Carolina Board of Transportation representing the Highway Divisions (currently 4, 5, 6 and 8) within the Metropolitan Planning Area
- One member of the Research Triangle Regional Public Transportation Authority Board of Trustees; and
- The Division Administrator of the Federal Highway Administration or his or her representative who shall serve as an advisory, non-voting member.
- The Regional Administrator of the Federal Transit Administration or his or her representative, who shall serve as an advisory, non-voting member.
- The Regional Administrator of the Federal Rail Administration or his or her representative, who shall serve as an advisory, non-voting member.

Municipal and county public transit providers shall be represented on the Executive Board through their respective municipal and county local government board members.

Voting representatives of the Municipalities and the Counties shall be designated by their respective governing boards. Requirements for voting, quorums, and membership in good standing shall be included in the adopted bylaws of the Executive Board. Weighted voting shall be applied as invoked by any voting member of the Executive

## N. C. Capital Area Metropolitan Planning Organization

### Memorandum of Understanding (cont.)

April 17, 2024

Board. In the instance of a weighted vote, each member government shall be apportioned weighted voting based on the most recent certified North Carolina Population Estimates for Municipalities and Counties utilizing a vote weighting formula of one vote for each 10,000 of population, or portion thereof. Other voting agencies without population-based representation on the Executive Board shall vote in accordance with the most recent voting schedule. The most recent voting schedule will be maintained by the CAMPO staff and updated with the most recent certified North Carolina Population Estimates for Municipalities and Counties.

At the invitation of the **Executive Board**, other local, regional, State or Federal agencies impacting transportation within the planning area may serve as non-voting members of the **Executive Board**.

As established in its adopted bylaws, the **Executive Board** shall meet as deemed appropriate and shall elect officers with the responsibility for coordination of the committee's activities. A member of the MPO staff will serve as secretary to the Committee.

As established in its adopted bylaws, the Executive Board may create an executive committee and/or subcommittees to carry out its responsibilities.

10. **A Technical Coordinating Committee (TCC) shall be established** with the responsibility of general review, guidance and coordination of the transportation planning process for the planning area and with the responsibility for making recommendations to the Executive Board and to other entities designated by the Executive Board regarding any necessary actions relating to the continuing transportation planning process. The TCC shall be responsible for development, review and recommendations of the **Prospectus, Unified Planning Work Program, Transportation Improvement Program, Metropolitan Area Boundary, Urbanized Area Boundary, and National Highway System**, for revisions to the **Transportation Plan**, for planning citizen participation and for documenting reports of the transportation study.

**Membership of Technical Coordinating Committee (TCC)** shall include technical representatives from local, regional and State governmental agencies; as well as major modal transportation providers directly related to and concerned with the transportation planning process for the planning area. Each member agency's representative(s) shall be designated by the chief administrative officer of that agency. Departments or divisions within local and state agencies that should be represented on the TCC include, but are not limited to, those responsible for transportation planning, land use planning, transportation operations, public works and construction, engineering, public transportation, environmental conservation and planning, bicycle and pedestrian planning, and economic development. The voting membership shall include, at a minimum, representation from the following agencies/organizations, with specific numbers of members from each agency/organization outlined in the Technical Coordinating Committee's adopted bylaws:

**N. C. Capital Area Metropolitan Planning Organization**

**Memorandum of Understanding (cont.)**

April 17, 2024

- Town of Angier
- Town of Apex
- Town of Archer Lodge
- Town of Bunn
- Town of Cary
- Town of Clayton
- Town of Coats
- City of Creedmoor
- Town of Franklinton
- Town of Fuquay-Varina
- Town of Garner
- Town of Holly Springs
- Town of Knightdale
- Town of Lillington
- Town of Morrisville
- City of Raleigh
- Town of Rolesville
- Town of Wake Forest
- Town of Wendell
- Town of Youngsville
- Town of Zebulon
- County of Chatham
- County of Franklin
- County of Granville
- County of Harnett
- County of Johnston
- County of Wake
- Central Pines Regional Council
- Capital Area Transit
- Cary Transit
- Raleigh-Durham Airport Authority
- Research Triangle Transit Regional Public Transportation Authority
  
- North Carolina Department of Transportation

## **N. C. Capital Area Metropolitan Planning Organization**

### **Memorandum of Understanding (cont.)**

April 17, 2024

- Rural Transit Systems Serving Franklin , Granville, Harnett, Johnston and Wake Counties
- North Carolina State University
- Research Triangle Foundation
- Triangle North Executive Airport

The host agency's membership shall not include members of the MPO staff.

In addition to voting membership, the TCC shall invite officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) to coordinate their planning process, to the maximum extent practicable, with MPO planning activities. Such organizations and agencies may include:

- a. The Federal Highway Administration
  - b. The Federal Transit Administration
  - c. The Federal Rail Administration
  - d. The U.S. Army Corps of Engineers
  - e. The U.S. Environmental Protection Agency
  - f. The U.S. Fish and Wildlife Service
  - g. The N.C. Department of Cultural Resources
  - h. The N.C. Department of Commerce
  - i. The U.S. Department of Housing and Urban Development
  - j. The N.C. Railroad Company
  - k. The N.C. Trucking Association
  - l. The N.C. Motorcoach Association
  - m. Regional Transportation Alliance
11. The Technical Coordinating Committee shall operate as determined by its adopted bylaws. Any agency not listed above which wishes representation on the TCC may request such representation for consideration under the adopted bylaws of the TCC. As established in its adopted bylaws, the TCC may create an executive committee and/or subcommittees to carry out its responsibilities.
12. The governing boards of the Municipalities and the Counties and the North Carolina Board of Transportation shall serve as the primary means for citizen input to the continuing transportation planning process. Citizen involvement will also be obtained through procedures outlined in the MPO's policy for public participation and through various special studies and projects undertaken by the MPO.

The Executive Board should also provide opportunities for citizen participation in the transportation planning process.



## **N. C. Capital Area Metropolitan Planning Organization**

### **Memorandum of Understanding (cont.)**

April 17, 2024

#### **Section II. Responsibilities**

It is further agreed that the subscribing agencies will have the following responsibilities, these responsibilities being those most logically assumed by the several agencies:

##### **The Municipalities and the Counties**

The Municipalities and the Counties will assist in the transportation planning process by providing assistance, data and inventories in accordance with the Prospectus. The Municipalities and the Counties shall coordinate zoning and subdivision approval within their respective jurisdictions in accordance with the adopted Metropolitan Transportation Plan. Additionally, the a host agency, as designated by the Executive Board will serve as the **Lead Planning Agency** for the MPO. Services provided by the Lead Planning Agency on behalf of the MPO will be governed by mutual agreement(s).

The Municipalities and the Counties will participate in funding the portion of the costs of the MPO's work program not covered by federal or state funding (minimum 20% match of actual annual expenditures) as approved by the Executive Board. The portion to be paid by each Municipal and County member government will be based upon its pro rata share of population within the MPO Planning Area, utilizing the most recent certified North Carolina Office of State Planning municipal and county population estimates. In addition, MPO members may also voluntarily contribute additional funds for other purposes such as to participate in funding the costs of special studies, or other specialized services as mutually agreed upon.

Failure to pay the approved share of costs shall invalidate the MPO's Unified Planning Work Program and annual MPO self-certification as required by 23 CFR 450. Failure to certify shall result in the withholding of transportation project funds to the metropolitan planning area in accordance with federal law. In order to avoid this, the Executive Board shall amend the Unified Planning Work Program.

The municipalities and the counties receiving federal transportation funding designated for the Urbanized Areas within the MPO Planning Area as approved by the Executive Board through the Unified Planning Work Program shall comply with adopted reporting and oversight procedures.

##### **North Carolina Department of Transportation**

The Department will assist in the transportation planning process by providing planning assistance, data and inventories in accordance with the Prospectus. The Department, to the fullest extent possible, and as permitted by existing State and Federal regulations, will provide assistance in the protection of necessary rights-of-way for those transportation corridors designated on the Transportation Plan.

##### **Research Triangle Regional Public Transportation Authority**

Triangle Transit will assist in the transportation planning process by providing planning assistance, data, and inventories in accordance with the Prospectus. Triangle Transit shall comply with adopted reporting and oversight procedures for the receipt of federal

**N. C. Capital Area Metropolitan Planning Organization**

**Memorandum of Understanding (cont.)**

April 17, 2024

transportation funding designated for the region's Urbanized Areas as approved by the Executive Board through the Unified Planning Work Program

**Section III. Termination**

Parties to this Memorandum of Understanding may terminate their participation in the N. C. Capital Area Metropolitan Planning Organization by giving thirty (30) days written notice to the other parties prior to the date of termination. If any party should terminate participation, this memorandum of understanding shall remain in force and the MPO shall continue to operate as long as 75% or more of the population within the Metropolitan Planning Area is represented by the remaining members.

**Section IV. Ratification**

In witness whereof, the parties of this Memorandum of Understanding have been authorized by appropriate and proper resolutions to sign the same, The Town of Angier by its Mayor, the Town of Apex by its Mayor, the Town of Archer Lodge by its Mayor, the Town of Bunn by its Mayor, the Town of Cary by its Mayor, the Town of Clayton by its Mayor, the Town of Coats by its Mayor, the City of Creedmoor by its Mayor, the Town of Franklinton by its Mayor, the Town of Fuquay-Varina by its Mayor, the Town of Garner by its Mayor, the Town of Holly Springs by its Mayor, the Town of Knightdale by its Mayor, the Town of Lillington by its Mayor, the Town of Morrisville by its Mayor, the City of Raleigh by its Mayor, the Town of Rolesville by its Mayor, the Town of Wake Forest by its Mayor, the Town of Wendell by its Mayor, the Town of Youngsville by its Mayor, the Town of Zebulon by its Mayor, the Triangle Transit Authority by its Chair, Chatham County by its Chairman of the Board of Commissioners, Franklin County by its Chairman of the Board of Commissioners, Granville County by its Chairman of the Board of Commissioners, Harnett County by its Chairman of the Board of Commissioners, Johnston County by its Chairman of the Board of Commissioners, Wake County by its Chairman of the Board of Commissioners, and by the Secretary of Transportation on behalf of the Governor of the State of North Carolina and the North Carolina Department of Transportation, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**[SIGNATURE PAGES TO FOLLOW]**

April 17, 2024

**TOWN OF ANGIER**

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

TOWN OF APEX

Clerk

Mayor

April 17, 2024

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

**TOWN OF BUNN**

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

TOWN OF CARY

Clerk

Mayor



April 17, 2024

# TOWN OF CLAYTON

Clerk

Mayor

April 17, 2024

## TOWN OF COATS

Clerk

Mayor

April 17, 2024

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

**TOWN OF FRANKLINTON**

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

# TOWN OF GARNER

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

# TOWN OF HOLLY SPRINGS

Clerk

Mayor



April 17, 2024

# TOWN OF KNIGHTDALE

Clerk

Mayor

April 17, 2024

**TOWN OF LILLINGTON**

Clerk

Mayor

April 17, 2024

**TOWN OF MORRISVILLE**

Clerk

Mayor

April 17, 2024

CITY OF RALEIGH

Clerk

---

Mayor

April 17, 2024

**TOWN OF ROLESVILLE**

Clerk

Mayor

April 17, 2024

# TOWN OF WAKE FOREST

Clerk

Mayor

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

**(Seal)**

**TOWN OF WENDELL**

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Mayor

April 17, 2024

**TOWN OF YOUNGSVILLE**

Clerk

Mayor



April 17, 2024

**TOWN OF ZEBULON**

Clerk

Mayor

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

(Seal)

**RESEARCH TRIANGLE TRANSIT  
REGIONAL PUBLIC  
TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
Chair

(Seal)

**CHATHAM COUNTY**

\_\_\_\_\_ By \_\_\_\_\_  
County Manager Chairman

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

**(Seal)**

**FRANKLIN COUNTY**

\_\_\_\_\_  
County Manager

By \_\_\_\_\_  
Chairman

**(Seal)**

**GRANVILLE COUNTY**

\_\_\_\_\_ By \_\_\_\_\_  
County Manager Chairman

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

**(Seal)**

**HARNETT COUNTY**

\_\_\_\_\_  
County Manager

By \_\_\_\_\_  
Chairman

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

**(Seal)**

**JOHNSTON COUNTY**

\_\_\_\_\_  
County Manager

By \_\_\_\_\_  
Chairman

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

**(Seal)**

**WAKE COUNTY**

\_\_\_\_\_  
County Manager

By \_\_\_\_\_  
Chairman



**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

(Seal)

**STATE OF NORTH CAROLINA AND  
DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
Secretary of Transportation

Approved for Execution

By \_\_\_\_\_  
Assistant Attorney General

**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

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**N. C. Capital Area Metropolitan Planning Organization**  
**Memorandum of Understanding (cont.)**  
April 17, 2024

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# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Joshua Killian, Planner I

Department(s): Planning

### Requested Motion

Motion to approve Statement of the Town Council and Ordinance for Rezoning Case No. 23CZ22 1013 Olive Chapel Rd, Ashwini Kumar Reddy Yalala, Srikanth Nalla, Rajanikanth Chippa, and Gurudath Munimakula, petitioners, for the property located at 1013 Olive Chapel Rd (PIN 0732732042).

### Approval Recommended?

The Planning Department recommends approval.

### Item Details

Rezoning Case No. 23CZ22 1013 Olive Chapel Rd was approved at the April 23, 2024 Town Council meeting.

### Attachments

- CN10-A1: Statement and Ordinance - Rezoning Case No. 23CZ22 - 1013 Olive Chapel Rd
- CN10-A2: Attachment A - Legal Description - Rezoning Case No. 23CZ22 - 1013 Olive Chapel Rd



**STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 2.0 ACRES LOCATED AT 1013 OLIVE CHAPEL ROAD FROM RESIDENTIAL AGRICULTURAL (RA) TO MEDIUM DENSITY RESIDENTIAL-CONDITIONAL ZONING (MD-CZ)**

**#23CZ22**

**WHEREAS**, Ashwini Kumar Reddy Yalala, Srikanth Nalla, Rajanikanth Chippa, and Gurudath Munimakula, owners/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of November 2023 (the “Application”). The proposed conditional zoning is designated #23CZ22;

**WHEREAS**, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #23CZ22 before the Planning Board on the 8<sup>th</sup> day of April 2024;

**WHEREAS**, the Apex Planning Board held a public hearing on the 8<sup>th</sup> day of April 2024, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #23CZ22. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #23CZ22;

**WHEREAS**, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director caused proper notice to be given (by publication and posting), of a public hearing on #23CZ22 before the Apex Town Council on the 23<sup>rd</sup> day of April 2024;

**WHEREAS**, the Apex Town Council held a public hearing on the 23<sup>rd</sup> day of April 2024. Joshua Killian, Planner I, presented the Planning Board's recommendation at the public hearing;

**WHEREAS**, all persons who desired to present information relevant to the application for #23CZ22 were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is consistent with the 2045 Land Use Plan and other adopted plans in that: The 2045 Land Use Map designates this area as Medium Density Residential. This designation on the 2045 Land Use Map includes the zoning district Medium Density Residential-Conditional Zoning (MD-CZ) and the Apex Town Council has further considered that the proposed rezoning to Medium Density Residential-Conditional Zoning (MD-CZ) will maintain the character and appearance of the area and provide the flexibility to accommodate the growth in population, economy, and infrastructure consistent with that contemplated by the 2045 Land Use Map;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that: The proposed rezoning is reasonable and in the public interest because it will implement stricter environmental conditions than the UDO requires and provide additional single-family homes that are compatible with those in the general vicinity; and

**WHEREAS**, the Apex Town Council by a vote of 3 to 2 approved Application #23CZ22 rezoning the subject tract located at 1013 Olive Chapel Rd from Residential Agricultural (RA) to Medium Density Residential-Conditional Zoning (MD-CZ).

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX**

**Section 1:** The lands that are the subject of the Ordinance are those certain lands described in Attachment “A” – Legal Description which is incorporated herein by reference, and said lands are hereafter referred to as the “Rezoned Lands.”

**Section 2:** The Town of Apex Unified Development Ordinance, including the Town of Apex North Carolina Official Zoning District Map which is a part of said Ordinance, is hereby amended by changing the zoning classification of the “Rezoned Lands” from Residential Agricultural (RA) to Medium Density Residential-Conditional Zoning (MD-CZ) District, subject to the conditions stated herein.

## Ordinance Amending the Official Zoning District Map #20CZ12

**Section 3:** The Planning Director is hereby authorized and directed to cause the said Official Zoning District Map for the Town of Apex, North Carolina, to be physically revised and amended to reflect the zoning changes ordained by this Ordinance.

**Section 4:** The “Rezoned Lands” are subject to all of the following conditions which are imposed as part of this rezoning:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

1. Single-family
2. Accessory apartment\*
3. Utility, minor

*\*Homeowners Association covenants shall not restrict the construction of accessory dwelling units.*

### **Zoning Conditions:**

1. A Solar PV system shall be installed on 100% of the homes within the development with a minimum of 6 kilowatts per system.
2. All homes shall be equipped with a 220V outlet for electric vehicle charging.
3. Development shall meet all stormwater requirements listed in UDO Section 6.1.12, including but not limited to limiting the post-development stormwater flows to not exceed pre-development rates. In addition, the post-development peak runoff rate shall be limited to the predevelopment peak runoff rate for the 2-year, 24-hour, the 10-year, 24-hour and the 25-year, 24- hour storm events.
4. Existing trees greater than 18” in a diameter that are removed by site development shall be replaced by planting a 1.5” caliper native tree from the Town of Apex Design and Development Manual either on-site or at an alternative location approved by Town of Planning Staff, above and beyond standard UDO requirements.
5. Development of the site shall include planting of warm season grasses.
6. Prior to the approval of Master Subdivision Final Plat, a minimum 6’ tall fence consisting of wood or vinyl shall be installed along the common property line of 1101 Olive Chapel Road (PIN 0732730167).
7. Homeowner Association covenants shall not restrict the construction of accessory dwelling units.
8. Vinyl siding is not permitted; however, vinyl windows, decorative elements and trim are permitted.
9. Garage doors shall have windows, decorative details or carriage-style adornments on them.
10. The visible side of a home on a corner lot facing the public street shall contain at least 3 decorative elements such as, but not limited to, the following elements:
  - a. Windows
  - b. Bay window
  - c. Recessed window
  - d. Decorative window
  - e. Trim around the windows
  - f. Wrap around porch or side porch
  - g. Two or more building materials
  - h. Decorative brick/stone
  - i. Decorative trim
  - j. Decorative shake
  - k. Decorative air vents on gable

**Ordinance Amending the Official Zoning District Map #20CZ12**

- l. Decorative gable
  - m. Decorative cornice
  - n. Column
  - o. Portico
  - p. Balcony
  - q. Dormer
11. The rear and side elevations of the units that can be seen from the right-of-way shall have trim around the windows.
  12. Access to Olive Chapel Road shall be provided by a single right-in/right-out intersection on the west side of the parcel, located approximately 350-400 feet west of Caley Road.
  13. Development of the site will include a single stub street to the property located to the east (PIN 0732733089).
  14. Olive Chapel Road Frontage widening and right of way dedication shall be provided based on a 4-lane median divided section on 110-foot right of way as identified in the Transportation Plan.

**Section 5:** The "Rezoned Lands" shall be perpetually bound to the conditions imposed including the uses authorized, unless subsequently changed or amended as provided for in the Unified Development Ordinance. Site plans for any development to be made pursuant to this amendment to the Official Zoning District Map shall be submitted for site plan approval as provided for in the Unified Development Ordinance.

**Section 6:** This Ordinance shall be in full force and effect from and after its adoption.

Motion by Council Member \_\_\_\_\_

Seconded by Council Member \_\_\_\_\_

With \_\_\_\_ Council Member(s) voting "aye."

With \_\_\_\_ Council Member(s) voting "no."

This the \_\_\_\_ day of \_\_\_\_\_ 2024.

**TOWN OF APEX**

\_\_\_\_\_  
Jacques K. Gilbert  
Mayor

**ATTEST:**

\_\_\_\_\_  
Allen Coleman, CMC, NCCCC  
Town Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Town Attorney



Aiken & Yelle Associates, PA  
Professional Engineers and Land Surveyors  
7700 Serenity Lake Dr, Wake Forest, North Carolina 27587

Lot 1 Legal Description

Beginning at an existing iron pipe corner in the southern right of way of Olive Chapel Road; said corner having NC Grid coordinates of N 723,244.51', E 2,037, 139.73'; Thence with the southern right of way of Olive Chapel Road S 86° 48' 40" E, 160.01' to an existing iron pipe; Thence leaving Olive Chapel Road right of way with the line of Lot 2 of the Gerringer & Mills Subdivision S 08° 57' 46" E, 415.98' to an iron pipe corner; Thence with the line of Lot 2, S 18° 31' 19" W, 142.87' to a corner with Dogwood Ridge Subdivision; Thence with the line of Dogwood Ridge Subdivision N 86° 48' 40" W, 160.01' to an iron pipe corner; Thence N 18° 31' 19" E, 142.87' to an iron pipe corner; Thence continuing with the line of Dogwood Ridge Subdivision N 08° 57' 46" W, 415.98' to the point and place of beginning. Being all of Lot 1 as recorded in Book of Maps 1979, Page 154 recorded in the Wake County Register of Deeds; said tract having an area of 2.00 acres more or less.



# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Shelly Mayo, Planner II

Department(s): Planning

### Requested Motion

Motion to approve the Statement of the Town Council and Ordinance for Rezoning Case No. 24CZ02, Natalie Hinton-Brooks & Inetta L. Hinton, applicant, for property located at 5836 Old Smithfield Rd (PIN 0740840331)

### Approval Recommended?

The Planning Department recommends approval.

### Item Details

Rezoning Case No. 24CZ02 5836 Old Smithfield Rd was approved at the April 23, 2024 Town Council meeting.

### Attachments

- CN11-A1: Statement and Ordinance - Rezoning Case No. 24CZ02 - 5836 Old Smithfield Rd
- CN11-A2: Attachment A - Legal Description - Rezoning Case No. 24CZ02 5836 Old Smithfield Rd



**STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 2.22 ACRES LOCATED AT 5836 OLD SMITHFIELD RD FROM RURAL RESIDENTIAL (RR) TO PLANNED COMMERCIAL-CONDITIONAL ZONING (PC-CZ)**

**#24CZ02**

**WHEREAS**, Natilee Hinton-Brooks and Inetta L. Hinton, owners/applicants (the “Applicant”), submitted a completed application for a conditional zoning on the February 1, 2024 (the “Application”). The proposed conditional zoning is designated #24CZ02;

**WHEREAS**, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #24CZ02 before the Planning Board on the 8<sup>th</sup> day of April 2024;

**WHEREAS**, the Apex Planning Board held a public hearing on the 8<sup>th</sup> day of April 2024, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #24CZ02. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application #24CZ02;

**WHEREAS**, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director caused proper notice to be given (by publication and posting), of a public hearing on #24CZ02 before the Apex Town Council on the 23<sup>rd</sup> day of April 2024;

**WHEREAS**, the Apex Town Council held a public hearing on the 23<sup>rd</sup> day of April 2024. Shelly Mayo, Planner II, presented the Planning Board's recommendation at the public hearing;

**WHEREAS**, all persons who desired to present information relevant to the application for #24CZ02 were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is consistent with the 2045 Land Use Plan and other adopted plans in that: The 2045 Land Use Map designates this area as Mixed Use: Medium Density Residential/Office Employment/ Commercial Services. This designation on the 2045 Land Use Map includes the zoning district Planned Commercial-Conditional Zoning (PC-CZ) and the Apex Town Council has further considered that the proposed rezoning to Planned Commercial-Conditional Zoning (PC-CZ) will maintain the character and appearance of the area and provide the flexibility to accommodate the growth in population, economy, and infrastructure consistent with that contemplated by the 2045 Land Use Map;

**WHEREAS**, the Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that: it will allow the applicants to operate the “Assembly hall, for-profit” use as they did before the property lost the legal non-conforming status in the late-2000s due to its conversion to a church use. The additional uses will expand the options available to the applicants while maintaining the core nature of the establishment. The proposed conditions will result in minimal required improvements to the existing site, which will allow the local, minority-owned, small business to legally continue as a social hub in this historically underserved, African-American community; and

**WHEREAS**, the Apex Town Council voted unanimously to approve Application #24CZ02 rezoning the subject tract located at 5836 Old Smithfield Rd from Rural Residential (RR) to Planned Commercial-

## Ordinance Amending the Official Zoning District Map #24CZ02

Conditional Zoning (PC-CZ).

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX**

**Section 1:** The lands that are the subject of the Ordinance are those certain lands described in Attachment “A” – Legal Description which is incorporated herein by reference, and said lands are hereafter referred to as the “Rezoned Lands.”

**Section 2:** The Town of Apex Unified Development Ordinance, including the Town of Apex North Carolina Official Zoning District Map which is a part of said Ordinance, is hereby amended by changing the zoning classification of the “Rezoned Lands” from Rural Residential (RR) to Planned Commercial-Conditional Zoning (PC-CZ), subject to the conditions stated herein.

**Section 3:** The Planning Director is hereby authorized and directed to cause the said Official Zoning District Map for the Town of Apex, North Carolina, to be physically revised and amended to reflect the zoning changes ordained by this Ordinance.

**Section 4:** The “Rezoned Lands” are subject to all of the following conditions which are imposed as part of this rezoning:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

The existing nonconforming site shall not be subject to UDO Articles 8 and 9 except as stated below, and provided that all of the following conditions are met:

1. Permitted uses:
  - a. Assembly hall, for profit
  - b. Assembly hall, non-profit
  - c. Church or place of worship
2. The existing buildings shall follow UDO Sec. 10.3 Nonconforming Structures. No additional buildings shall be permitted on site.
3. If the existing building is damaged or destroyed to the extent that it must be rebuilt per UDO Sec. 10.3, the rebuilt building will also meet these conditions:
  - a. The predominant exterior building materials shall be high quality materials, including:
    - i. Brick masonry
    - ii. Decorative concrete block (either integrally colored or textured)
    - iii. Stone accents
    - iv. Aluminum storefronts with anodized or pre-finished colors.
    - v. EIFs cornices, and parapet trim
    - vi. Precast concrete
  - b. EIFs or synthetic stucco shall not be used in the first forty inches above grade.
  - c. The building exterior shall have more than one material color.

## Ordinance Amending the Official Zoning District Map #24CZ02

- d. The building shall have more than one parapet height.
- e. The main entrance to the building shall be emphasized.
- 4. The total built upon area for the site shall not exceed 12% without a Stormwater Control Measure (SCM), unless it otherwise meets one or more of the exemptions listed in UDO Sec. 6.1.3.
- 5. The 100-foot riparian buffer at the northwestern corner of the property and the 50-foot riparian buffer at the rear property line shall not be disturbed, except the minimum necessary to install required sewer infrastructure and SCM outlets. The SCM water storage and treatment area shall not be permitted within the riparian buffer. The sewer shall be designed to minimize impacts to the riparian buffer. The required riparian buffers shall also be dedicated as Resource Conservation Area (RCA).
- 6. The buffer along Old Smithfield Road shall be a 15-foot Type E buffer.
- 7. The buffer along the western property line shall be 10-foot existing undisturbed.
- 8. Along the eastern property line, there shall be no required perimeter buffer due to the existing sewer easement.
- 9. The site shall not require a Traffic Impact Analysis and no road improvements shall be required. This does not exempt the installation of improvements required for the safe ingress and egress of vehicles and emergency services accessing the site, including, but not limited to, installation of a paved driveway apron, necessary driveway relocation, and other roadway markings and signage associated with the driveway location.
- 10. The parking lot may be gravel except for driveway aprons, which shall be concrete, and handicapped spaces, which shall be concrete or asphalt. Gravel parking shall at a minimum meet the following specifications:
  - a. Compacted Subgrade;
  - b. 6 Inches Aggregate Base Course;
  - c. 1.5 Inches #78M Stone; and
  - d. Drive aisles must be repaired or replaced with #78M Stone every six (6) months.
- 11. Parking and vehicular use areas shall not be required to be set back from any required buffers. Wheel stops shall be installed to protect vegetated areas from impacts by cars.
- 12. No exterior lighting shall be installed on site unless a lighting plan is submitted which meets all provisions of UDO Sec. 8.6, except as required by building code or ADA.
- 13. A dumpster shall not be permitted unless it is screened by an enclosure, per UDO Sec. 8.2.8 and the Town of Apex Standard Specifications and Standard Details.
- 14. Signs shall not be permitted unless they meet all provisions of UDO Sec. 8.7.
- 15. At least 1 parking space per 500 square feet of building area shall be provided.

**Section 5:** The “Rezoned Lands” shall be perpetually bound to the conditions imposed including the uses authorized, unless subsequently changed or amended as provided for in the Unified Development Ordinance. Site plans for any development to be made pursuant to this amendment to the Official Zoning District Map shall be submitted for site plan approval as provided for in the Unified Development Ordinance.

**Section 6:** This Ordinance shall be in full force and effect from and after its adoption.

Motion by Council Member \_\_\_\_\_

Seconded by Council Member \_\_\_\_\_

**Ordinance Amending the Official Zoning District Map #24CZ02**

With \_\_\_\_ Council Member(s) voting "aye."

With \_\_\_\_ Council Member(s) voting "no."

This the \_\_\_\_ day of \_\_\_\_\_ 2024.

**TOWN OF APEX**

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Jacques K. Gilbert  
Mayor

**ATTEST:**

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Allen Coleman, CMC, NCCCC  
Town Clerk

**APPROVED AS TO FORM:**

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Town Attorney

# Attachment "A" – Legal Description

Smith & Smith Surveyors, P.A.  
P.O. Box 457  
Apex, N.C. 27502  
(919) 362-7111  
Firm License No. C-0155

Lying and being in Town of Apex ETJ, Holly Springs Township, Wake County, North Carolina and described more fully as follows to wit:

BEGINNING at an iron pipe set on the northern right of way of Old Smithfield Road ~ NCSR 1172, the southeastern corner of Lot 2 (B.M. 2004, PG. 1047), also the southwestern corner of Lot 1 described herein (B.M. 2004, PG. 1047); thence with Lot 2 North  $22^{\circ} 55' 35''$  East, 386.51 feet to a mathematical point (not set) in the center of Falls Branch; thence with Falls Branch the following 13 calls South  $27^{\circ} 59' 45''$  East, 8.07 feet; thence South  $55^{\circ} 26' 32''$  East, 10.49 feet; thence South  $88^{\circ} 21' 04''$  East, 15.16 feet; thence North  $87^{\circ} 32' 26''$  East, 19.80 feet; thence North  $21^{\circ} 12' 15''$  East, 13.76 feet; thence South  $66^{\circ} 49' 47''$  East, 47.23 feet; thence South  $48^{\circ} 29' 07''$  East, 22.82 feet; thence North  $88^{\circ} 28' 46''$  East, 11.49 feet; thence South  $60^{\circ} 23' 15''$  East, 11.78 feet; thence South  $45^{\circ} 10' 41''$  East, 22.73 feet; thence South  $70^{\circ} 57' 06''$  East, 34.44 feet; thence North  $63^{\circ} 02' 11''$  East, 20.67 feet; thence South  $84^{\circ} 19' 52''$  East, 18.48 feet; thence leaving Falls Branch South  $16^{\circ} 10' 00''$  West, 404.13 feet to an existing iron pipe near the northern right of way of Old Smithfield Road; thence along and with said right of way a curve to the left North  $70^{\circ} 35' 22''$  West, 273.67 feet (chord), 1210.00 feet radius to the BEGINNING, containing 2.221 total acres more or less.

PIN 0740-84-0331

This description was prepared for the sole purpose to rezone a property and for no other use.

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Lisa Raschke, Special Events Coordinator

Department(s): Parks, Recreation and Cultural Resources

### Requested Motion

Motion to authorize alcohol possession, consumption, and open container of the same in The Depot parking lot located at 220 North Salem Street in Apex, North Carolina, for the Town's Juneteenth Festival scheduled for June 15, 2024.

### Approval Recommended?

Yes

### Item Details

The Juneteenth Festival Committee would like to include alcohol vendors in this year's Juneteenth Festival on June 15, 2024 from 11:00 AM - 5:00 PM in the Depot Courtyard. The alcohol vendor(s) would be responsible for holding the ABC permit and for paying the off-duty officer fees.

This authorization allows for the consumption of alcoholic beverages and possession of an open container of the same during a special event if the event has been approved for alcohol service by the Town.

### Attachments

- N/A

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Amanda Bunce, Current Planning Manager

Department(s): Planning

### Requested Motion

Motion to approve the Statement of the Apex Town Council pursuant to G.S. 160D-605(a) addressing action on the Unified Development Ordinance (UDO) Amendments of April 23, 2024.

### Approval Recommended?

The Planning Department recommends approval.

### Item Details

## Attachments

- CN13-A1: Statement of Town Council - UDO Amendments - April 2024





**STATEMENT OF THE APEX TOWN COUNCIL PURSUANT TO G.S. 160D-605(a) ADDRESSING ACTION ON THE UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENTS OF APRIL 23, 2024**

Pursuant to G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting), of a public hearing on UDO Amendments before the Town Council on the 23<sup>rd</sup> day of April 2024.

The Apex Town Council held a public hearing on the 23<sup>rd</sup> day of April 2024. Robert Patterson, Senior Stormwater Engineer, presented the Planning Board's vote to recommend approval by a vote of 8-0 at the public hearing.

All persons who desired to present information relevant to the UDO were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away.

The Town Council on the 23<sup>rd</sup> day of April 2024 by a vote of 5-0 approved the Ordinance for UDO Amendments.

The Apex Town Council finds from information and testimony provided at the public hearing that the approval of the various UDO Amendments of April 23, 2024 are consistent with the Advance Apex: The 2045 Plan and reasonable and in the public interest for the following reason(s):

1. The amendments to UDO Sec. 6.1 *Watershed Protection Overlay Districts* incorporate the Neuse River Basin stormwater regulations as required by 15A NCAC 02B .0711 *Neuse Nutrient Strategy - Stormwater* and update the riparian buffer mitigation requirements to be consistent with that in 15A NCAC 02B .0295 *Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers*. The related amendments to Sec. 8.2.7 *Fences, Walls, and Berms* and Sec. 11.4.4 *Civil Penalties* update Section references related to the proposed changes in Sec. 6.1. The updates to Sec. 12.2 *Terms Defined* update the definition of "Built-Upon Area" to be consistent with that required by NC General Statute 143-214.7.

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Jacques K. Gilbert  
Mayor

ATTEST:

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Allen Coleman, CMC, NCCCC  
Town Clerk

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Date

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PRESENTATION

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Councilmember Terry Mahaffey, Sponsor  
Barbara Conroy Co-Founder and President of Apex Public School Foundation

Department(s): Governing Body  
Apex Public School Foundation

### Requested Motion

Presentation of the Peak S.T.A.R. Award for the 3rd Quarter of the 2023-2024 School Year.

### Approval Recommended?

N/A

### Item Details

The Apex Town Council is pleased to work in partnership with the Apex Public School Foundation (APSF) to present the Peak S.T.A.R. Award to a deserving Apex school staff member, teacher, or someone in school administration. This award will be presented quarterly by the Apex Town Council and the APSF.

### Attachments

- N/A





*"The Peak of Good Living"*

## TOWN OF APEX NORTH CAROLINA

### *Proclamation*

#### Apex Public Service Recognition Period 2024

*from the Office of the Mayor*

WHEREAS, The Town of Apex employs more than 600 civil servants who work day in and day out to provide the highest quality of service to our more than 75,000 residents; and,

WHEREAS, These employees have a diverse skillset, and help provide services to the town that promote and preserve the health and safety of our community; and,

WHEREAS, Town employees are vital to so many of the aspects of day-to-day life in Apex, including transportation, water and electricity access, fire and police protection, green space and recreation opportunities, waste and recycling services, building safety, planning and development, housing assistance, government connectivity, and more; and,

WHEREAS, Many jobs in public service are hazardous and/or physically demanding, and we are grateful for the individuals who do fulfill these necessary functions; and,

WHEREAS, The Town of Apex thanks to its public servants for the excellent jobs they do, and they should be proud of how their work contributes to making Apex the Peak of Good Living.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the weeks of May 5<sup>th</sup> through May 18<sup>th</sup>, 2024, as Public Service Recognition Period in the Town of Apex, and extend my gratitude to our public servants for the critical and often unnoticed work they do in helping our town run.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 14th day of May 2024

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

## TOWN OF APEX NORTH CAROLINA

### *Proclamation*

#### **Asian American, Native Hawaiian, and Pacific Islander Month 2024**

*from the Office of the Mayor*

WHEREAS, In May, we honor Asian American, Native Hawaiian, and Pacific Islander Month (AANHPI), acknowledging the vibrant histories of people from the expansive Asian continent and the diverse regions of the Pacific Islands, including Melanesia, Micronesia, and Polynesia; and,

WHEREAS, The efforts of the Asian American and Native Hawaiian and Pacific Islander Communities can be seen in every aspect of society including education, history, politics, health care, business, and science, playing a pivotal role in America's history; and,

WHEREAS, In 1979, President Carter issued the first proclamation for Asian/Pacific American Heritage Week, and in 1990, President Bush signed a bill passed by congress which extended the observation to a month; and,

WHEREAS, The Month of May was chosen in part because of the significance of May 7, 1843, when the first Japanese immigrants arrived in the US, and of May 10, 1869, when the first US transcontinental railroad was completed with significant efforts from Chinese pioneers; and,

WHEREAS, The Town of Apex is proud to be home to many individuals Asian American, Native Hawaiian, and Pacific Islander origin, whose roots and culture have contributed to the success and character of our town.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the Month of May 2024 as Asian American, Native Hawaiian, and Pacific Islander Month in the Town of Apex, and acknowledge the contributions of the Asian American, Native Hawaiian, and Pacific Islander community to our great town.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 14th day of May 2024

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

## TOWN OF APEX NORTH CAROLINA

### *Proclamation*

#### National Foster Care Month 2024

*from the Office of the Mayor*

WHEREAS, The children in our community are vital to our future, and all children deserve to grow up in a loving, nurturing, and safe place to call home; and,

WHEREAS, There are currently 10,848 youth in the North Carolina Foster Care System, including 404 that are within Wake County; and,

WHEREAS, The primary goal of Foster Care is to provide safe and stable homes through the compassion and support of a foster family or kinship family; and,

WHEREAS, Foster families and kinship families play a vital role in helping children who have experienced a crisis in their home lives heal and reunify with their families, and in helping them launch into a successful adulthood; and,

WHEREAS, National Foster Care Month is a time to recognize the foster parents, child welfare professionals, and advocates working tirelessly to ensure our children's safety, well-being, and permanence, and to spread awareness on behalf of the hundreds of youth in foster care in Wake County.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the Month of May 2024 as National Foster Care Month in the Town of Apex, and encourage all residents to volunteer their time and effort to raising awareness of the need for a robust foster care system, and to recognize the families, individuals, and organizations that provide this important resource to our children.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 14th day of May 2024

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

## TOWN OF APEX NORTH CAROLINA

### *Proclamation*

#### National Police Week 2024

*from the Office of the Mayor*

WHEREAS, In 1962, President John F. Kennedy designated May 15<sup>th</sup> of each year as "Peace Officers' Memorial Day", and the week in which it falls as "National Police Week"; and,

WHEREAS, The Town of Apex is fortunate to be served by its Police Force of 105 officers, whose expertise and actions help protect the town and its people; and,

WHEREAS, These brave individuals put their health, safety, and lives at risk each day in order to protect and serve our residents and community; and,

WHEREAS, The names of US Police Officers who have been killed in the line of duty are engraved on the National Law Enforcement Officers Memorial in Washington, D.C, and this year, 282 names will be added of officers who were killed in 2023 and other years prior; and,

WHEREAS, The Town of Apex joins in the solemn observance of the sacrifices of these individuals, and is committed to ensuring our officers and their well-being are supported fully in the performance of their duties.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the week of May 12<sup>th</sup> through May 18<sup>th</sup>, 2024, as National Police Week, and further proclaim May 15<sup>th</sup>, 2024, as Peace Officers Memorial Day in the Town of Apex, in honor of our incredible Police Officers and the selfless work they do in order to safeguard Apex and its people.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 14th day of May 2024

Jacques Gilbert, Mayor



*"The Peak of Good Living"*

## TOWN OF APEX NORTH CAROLINA

### *Proclamation*

#### National Tennis Month 2024

*from the Office of the Mayor*

WHEREAS, Tennis is a sport that can be played throughout a person's life, and is available to all people regardless of age, skill level, physical ability or fitness, or environment; and,

WHEREAS, Tennis provides immense benefits across all elements of health, and one long-term study showed that actively playing tennis as a form of cardiovascular exercise added 9.7 years to expected lifespan compared to sedentary individuals; and,

WHEREAS, The Town of Apex offers tennis lessons and competitive tennis leagues for residents and non-residents, as well as open play opportunities at Apex Community Park, Apex Nature Park, Pleasant Park, and Kelly Road Park; and,

WHEREAS, Tennis opportunities are also available through the Western Wake Tennis Association, which offers resources, events, and leagues that seek to enhance the tennis experience for residents in our area; and,

WHEREAS, The Town of Apex will continue to strive to provide access and opportunities for playing tennis for residents across all ages and ability levels, in order to promote the health and well-being of our community.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the Month of May 2024 as National Tennis Month in the Town of Apex, and encourage all residents to gather a racket, a ball, and a friend, and experience the fun and camaraderie of tennis in Apex.

I hereby set my hand and have caused the Seal of the Town of Apex,  
North Carolina, to be affixed this the 14th day of May 2024

Jacques Gilbert, Mayor



# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PRESENTATION

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Jenna Shouse, Senior Long Range Planner

Department(s): Planning

### Requested Motion

Receive as information, updates on the Western Big Branch Area Plan and a summary of input received in Spring 2024.

### Approval Recommended?

N/A

### Item Details

The purpose of this item is to share a summary of input received on the Western Big Branch Area Plan in Spring 2024. This planning process will ultimately inform possible revisions to the 2045 Land Use Map and 2045 Transportation Plan.

In March 2024, three meetings were held and an online opportunity was provided for the community to review and provide feedback on three land use and transportation plan amendment scenarios. The meetings were held on: March 6th, March 18th, and March 20th. The presentation will include an overview of input received on three plan amendment scenarios and the attached community-proposed Friendship and New Hill Community Land Use Map & Neighborhood Conservation Overlay District will be summarized. The staff report includes additional detail about input received on other plan recommendations and the draft plan vision and goals.

More information about the planning process and the public engagement completed to date is available at: [www.apexnc.org/wbbap](http://www.apexnc.org/wbbap).

### Attachments

- PR7-A1: Staff Report - Western Big Branch Area Plan Update
- PR7-A2: Friendship and New Hill Community Land Use Map & Neighborhood Conservation Overlay District Proposal - Western Big Branch Area Plan Update



- PR7-A3: PowerPoint Presentation – Western Big Branch Area Plan



## STAFF REPORT

### Western Big Branch Area Plan Update

May 14, 2024 Town Council Meeting



## Introduction

In March 2024, three meetings were held and an online opportunity was provided for the community to review and provide feedback on three land use and transportation plan amendment scenarios. The meetings were held on: March 6<sup>th</sup> at the Apex Senior Center, March 18<sup>th</sup> at Pleasant Plains Baptist Church, and March 20<sup>th</sup> at the New Hill Community Center. A total of 75 people attended the three public meetings.

Meeting materials were posted on the project website on February 20<sup>th</sup>, in advance of the first public meeting. An online survey that matched the in-person comment form was open from February 20<sup>th</sup> – April 1<sup>st</sup>. Eighty-one online and paper survey responses were provided. Additional community input, separate from the online survey, was provided through email. A recorded presentation that was posted on the project website and played during the public meetings received 474 views on YouTube.

More information about the planning process and the public engagement completed to date is available at: [www.apexnc.org/wbbap](http://www.apexnc.org/wbbap).

During the staff presentation to Town Council, a graphic summary of input received on the three plan amendment scenarios will be presented and the attached community-proposed Friendship and New Hill Community Land Use Map & Neighborhood Conservation Overlay District will be summarized. This staff report summarizes that information **and also** includes input received on the Draft Additional Plan Recommendations and the Draft Vision & Goals.

## Draft Additional Plan Recommendations

The Draft Additional Plan Recommendations and the associated comments received are listed below.

### *Future Land Use*

- Encourage development of a small-scale downtown near the intersection of Humie Olive Rd and Old US 1.
  - Architecture of The Summit does not align with the Humie Olive Concept Development. Question of what controls will be put in place to ensure the small-scale downtown feel.
- Encourage development of grocery/convenience offerings near the intersection of New Hill Holleman Road and US 1.
  - Grocery store is proposed as part of the New Hill Plaza, but the project's high-density housing does not align with small-scale community.

### *Transportation*

- Study and potentially invest in turn lanes and a traffic signal at the intersection of Friendship Rd and Old US 1.
  - Traffic signal and turn lanes needed at intersection of Friendship Rd and Old US 1.
  - Concerned the traffic study included a school holiday.
- Conduct a feasibility study for a potential grade separation at either NC 540 or S Salem St to improve vehicular, bicycle, and pedestrian access to Pleasant Park.
  - Town should not open Phase 3 of the park given the unsafe conditions.
  - Prepare an updated traffic study for Pleasant Park.
  - Provide additional roadway improvements to prevent near-miss incidents.

## STAFF REPORT

### Western Big Branch Area Plan Update

May 14, 2024 Town Council Meeting



- Coordinate with NCDOT on its annual resurfacing contract for opportunities to stripe bicycle lanes and/or provide bicycle signage within the study area.
  - Raised centerline reflectors and reflective paint on road shoulders at the time of repaving would assist nighttime driving as drivers face oncoming headlights.
  - Reduce posted speed limit along Old US 1 from 55 mph to 45 mph.
  - In 2023, NCDOT determined that Friendship Rd is ineligible for bike lanes. Additional cycling should not be encouraged until road improvements are made for both cyclist and motorist safety.
- Coordinate with regional partners on transportation requirements for motorists, cyclists, and pedestrians associated with new development in the vicinity of the study area.
  - Include a community member in the discussions regarding Richardson Rd.
  - The Richardson Rd extension is a major highway up to 130 feet wide with 20,000 daily vehicles. This is much wider than existing roadways in the community and may generate traffic volumes in line with NC 540.
  - Update scope for traffic studies to include traffic that is generated when a development's school is capped or when a park fee-in-lieu occurs.
  - Conduct traffic studies.
- Further explore a potential transit connection between downtown Apex and Pleasant Park.
  - Bus stops must be internal to the park and not on Pleasant Plains Rd. Town staff need to supervise minors who come to the park without an adult.
  - Support the GoApex bus, but a bus stop is needed closer to the study area.
- Suggested Recommendations
  - Friendship Rd is 6.5-ton weight limited. Work with NCDOT to increase enforcement.
  - Old US 1 has blind spots due to rolling hills. Work with incoming development to reduce hills.
  - Old US 1 has concrete buckling under the pavement. Work with NCDOT to have concrete removed from problem areas.
  - Restrict left turn hours at Friendship Rd/Old US 1 intersection.
  - Explore roundabouts.
  - Coordinate with other agencies to construct road infrastructure.
  - Traffic signal needed at Kelly Rd/Old US 1
  - Construct bike lanes along Old US 1 from Friendship Rd to NC 55.
  - Remove timers from lights at NC 540/Old US 1.

#### *Quality of Life*

- Encourage economic development along the Richardson Road corridor at the future Friendship Road/US 1 interchange.
  - This is an Apex goal, not a community goal.
  - The community understands development will occur. It should reflect Historic Friendship and New Hill.
- Utilize the Town of Apex Affordable Housing Incentive Zoning Policy to encourage mixed housing options in the study area.
  - Mixed housing should be banned as it was not part of Historic Friendship or New Hill.
  - Small-scaled Habitat for Humanity styled homes with small yards or replicas of New Hill travel cottages are a better fit.
- Suggested Recommendations

## STAFF REPORT

### Western Big Branch Area Plan Update

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- Provide more housing.
- Provide parks.
- Keep areas for people with low incomes to live.
- Do not build a landfill near New Hill.
- Increase buffers in UDO to protect rural properties.

#### *Environment*

- Review best practices and develop a policy to encourage the preservation of forested areas.
  - NC Forest Service and Wake County Soil & Water should be included in the development of the plan.
  - Town should look to establish a community forest in the study area, similar to the Cary Tree Archive.
  - Town should look to establish a permanent farmers market and community farm, similar to Good Hope Farm in Cary.
- Continue to designate properties within the study area as either part of the Primary or Secondary Watershed Protection Areas after being voluntarily annexed into the Town of Apex.
  - Property owners would like to know the future classification before annexation.

#### *History*

- Incorporate New Hill Historic District gateway signs into the Town-wide Wayfinding Signage Program.
  - Should include both New Hill and Friendship historic gateways.
- Encourage residents of the Friendship and New Hill communities to participate in the Town of Apex Historical Marker Program.
  - Agreed. Please provide the process.
- Add a subtitle to the plan document: Western Big Branch Area Plan – Encompassing the Friendship and New Hill Communities.
  - The Western Big Branch Area Plan name should be abandoned. Let property owners nominate the name.

#### Draft Vision & Goals

##### Fall 2023 Public Input Process & Results

A draft vision and set of goals were developed based on input provided at the August 2023 public open houses. An online survey was released to gather input on the draft vision & goals from October 25 – November 13, 2023. 71 individuals either participated in the survey or provided input through email. 82% of survey respondents either agree or strongly agree with draft vision and draft goals as presented in August 2023. Based on the public input provided, staff maintained draft vision and added one goal (#7) based on online survey results. The updated vision and goals were used to inform Draft Additional Plan recommendations. The Draft Additional Plan Recommendations were presented to the public for input in Spring 2024. The full summary of input on the draft vision and goals is available on the project website at: <https://publicinput.com/i5237#tab-45673>.

##### Spring 2024 Public Input

##### *Draft Study Area Vision*

The Western Big Branch Area Plan envisions a future where the rural residential character of the study area is valued and actively protected, the unique history of the New Hill and Friendship communities is acknowledged

## STAFF REPORT

### Western Big Branch Area Plan Update

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and celebrated, new development is responsive to the needs of surrounding residents, and multimodal travel is safe and context sensitive.

#### *Draft Study Area Vision Comments*

- Most of the community generally agrees.
- The community is more than just rural, it includes a variety of farm types. These tracts provide economic value through environmental protection.
- Study Area Vision and Town Ordinances need to be expanded to address the potential nuisance that new development creates in the study area.

#### *Draft Study Area Goals Comments*

The draft study area goals and the associated comments are listed below.

1. Preserve rural residential land, agriculture, and open space
2. Maintain and enhance the tree canopy
3. Protect water resources
  - Rural nature and tree canopy cannot be preserved when there is more than one house per acre.
4. Honor the history of the Friendship and New Hill communities
  - Agreed. Thank you.
5. Encourage development of a small-scale downtown near the intersection of Humie Olive Road and Old US 1
6. Encourage development of grocery/convenience offerings near the intersection of New Hill Holleman Road and US 1
  - It is understood that commercial development may occur along Old US 1 and New Hill Holleman Road.
  - Mixed-use and high density residential is not cohesive to adjoining rural properties and fails to actively protect the rural nature of the study area.
7. **(Added after 2023 online survey)** Encourage economic development along the Richardson Road corridor south of Old US 1 and at the future Richardson Road/US 1 interchange
  - This is not a community goal. This would further divide the community and destroy portions of Bosco Rd and potentially Friendship Rd.
  - Remove this goal.
8. Improve the safety of area roadways for motorists, cyclists, and pedestrians
  - Agreed.
9. Mitigate the impact of surrounding development on existing roads
  - Replace the word “mitigate” with “eliminate”.
  - When development is approved with park fee-in-lieu and schools are capped, there is more traffic. Account for this in traffic studies.
  - Connector roads are not supported as these roads do not protect the rural character and does not increase the quality of life.



#### 10. Provide trails, greenways, and trailheads

- Community is split:
  - Opposed if facilities come with townhomes.
  - Support if facilities come with commercial development.

#### Additional Comments

The following comments were provided about the planning process as well as about topics separate from the Western Big Branch Area Plan.

- Concerned about the lack of transparency associated with the Little Beaver Creek Conservation Easement.
- Concerned about the three scenarios versus having a dialogue about what the community wants.
- Perception that the Town is looking to expand the same kind of development as is found in Apex versus development unique to the study area.
- Friendship and New Hill residents lack representation.
- Planning Department steered the options.
- Concerned that the input provided at the August 2023 open houses on what attendees would like to see more of and less of in the study area was used as approvals.
- Against Apex's use of eminent domain and development (Richardson Road, Hunter Street Sidewalk, Pleasant Park).
- The community plans to propose a Historical Farm Overlay District to reflect the historical significance of farming and to support and encourage urban farms, mini farms, horse farms, and larger farms in the study area.

#### Scenarios Introduction

- In August 2023, the community shared their preference is to maintain existing land uses in the study area and also improve the transportation network. The purpose of these plan amendment scenarios is to convey tradeoffs - that is, transportation improvements within the study area would primarily be constructed through private development. Without development, transportation improvements will be limited.
- In general, as the scenario number increases from one to three, the land use intensities increase and the transportation network expands.
- Scenario 1 emphasizes study area goals 1 and 2, which include:
  - Preserve rural residential land, agriculture, and open space; and
  - Maintain and enhance the tree canopy
- Scenario 3 emphasizes study area goals 7 through 9, which include:
  - Encourage economic development along the Richardson Road corridor south of Old US 1 and at the future Richardson Road/US 1 interchange
  - Improve the safety of area roadways for motorists, cyclists, and pedestrians, and
  - Mitigate the impact of surrounding development on existing roads
- Scenario 2 attempts to balance preservation of existing land uses and transportation improvements.

#### Scenario Preferences

- Most preferred: Scenario 1
- Second preferred: Scenario 2

## STAFF REPORT

### Western Big Branch Area Plan Update

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- Least preferred: Scenario 3

	Scenario 1	Scenario 2	Scenario 3
Top Rank	43	15	6
Second Rank	5	38	12
Third Rank	16	3	37
<b>Weighted Rank</b>	<b>1.6</b>	<b>1.8</b>	<b>2.6</b>

#### Scenario One: Minimize Change

##### General Comments

Comment	Frequency
Maintain the rural feel (low density and few vehicles).	5
Leave us and the area alone/keep the area the same.	4
It is not realistic to expect this area to stay as is (new water, sewer, etc.).	4
Support this scenario.	2
Do not support this scenario.	1
Concerned it pushes housing further into non-developed areas with less infrastructure.	1
Current pace of town growth is not sustainable.	1
There is a misperception on what the Future Land Use Map (FLUM) does. The FLUM does not force sales or require right-of-way dedication.	1
Allow people to stay in the area or sell if they choose.	1
Half of Bosco Road is destroyed.	1
*Update map to reflect Enhanced Voluntary Agricultural Districts and Voluntary Agricultural District properties.	

\*Comment submitted separately from survey

##### Location-Specific Land Use Comments

- Change the Kilcastle Farms properties to Rural Density Residential
- Change both sides of New Hill Holleman Rd to Low/Rural Density, apart from the US 1 interchange
- Support the Rural Transition Density along Hazelhurst Cir
- Change 3601 Friendship Rd to Rural Density Residential
- Change both sides of Friendship Rd to Rural Density Residential

##### General Land Use Comments

- Like the rural development levels/atmosphere
- Support density around major intersections
- Support life science campus (or similar) rather than subdivisions with commercial, with the exception of grocery.
- Concerned the medium density and commercial areas will have a domino effect
- The US 1 / NC 540 area should not be fully preserved. Provide options for people to live and work.

##### Location-Specific Transportation Comments

- Shift Richardson Rd away from Country Haven Ln and Bosco Rd

## STAFF REPORT

### Western Big Branch Area Plan Update

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- Transportation improvements are needed, particularly along Friendship Rd and Old US 1
- Improve Friendship Rd/Old US 1 intersection
- Against New Hill Loop collector
- Against Richardson Rd extension
- Against Friendship Rd widening – protect historic structure
- Support side path along Old US 1
- Support removal of Bosco Rd collector
- Support Richardson Rd/Bosco Rd alignment
- Close Friendship Rd bridge
- Against removal of bike lanes from Friendship Rd
- Against collector street between Friendship Rd and Pleasant Plains Rd

#### General Transportation Comment

- Bike lanes are needed

#### Scenario Two: Incremental Change

##### General Comments

Comment	Frequency
Do not support.	5
Leave us/the area alone.	4
Best balance of development and road improvements.	3
Good overall.	2
Average / safe.	1
Hoping this will bring a good mix of housing and business with the necessary infrastructure improvements.	1
Since the current infrastructure is overwhelmed by growth, we need transportation updates. At the same time, this plan will help preserve the unique history and nature of the Friendship Community.	1
Support 3-lanes along Friendship Road, but without land use changes to Creeks Bend. Prefer rural density for Creeks Bend.	1
Buildings are often abandoned. Green areas and trees should be prioritized.	1
Keep the rural nature.	1
Receive resident approval before future planning.	1
Half of Bosco Road is destroyed.	1

##### Location-Specific Land Use Comments

- Prefer Rural Transition Density instead of Medium Density for Hazelhurst Cir
- Concerned about Medium Density along Bosco Rd
- Second choice because Friendship Rd area is Medium Density rather than Low Density

##### General Land Use Comments

- Not balanced - development area is larger than rural area
- Not sufficient - higher intensity is needed



## STAFF REPORT

### Western Big Branch Area Plan Update

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- Seems optimal - keep major retail along major corridors, especially US 1

#### Location-Specific Transportation Comments

- Shift Richardson Rd away from Country Haven Ln and Bosco Rd
- Support removal of Bosco Rd collector
- Support Richardson Rd extension to Old US 1 only
- Against Richardson Rd extension

#### General Transportation Comments

- Support the bike lanes
- Close, but improvements will not keep up with development
- Prioritize infrastructure improvements that focus on public safety and congestion reduction
- Raise fee in lieu costs to match actual costs

#### Scenario Three: Expand Transportation Network

##### General Comments

Comment	Frequency
Do not support.	6
Leave us/the area alone.	5
Costs to the Town outweigh benefits.	2
If roads are changing, builders will offer more money and land will sell. Have a plan for future land owners, not current ones.	1
This scenario would destroy the rural character and historic structures in Friendship.	1
Good overall.	1
Half of Bosco Road is destroyed.	1
Expanding the street network and increasing density is needed to reduce traffic all over town.	1

#### Location-Specific Land Use Comments

- Against Medium Density or High Density around Old US 1/Friendship Rd/Humie Olive Rd
- Makes use of the existing and proposed interchanges at US 1 to provide economic growth

#### General Land Use Comments

- Too dense
- Community does not want more townhomes
- Puts density near major intersections and possible public transit
- Too much residential development
- Increased density around Vicious Fishes will be good for Apex and surrounding areas
- Fills the gap in residential density between north of Old US 1 and Holly Springs
- Higher intensity uses will support public transit.

#### Location-Specific Transportation Comments

- Shift Richardson Rd away from Country Haven Ln and Bosco Rd
- Remove the intersection of Bosco Rd and Richardson Rd

## STAFF REPORT

### Western Big Branch Area Plan Update

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- Two streets, Bosco Rd collector and new local connection) are proposed through 8164 Providence Oak Path
- Against Bosco Rd collector
- Against Richardson Rd extension
- Additional travel lane needed on Old US 1 bridge over NC 540.

#### General Transportation Comments

- Support expanded public transit
- Against planning for transit
- Roads will not handle traffic volumes
- Improve safety for cyclists, beyond bike lanes
- Add roadways through undeveloped land that is not historic
- Against Church Rd extension through New Hill Community Center property
- Expanding the street network is preferred to adding lanes to US 1
- Support expanding the transportation network to reduce congestion

#### Draft Additional Plan Recommendations

The draft recommendations are informed by the study area vision and goals as well as the information gathered to date. The draft recommendations are divided into the five planning themes that were presented during the August 2023 Open Houses: Future Land Use, Transportation, Quality of Life, History, and Environment.

Survey respondents were asked to review the Additional Plan Recommendations and rank their top three priorities. The recommendation to study and potentially invest in turn lanes and a traffic signal at the intersection of Friendship Road and Old US 1 received the highest weighted rank. The recommendation to review best practices and develop a policy to encourage the preservation of forested areas received the most top-priority responses.

Rank	Weighted Rank	Additional Plan Recommendation
1	1.4	Study and potentially invest in turn lanes and a traffic signal at the intersection of Friendship Road and Old US 1.
2	1.57	Review best practices and develop a policy to encourage the preservation of forested areas.
3	1.60	Further explore a potential transit connection between downtown Apex and Pleasant Park.

Draft Additional Plan Recommendation	1st Rank	2nd Rank	3rd Rank	Total Responses	Weighted Rank
Study and potentially invest in turn lanes and a traffic signal at the intersection of Friendship Road and Old US 1.	13	6	1	20	1.40
Review best practices and develop a policy to encourage the preservation of forested areas.	17	6	5	28	1.57

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Draft Additional Plan Recommendation	1st Rank	2nd Rank	3rd Rank	Total Responses	Weighted Rank
Further explore a potential transit connection between downtown Apex and Pleasant Park.	3	1	1	5	1.60
Encourage development of a small-scale downtown near the intersection of Humie Olive Road and Old US 1.	3	2	3	8	2.00
Encourage residents of the Friendship and New Hill communities to participate in the Town of Apex Historical Marker Program.	1	2	1	4	2.00
Utilize the Town of Apex Affordable Housing Incentive Zoning Policy to encourage mixed housing near major intersections in the study area.	0	1	0	1	2.00
Encourage development of grocery/convenience offerings near the intersection of New Hill Holleman Road and US 1.	2	6	3	11	2.09
Incorporate New Hill Historic District gateway signs into the Town-wide Wayfinding Signage Program.	1	2	2	5	2.20
Conduct a feasibility study for a potential grade separation in the vicinity of Pleasant Park to improve vehicular, bicycle, and pedestrian access to the park.	1	1	2	4	2.25
Coordinate with regional partners on transportation requirements for motorists, cyclists, and pedestrians associated with new development.	1	3	3	7	2.29
Continue to designate properties within the study area as either part of the Primary or Secondary Watershed Protection Areas after being voluntarily annexed into the Town of Apex.	1	6	5	12	2.33
Encourage economic development along the Richardson Road corridor at the future Friendship Road/US 1 interchange.	1	2	4	7	2.43
Coordinate with NCDOT on its annual resurfacing contract to stripe bicycle lanes and/or provide bicycle signage within the study area.	1	1	5	7	2.57

### Friendship and New Hill Community Land Use Map & Neighborhood Conservation Overlay District

130 residents have signed a petition to propose a neighborhood conservation overlay district called the Historical Farm Overlay District. The full proposal is included as an attachment to the staff report. The proposal notes that purpose of this zoning overlay district is to preserve and enhance the general quality and appearance of established neighborhoods by regulating built environmental characteristics such as lot size and frontage,

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### Western Big Branch Area Plan Update

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building setback, and building height. This district is intended to reduce conflicts between new construction and existing development and encourages compatible infill development.

Key elements of the overlay district proposal are listed below.

- Residential development:
  - Provisions regarding building height, fencing, buffers, stormwater, tree preservation, and seller disclosure
- Citizen Advisory Committee:
  - Review and provide non-binding comments on pre-applications for development
  - Participate in neighborhood meetings
  - Participate in Town Council Work Sessions, Technical Review Committee meetings, and public hearings

In addition to the overlay district proposal, the community members provided additional feedback regarding the Land Use Map and Transportation Plan.

#### Land Use Map Comments

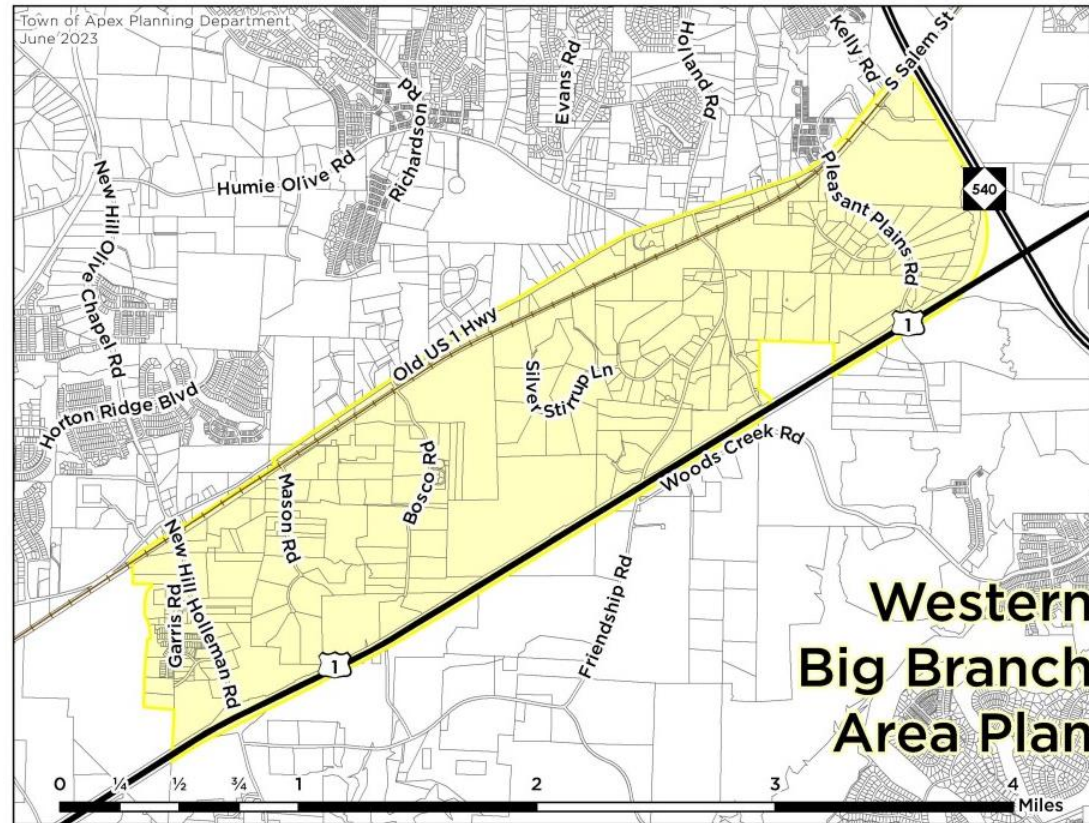
- Residential development:
  - No more than one home per acre
- Commercial development:
  - Target commercial development along Old US 1, New Hill Holleman Road, and future Richardson Road
  - Do not allow mixed-use commercial with residential development
  - Encourage agritourism

#### Transportation Plan Comments

- Focus on improvements to perimeter roads (Old US 1, NC 540, New Hill Holleman Road)
- Minimize interconnectivity
- Shift future Richardson Road east

# Friendship and New Hill Community

## Land Use Map & Neighborhood Conservation Overlay District Proposal





# Background

- Our community is part Apex ETJ and part Wake County.
- Our community is more than just a rural area. It is a vibrant community with numerous mini-farms, horse farms, bona fide farms and forestry parcels that participate in leading NC economies resulting in job creation for veterinarians, farriers, feed manufacturers, building suppliers, farm equipment manufacturers, and food production.
- Our community also provide important economic value in carbon sequestration, pollution and water quality mitigation as quantified in the 2023 Apex Tree Canopy Assessment.
- Town of Apex is evaluating future land uses within our area via the Western Big Branch Area Plan Study. Wake County has plans to do so in 2024.
- Apex proposed:

**Draft Study Area Vision**

The Western Big Branch Area Plan envisions a future where the rural residential character of the study area is valued and actively protected, the unique history of the New Hill and Friendship communities is acknowledged and celebrated, new development is responsive to the needs of surrounding residents, and multimodal travel is safe and context sensitive.
- Community agrees with the vision but not the options provided by the Town. Detailed feedback provided to Apex via email on Wednesday, March 27.

# Community Proposal – Land Use Map & Transportation Map

## Draft Study Area Vision

The Western Big Branch Area Plan envisions a future where the rural residential character of the study area is valued and actively protected, the unique history of the New Hill and Friendship communities is acknowledged and celebrated, new development is responsive to the needs of surrounding residents, and multimodal travel is safe and context sensitive.

## To achieve the Study Area Vision:

- **Development Limited** - Except for the Walker & Baucom tracts, installing future sewer from connection points at US 1 thru existing neighborhoods will be difficult given the negative impact to those neighborhoods and potentially, is cost prohibited due to distance. Walker & Baucom tracts are burdened with the cost of future Richardson Rd with its CSX crossing & US1 interchange connection.
- **Residential** - Residential zoning no greater than Rural Transition Density of 1 home per acre which is 4X greater than current average density of 1 home per 4 acres.
  - Greater density fails to reflect rural character, to maintain tree canopy and fails to provide context sensitive development.
- **Commercial** - No Mixed Use Commercial with Residential - By definition, mixed use is metropolitan and not context sensitive.
- **Transportation** - Plans should be focused on road improvements (widening, signalization, etc.) for New Hill Holleman Road, Old US 1 and access to I540 versus creating interconnectivity within our community which only creates nuisance cut-thru traffic.
- **Overlay District** – In addition to the underlying Land Use Map & Transportation Plan, community to petition for the creation of a Neighborhood Conservation Overlay District to further define allowable context sensitive development.

# Neighborhood Conservation Overlay Districts

A **Neighborhood Conservation Overlay District (NCOD)** is a zoning overlay district intended to preserve and enhance the general quality and appearance of established neighborhoods by regulating built environmental characteristics such as lot size and frontage, building setback, and building height. This district reduces conflicts between new construction and existing development and encourages compatible infill development.

- NCOD's exist in surrounding communities such as Carrboro, Chapel Hill, Charlotte, Greensboro, Raleigh and Winston Salem. Apex currently offers the Small Town Character Overlay District.
- NCOD's are used to protect historical communities from gentrification. Gentrification of farmland is well documented.
  - NC Dept. of Ag. and Wake County publish yearly statistics of lost farm land in Wake County.
  - Gov. Cooper issued an executive order on 2/15/2024 to protect more North Carolina land.
  - NC General Assembly & Wake County Commissioners adopted the Farm Preservation Act which provides the Voluntary Agricultural District Program & the Enhanced Voluntary Agricultural District Program. 12% of our area participates in.
  - Wake County Commissioners funded \$3 million in FY24 to Triangle Land Conservancy to assist in preserving farmland.
- While final name may change, community is proposing and petitioning for "Historical Farm Overlay District" to honor the history and to preserve the ability to have a community of urban farms, mini-farms, and farms.



# Why Historical Farm Overlay District?

- Ensures the historical value of farming to both Friendship and New Hill Communities is preserved.
- Recognizes that our community supports and wants to encourage more urban farms, mini-farms, farms and forestry parcels. Minimum of 1 acre with home is needed for an urban farm to be viable.
- Close proximity of farms enable better utilization of resources and has less conflict with surrounding development.
- Recognizes the economic value that our area currently contributes to:
  - Forestry, Equine, Agricultural Industries – all critical industries to NC
  - Participation in EVAD and VAD programs unanimously approved by Wake County Commissioners.
- It allows for 50% tree canopy to continue and is essential for carbon sequestration and water quality for Wake County and Apex.
- Would be the first agricultural focused NCOD, serving as a model community for other to replicate.

# About Us

## Why Historical Farm Overlay District is a good fit?

*Area inside of New Hill Holleman Rd, Old US 1, I540 and US 1 boundaries*

262 Parcels

(100 Apex ETJ / 162 Wake County)

1829 acres

(665 Apex ETJ / 1146 Wake County)

### Consisting of:

- Pleasant Park 92 acres (in Yellow)
- 2 Largest Parcels 228 acres (Baucom & Walker)
- 120 Parcels 450 acres (3.75 acres –aver. lot size)
- 102 Parcels w/Covenants 404 acres (3.96 acres – aver. lot size, in blue)
- 3 Forestry Parcel 120 acres (1 qualifies as a Century Farm\*)
- 2 Largest Farms 65 acres (1 qualifies as a Century Farm\*, 2<sup>nd</sup> will qualify in 2032)
- 32 Parcels over 10 acres 510 acres (horse farms & mini-farms / 14.72 acres – aver. lot size)
- 200 Acres in NC Voluntary Ag. District or Enhanced Voluntary Ag. District (in pink & green – committed to preserve farmland)

\*Century Farms as recognized by NC Dept of Ag. are farms owned by same family for at least 100 years. Applications are underway.



### Notables:

3 – Equestrian Communities with Bridle Paths  
Victory Hill Farms – Award Winning Equine Training Facility  
Multiple Private Equine Facilities, Mini Farms  
East Coast Koi Imports  
Home to a NC Stewardship Forest

Autumn Winds Dog Training and Agility Center  
The Mother Ranch (equine & wellness)  
Holt Farms, Days Journey Farms (food producers)  
Finnigan’s Run Farm (wedding & event venue)  
**Critical Watershed for Harris Lake / Shearon Harris Nuclear Plant**

# Historical Farm Overlay District - Residential Development

No greater than 1 home per acre

## Apex Study

### Draft Study Area Goals

- 1. Preserve rural residential land, agriculture, and open space
- 2. Maintain and enhance the tree canopy
- 3. Protect water resources

Rural Residential Density	• Characterized by single-family development up to one dwelling unit per five acres and large tracts of agricultural lands.
Rural Transition Density	• Characterized by single-family development up to one dwelling unit per one acre.
Low Density Residential	• Characterized by single-family homes, duplexes, and townhomes with densities not to exceed three units per one acre.
Medium Density Residential	• Characterized by single-family homes, duplexes, and townhomes with densities no less than three and no more than seven dwelling units per one acre.

*The rural nature, agriculture and tree canopy cannot be preserved ...*

*...when there are up to 3 homes per acre.*

Example of Low Density Residential  
Winston Circle, Apex – 2 houses per acre →



*...when there are up to 7 homes per acre.*

← Example of Medium Density Residential  
Todd Hollow Trail, Apex – 5 houses per acre.

*1 house per acre would allow urban farms to exist and is 4X denser than the current average density.  
Land Use Map and Overlay District to ... no more than Rural Transition Density.*

# Historical Farm Overlay District - Residential Development

## Additional Provisions

- **1 Story Rule** – New Construction cannot be more than 1 story higher than the adjoining existing structure. This would allow developers to place 2 story building next to an existing 1-story building, then 1 street over place a 3-story building next to the 2-story building and so on. This is to prevent nuisance development where new construction has been allowed to surround and tower over existing properties creating an eyesore and invading one's right to privacy.
- **Fencing** – New construction will be required to install a fence to prevent trespassing onto rural properties that are often used for equine, farming, and hunting activities. Currently, no such provision is required by Apex's UDO and is a burden placed on current property owners.
- **Greater Buffers** – Buffers are the only effective way to protect rural properties from both light and noise pollution from commercial development.
- **Stormwater protections** - Stormwater is critical to recharging the water table that serves the many ponds and private wells. Stormwater should not be carried off but managed on-premise to ensure recharging of the water table can occur. Additionally, our creeks feed into Harris Lake, critical for cooling Shearon Harris Nuclear Plant.
- **Tree Canopy Protections** – Clear-cutting is prohibited. Phased grading must allow for 50% of trees to remain.
- **Seller Disclosure** – Potential buyers must be notified of the overlay district requirements.

# Historical Farm Overlay District - Commercial Development

- It is known that commercial development is targeted along Old US 1, New Hill Holleman Rd. & future Richardson Rd.
- Currently, planned commercial development with West Village, the Summit and on 500 acres of Friendship Road (Holly Springs' portion) exceeds projected needs and includes multiple grocery stores.

## **Therefore, for commercial properties adjoining or within the District:**

- Mixed use commercial with residential is not allowed as “metropolitan” development is not cohesive with District.
- Development should not be a nuisance to adjoining properties. Ag-friendly development should be encouraged:
  - Permanent farmer’s market & flea market like NC State Fairgrounds to support local farmers yet attract tourism as desired by Apex.
  - Farm to Table restaurants – Both high end like Farrington Village and alternatives like State Farmer Market Restaurant
  - Community Farm & Tree Archive – like Cary Good Hope Farm & Cary Tree Archive
  - Public Equine Complex – Horse Arena & Riding Trails
- Parking to be camouflaged and walking / cycling trails should be offered to discourage local drivers.
- Hours of operations, noise and light pollution should not be a nuisance.
- Architecture should feature “country, rural” qualities such as tin roofs, small town and barn aesthetics.

# Historical Farm Overlay District - Transportation

“Cut Thru” traffic patterns divide our community, brings in additional traffic and has been highly problematic for residents along Friendship Road as it is no longer safe to ride horses, bikes or even walk along Friendship Road. While Friendship Road will operate better with the planned turn lanes and signalization, the cut thru traffic does not serve the community.

- **Focus on perimeter**– Improve traffic operations on Old US1 to I540 & New Hill Holleman Rd to US1 to minimize “cut-thru”.
- **Minimize Interconnectivity** - Creates undesirable cut-thru traffic and neighborhood sprawl and should be prohibited.
  - Stub roads / interconnectivity between Pleasant Plains, Friendship, Bosco and Mason Roads are prohibited. Each road must support it’s own development and not transfer the burden on other District’s roads.
  - Stub road cannot count towards fire apparatus safety given anticipated slow development of area.
- **Future Richardson Rd** – 2022 Hot Spot CAMPO Study proposed shifting the CSX crossing east towards to minimize the negative impact on Bosco and Hinsley Roads. If built, shifting east is the only proposal the community will support due to the negative impact to both rural roads. Community will advocate with CSX, CAMPO, Wake County and Apex to adopt the eastern alignment
- **Traffic Studies** – Where development is approved with Capped Schools and / or Park Fee-in-Lieu, those studies must forecast added traffic to intersections leading to the assigned school and nearest park to accurately estimate actual traffic a development contributes to the road.



# Historical Farm Overlay District - Impact When Selling

If you sell your property ....

- **Property disclosure** (All properties)- Disclose property is in the Historical Farm Overlay District.
- **Neighborhood with Covenants** (39% of properties)- Re-development of neighborhood is prohibited by the neighborhood covenants. Property owners sell their home subject to covenants as usual.
- **Neighborhood whose Covenants expire or are voted out** – Sell as is or if re-development is desired, development is subject to the Historical Farm Overlay District and the underlying zoning, generally no more than 1 home per acre.
- **Tracts less than 10 acres with no covenants** (46% of properties) - Sell as is or if re-development is desired, development is subject to the Historical Farm Overlay District and the underlying zoning, generally no more than 1 home per acre.
- **Tracts over 10 acres and/or Bona Fide Farms** (15% of properties)- Sell as is or if re-development is desired, development is subject to the Historical Farm Overlay District and the underlying zoning, generally no more than 1 home per acre.

“Conditional Zoning” Exception: Per NC law, developers may apply for “Conditional Zoning” which provides exceptions and allows for deviations to any proposed or current zoning. Requires both public hearings and Apex Town Council vote.

# Historical Farm Overlay District - Steering Committee

**Citizen Advisory Committee** - due to the lack of elected representation within Apex, a Citizen Advisory Committee is created and will be known as the Community Steering Committee. At least 1 representative per road or major community will serve on the committee. Initial members are:

- Tony Santitori – Kirkwood & Pleasant Plains Road
- Elizabeth Stitt – Friendship Road (Apex ETJ)
- Kurt Kuechler – Hazelhurst & Creeks Bends Estates
- Beth Bland - Kilcastle Farms & Friendship Road (Wake County)
- Dawn Cozzolino – Bosco Road
- Patty McIver – Mason Road

Additional responsibilities include:

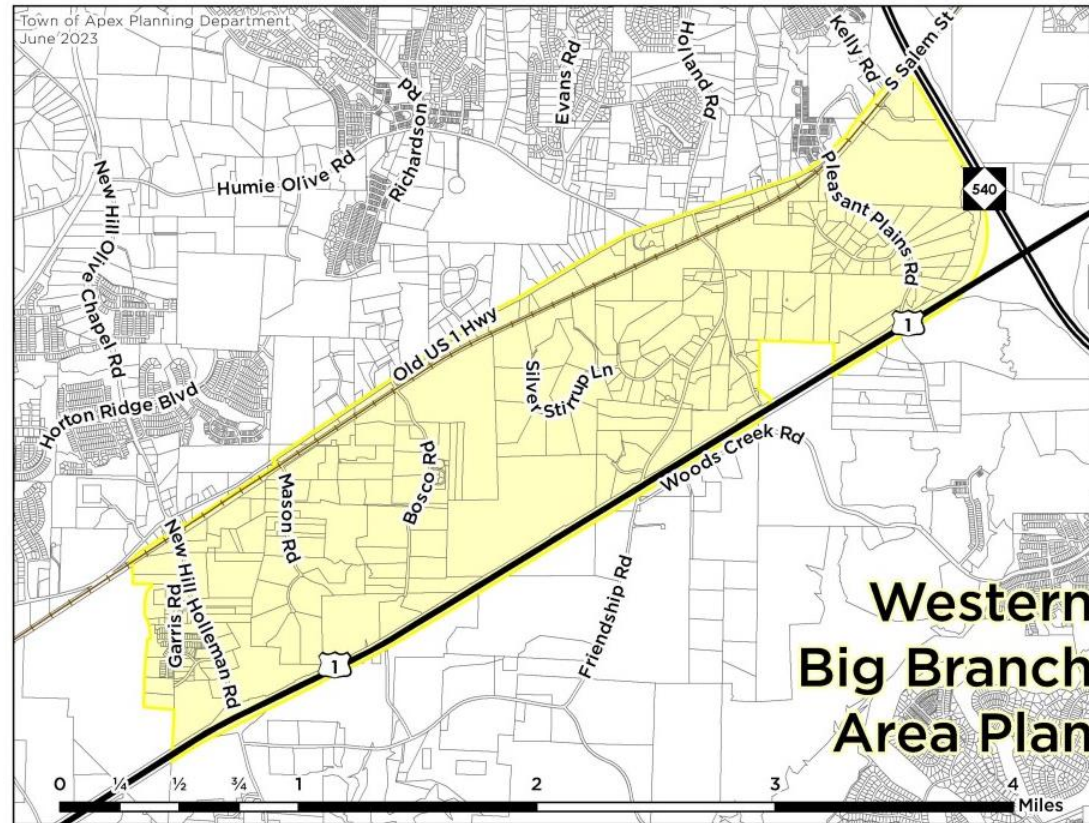
- **Pre-Development applications** – Town to send applications to the Committee for non-binding comments.
- **Neighborhood Meetings** - Committee to be included in developers' neighborhood meetings.
- **Committee Representation** - is allowed to participate in work sessions, TRC meetings, and public hearings (without the 3 minute time limit) to represent District's interests.



# Community Feedback Deck to Apex

## March 26, 2024

# Friendship and New Hill Community Feedback to Apex Western Big Branch Area Plan



# Acknowledgements / Thank You

- Having meetings at Apex Friendship Middle, New Hill Community Center and Pleasant Plains Baptist Church allowed for greater community participation.
- Making the March 2024 presentation and proposals available online prior to the meetings enabled our community to have a look and come to the sessions better prepared with questions and ideas.
- Map legend handout at March 2024 meeting was concise and very helpful.
- Many Apex staff members and elected officials were available at the meetings for discussions and what we hope is the foundation to building better relationships.

# Challenges

- Western Big Branch Area Plan Name
  - Despite much feedback that we find the name highly offensive due to our negative experience with the Big Branch Force Main Sewer Project, yet no change to the name has occurred.
- Consequences from Little Beaver Creek Conservation Easement
  - Community learned in January 2024 that the Town has been actively working to breach the Conservation Easement since at least 2016 and the Town's intentions to do so were publicly discuss within public hearings for other matters where the legal ads did not reference the Easement. The lack of transparency deprived our community constructive notice and broke trust that we've been working to build.
  - Culturally, our community highly values responsible land management. Breaching the easement is highly offensive.
  - We are formally opposing the Town's application to breach the easement.
- Community input was limited to pre-set options provided by the Town
  - Preset options did not capture what the community wanted. Instead, community was choosing the least objectionable options offered versus having a true dialog about what the community wants and needs.
- Lack of outside Consultant
  - Perception is that the Town's is simply looking for more of the same kind of development that Apex already has versus development that reflects the unique history and culture of the Friendship and New Hill Communities.
- Lack of representation
  - Without voting rights and with no elected official to advocate for our interests within Apex leadership, we have begun advocating to CAMPO, NCDOT, Wake County, NCDEQ, NCDOA and CSX for the interests of Friendship and New Hill.

# Current Unsolved Development Challenges

- Traffic Congestion at Pleasant Park
  - Despite many assurances from the Town, traffic mitigations at the Park have failed.
  - Town's needs to solve issues quickly to instill confidence.
- Traffic Congestion at Old US 1 & Friendship Road
  - There has been no development by neighbors on Friendship Road. All traffic growth is from Apex or Holly Springs.
  - Community members fought for money from Holly Springs. Apex needs to take the lead on fixing the intersection to instill confidence.
- Incompatible development trends
  - 3 story townhomes towering over and encircling single story homes or rural communities (Winding Creek Estates)
  - Town's continuous threat of eminent domain – Rubin case, Big Branch Force Main
  - “50 Shades of Gray”

# Proposal Feedback

## Apex Proposed:

### **Draft Study Area Vision**

The Western Big Branch Area Plan envisions a future where the rural residential character of the study area is valued and actively protected, the unique history of the New Hill and Friendship communities is acknowledged and celebrated, new development is responsive to the needs of surrounding residents, and multimodal travel is safe and context sensitive.

## Community Feedback:

Most in the community generally agree with Study Area Vision.

The community is more than just a rural area. It also includes numerous mini-farms, horse farms, bona fide farms and forestry tracts that participate in leading NC economies resulting in job creation for veterinarians, farriers, feed manufacturers, building suppliers, farm equipment manufacturers, and food production. These tracts further provide economic value in carbon sequestration, pollution mitigation and improve water quality.

The Study Area Vision and Town Ordinances need to be expanded to address the potential nuisance that new development creates for these properties.

Apex Proposed:

Draft Study Area Goals

- 1. Preserve rural residential land, agriculture, and open space
- 2. Maintain and enhance the tree canopy
- 3. Protect water resources

	Rural Residential Density	<ul style="list-style-type: none"><li>• Characterized by single-family development up to one dwelling unit per five acres and large tracts of agricultural lands.</li></ul>
	Rural Transition Density	<ul style="list-style-type: none"><li>• Characterized by single-family development up to one dwelling unit per one acre.</li></ul>
	Low Density Residential	<ul style="list-style-type: none"><li>• Characterized by single-family homes, duplexes, and townhomes with densities not to exceed three units per one acre.</li></ul>
	Medium Density Residential	<ul style="list-style-type: none"><li>• Characterized by single-family homes, duplexes, and townhomes with densities no less than three and no more than seven dwelling units per one acre.</li></ul>

Community Feedback:

The rural nature and tree canopy cannot preserved ...

- when there are 3 or more homes per acre. See Todd Hollow Trail,
- Or when there are 2 or more homes per acre. See Winston Circle.

If the Town is to meet the above 3 goals, housing density should not be more than 1 house per acre.

Winston Circle, Apex  
on ½ acre lots

Todd Hollow Trail, Apex  
On 1/5 acre lots





**Apex Proposed:**

4. Honor the history of the Friendship and New Hill communities

**Community Feedback:**

Agreed and Thank you.

## Apex Proposed:

5. Encourage development of a small-scale downtown near the intersection of Humie Olive Road and Old US 1
6. Encourage development of grocery/convenience offerings near the intersection of New Hill Holleman Road and US 1
7. Encourage economic development along the Richardson Road corridor south of Old US 1 and at the future Richardson Road/US 1 interchange

## Community Feedback:

Goal 5 & 6:

In general, it is understood that commercial development may occur along Old US 1 and New Hill Holleman Road.

Mixed use and high density residential is not “context sensitive”, is not cohesive to adjoining rural properties and fails to “actively protect” the rural nature stated within Study Area’s vision. This type of development is a nuisance to rural properties due to the increased noise, subsequent trespassing, and loss of privacy due to towering buildings.

Goal 7: This goal was not a community goal. Economic development of this area further divides our community and destroys portions of it along Bosco Road and potentially a portion of Friendship Road. More detailed comments are provide with the Scenario depictions.

### Apex Proposed:

8. Improve the safety of area roadways for motorists, cyclists, and pedestrians
9. Mitigate the impact of surrounding development on existing roads
10. Provide trails, greenways, and trailheads

### Community Feedback:

Goal 8: Community agrees.

Goal 9: When the Town approves development with park fee-in-lieu and capped schools, the Town is putting more traffic on over-burdened roads. The Town's traffic studies also have not kept up with actual traffic volumes such as Pleasant Park. For our Study Area, we want traffic study to address these issues.

It seems the Town wants to shift development traffic into our community with connector roads which will not protect the rural character or increase the quality of our daily lives. Development traffic should be directed out, not through, our community.

Goal 10: Community is split. If the trade off to get trails, greenways, and trailheads is construction of townhouses, then the community is generally against this goal. If the trails, greenways and trailheads are part of the commercial development, then it is generally received better.

# Community Feedback

## Draft Additional Plan Recommendations

### Future Land Use

- Encourage development of a small-scale downtown near the intersection of Humie Olive Road and Old US 1.
- Encourage development of grocery/convenience offerings near the intersection of New Hill Holleman Road and US 1.

### History

- Incorporate New Hill Historic District gateway signs into the Town-wide Wayfinding Signage Program.
- Encourage residents of the Friendship and New Hill communities to participate in the Town of Apex Historical Marker Program.
- Add a subtitle to the plan document: Western Big Branch Area Plan – Encompassing the Friendship and New Hill Communities.

### Transportation

- Study and potentially invest in turn lanes and a traffic signal at the intersection of Friendship Road and Old US 1.
- Conduct a feasibility study for a potential grade separation in the vicinity of Pleasant Park to improve vehicular, bicycle, and pedestrian access to the park.
- Coordinate with NCDOT on its annual resurfacing contract to stripe bicycle lanes and/or provide bicycle signage within the study area.
- Coordinate with regional partners on transportation requirements for motorists, cyclists, and pedestrians associated with new development.
- Further explore a potential transit connection between downtown Apex and Pleasant Park.

### Quality of Life

- Encourage economic development along the Richardson Road corridor at the future Friendship Road/US 1 interchange.
- Utilize the Town of Apex Affordable Housing Incentive Zoning Policy to encourage mixed housing near major intersections in the study area.

### Environment

- Review best practices and develop a policy to encourage the preservation of forested areas.
- Continue to designate properties within the study area as either part of the Primary or Secondary Watershed Protection Areas after being voluntarily annexed into the Town of Apex.

Architecture of the Summit does not align with the Humie Olive Concept Development. What controls be put in place will ensure the small-scale downtown feel?

Grocery store is proposed as a part of New Hill Plaza but the project's high density housing does not align with small-scale community.

Should include both New Hill and Friendship historic gateways.

Yes, we should. Please provide the process.

WBBAP name should be abandoned. Other communities ... Green Level & Olive Chapel are not "labeled", so Friendship & New Hill should not be labeled. Let owners nominate the name.

This is an Apex goal, not a community goal. We understand development will occur. It should reflect Historic Friendship and New Hill.

Mixed housing should be banned as it was not a part of Historical Friendship or New Hill. Small scaled Habitat for Humanity styled homes with small yards is a better fit or replicas of New Hill travel cottages.

NC Forestry & Wake County Soil & Water should be included in the development of the plan.

Town should look to establish a community forest like Cary Tree Archive in our area.

Town should look to establish a permanent farmers market & community farm like Cary's Good Hope Farm.

# Draft Additional Plan Recommendations

- Traffic signal and turn lanes on Friendship Road are warranted now based on current traffic. No further development should be approved by any Town process without this improvement in place.
- Old US 1 is designated as the NC Bike Route “Carolina Connection”. Town should work with the state to improve the safety, signage and striping of the route.
- In 2023, DOT determined that Friendship Road was not eligible for bike striping or shoulder expansion for bike lanes. Road is too narrow and the grading of ditches are too steep. Full replacement of road would be required
- Bus stops must be internal to the park and not on Pleasant Plains Road. Town must have staff to supervise kids who come to the park without an adult.

## Transportation

- Study and potentially invest in turn lanes and a traffic signal at the intersection of Friendship Road and Old US 1.
- Conduct a feasibility study for a potential grade separation in the vicinity of Pleasant Park to improve vehicular, bicycle, and pedestrian access to the park.
- Coordinate with NCDOT on its annual resurfacing contract to stripe bicycle lanes and/or provide bicycle signage within the study area.
- Coordinate with regional partners on transportation requirements for motorists, cyclists, and pedestrians associated with new development.
- Further explore a potential transit connection between downtown Apex and Pleasant Park.

- Town should not open the Park’s Phase 3 given the unsafe, current conditions.
- Community wants to see an updated traffic study.
- Community wants town to explore the option of an exit onto 540.
- Town to provide additional improvements to ensure residents are able to access and leave their neighborhood with less “near-miss” accidents.
- Given the unacceptable plans for Richardson Road, we ask that a community member be included in those discussions.

## Community Added Recommendations:

- Friendship Road is 6 ½ Ton Weight Limited – Work with DOT to increase enforcement.
- Old US 1 has blind spots due to rolling hills. Work with incoming development to reduce hills.
- Old US 1 has concrete buckling under the payment. Work with DOT to have concrete removed from problem areas.
- Apex’s traffic studies does not capture the additional traffic that is generated when a development’s school is capped or when a park fee-in-lieu occurs. As such, studies are under-scoped. Please update policies to include these additional trips.



# WESTERN BIG BRANCH AREA PLAN

## Scenario One: Minimize Change

Prepared by the Town of Apex Planning Department, February 2024

- Page 294 -

- Page 294 -

# Why Historical Farm Overlay District?

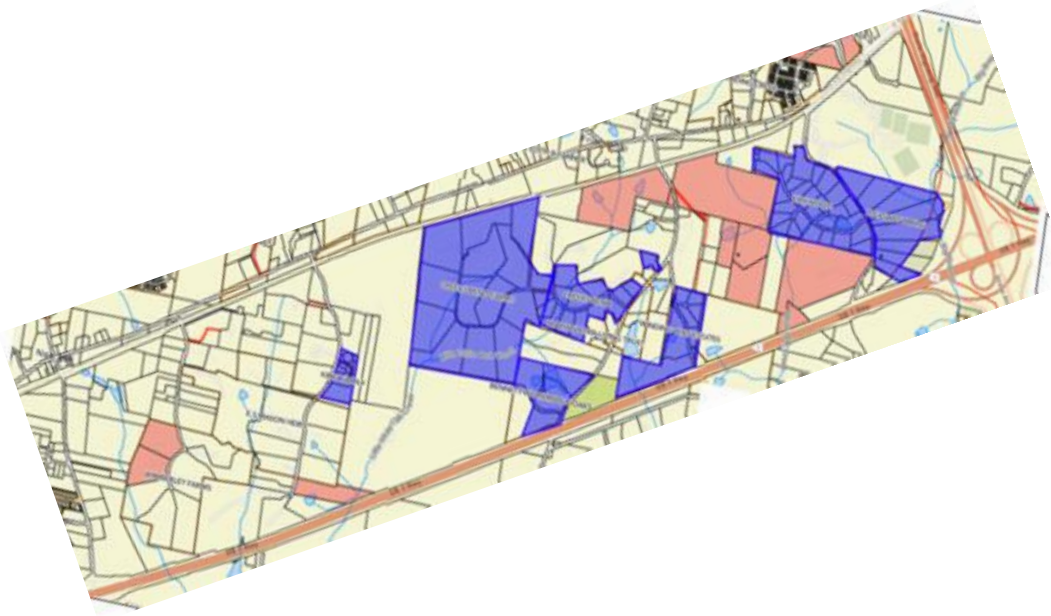
- Offers diversity in property types to Apex's current trends
- Offers critical offset to Apex's density issue
- Honors historical value of farming to both Friendship and New Hill Communities
- Recognizes the economic value this area contributes to:
  - Forestry, Equine, Agricultural Industries – all critical industries to NC
  - Community noise is an issue for these industries
- 50% Tree Preservation can not be achieved with development as proposed
- Rural communities trees help with climate change
- Development along future Richardson Road could offer:
  - Farmer's market & Flea Markets like State Fair Ground to attract tourists
  - Farm to Table restaurants – high end and like Raleigh's Farmer Market Restaurant
  - Tree Archive – like Cary Tree Archive
  - Community Farm – like Cary Good Hope Farm
  - Walking and riding trails for visitors who want nature excursion with markers along the way with New Hill and Friendship History
  - Public Horse Arena

# Purpose

The purpose and intent of the Historical Farm Overlay District is to preserve and enhance critical environmental and natural resources, including water resources and ecosystem services in the stream network flowing through the district and maintain the Town's rural agricultural history. The Overlay identifies the architectural qualities that define the agricultural character and proposes design standard to maintain the character in new and infill projects of urban farms and mini-farms while complimenting larger farms.



# Study Area Statistics



• 243 Parcels 1829 acres

Consisting of:

- 102 Parcels in HOAs 404 acres (3.96 acres - average lot size)
- 2 Largest Parcels 228 acres (Baucom & Walker)
- Pleasant Park 92 acres
- 3 Forestry Tracts 120 acres (1 qualifies as a Century Farm)
- 2 Largest Farms 65 acres (1 qualifies as a Century Farm, the 2<sup>nd</sup> will be in 2032)
- 32 Tracts over 10 acres 510 acres (horse farms & mini-farms/ 14.72 acres - average lot size)
- 120 Tracts 450 acres ( - Page 297 - res –average lot size)



# **Western Big Branch Area Plan**

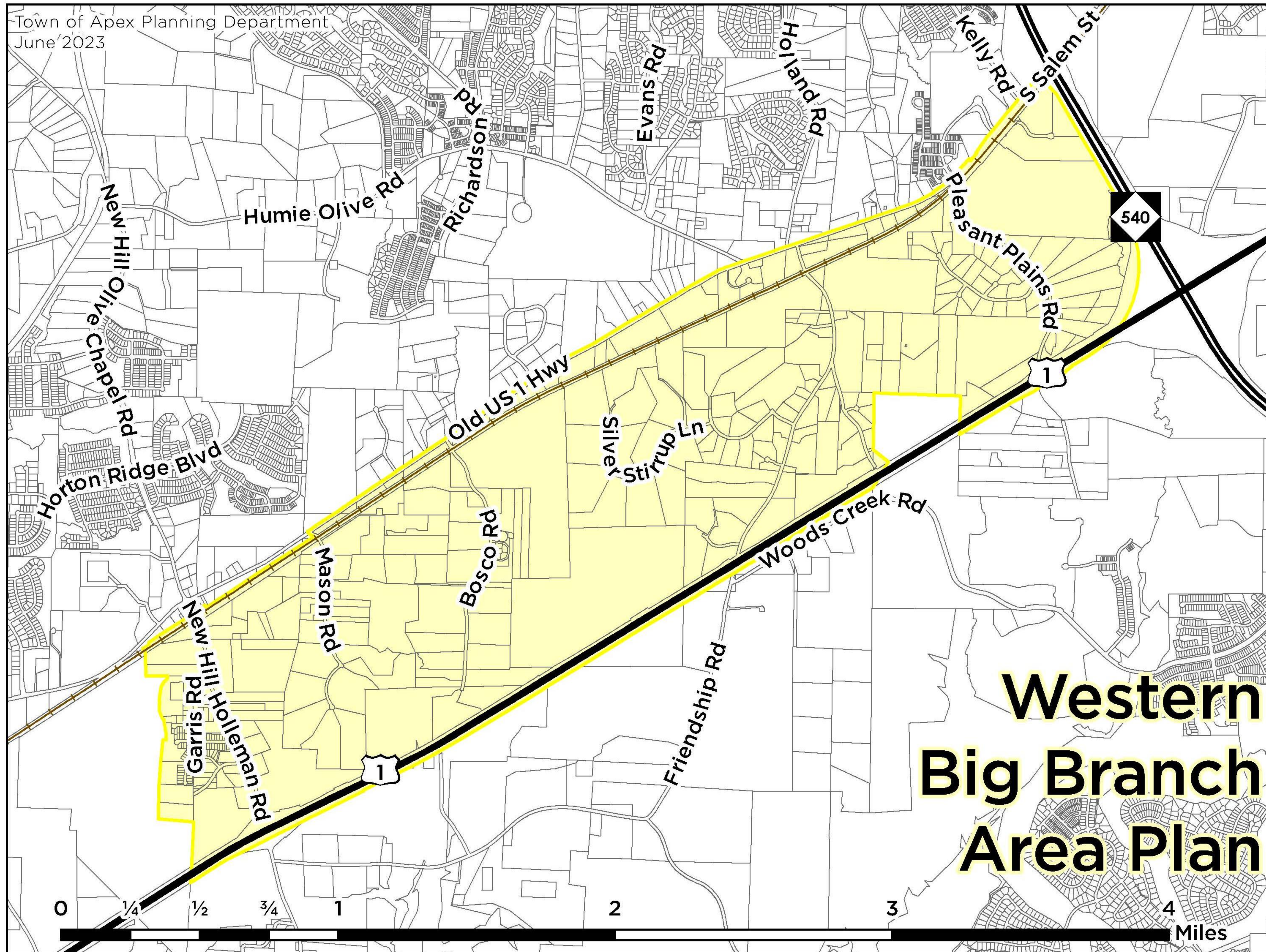
## **Spring 2024 Public Input Summary**



# Overview

- Presentation includes summary of input on:
  - Three plan amendment scenarios
  - Friendship and New Hill Community Land Use Map & Neighborhood Conservation Overlay District
- Staff report **also** includes summary of input on:
  - Draft Additional Plan Recommendations
  - Draft Vision & Goals





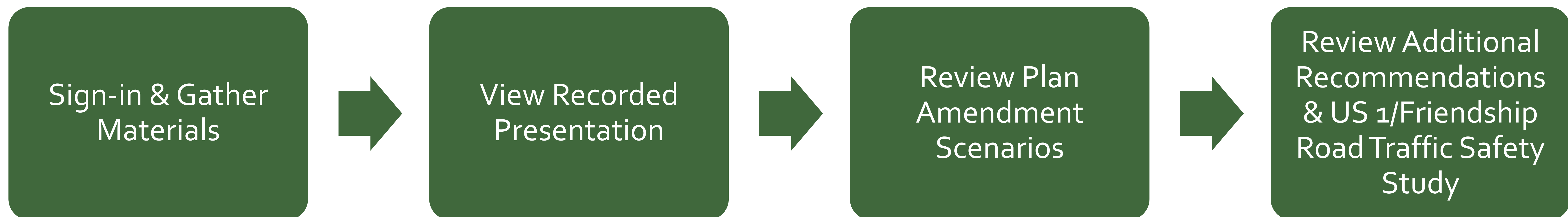
# Western Big Branch Area Plan





# March 2024 Public Meetings

- March 6<sup>th</sup> at Apex Senior Center
  - 26 attendees
- March 18<sup>th</sup> at Pleasant Plains Baptist Church
  - 29 attendees
- March 20<sup>th</sup> at New Hill Community Center
  - 20 attendees







- Retail Sales / Service
- Industrial
- Office / Business / Professional
- School
- Park
- Proposed Apex Peakway
- Study Area
- Apex Corporate Limits
- Apex Extraterritorial Jurisdiction
- County Line

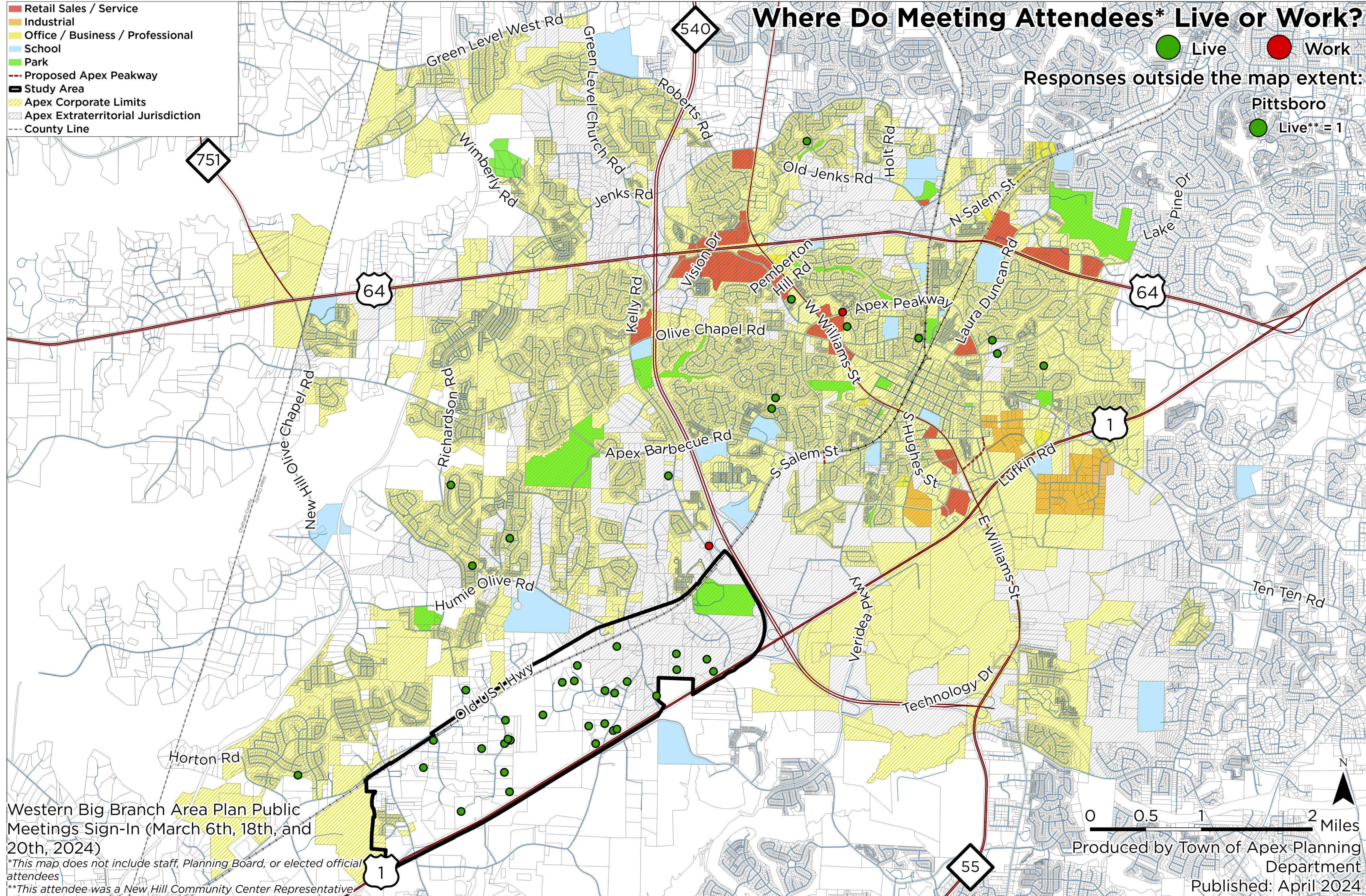
## Where Do Meeting Attendees\* Live or Work?

- Live
- Work

Responses outside the map extent:

Pittsboro

- Live\*\* = 1



Western Big Branch Area Plan Public Meetings Sign-In (March 6th, 18th, and 20th, 2024)

\*This map does not include staff, Planning Board, or elected official attendees

\*\*This attendee was a New Hill Community Center Representative

0 0.5 1 2 Miles

Produced by Town of Apex Planning Department

Published: April 2024





# Online Opportunity

- Meeting materials posted online February 20<sup>th</sup>
- Online survey period: February 20<sup>th</sup> – April 1<sup>st</sup>
- 81 online and paper survey responses
- Community input, separate from online survey, provided through email
- 474 views of the recorded presentation on YouTube



# Presentation Purpose and Overview

- August 2023 Public Input Summary
- Draft Study Area Vision & Goals
- Plan Amendment Scenarios and how to provide input
- Additional Plan Recommendations
- Next Steps





# Scenarios Introduction

Scenario 1

↓ Land Use Intensities

↓ Transportation Network

Scenario 2

Land Use Intensities



Transportation Network

Scenario 3

↑ Land Use Intensities

↑ Transportation Network



# Scenario Preferences

- Most preferred: Scenario 1
- Second preferred: Scenario 2
- Least preferred: Scenario 3

	Scenario 1	Scenario 2	Scenario 3
Top Rank	43	15	6
Second Rank	5	38	12
Third Rank	16	3	37
<b>Weighted Rank</b>	<b>1.6</b>	<b>1.8</b>	<b>2.6</b>



# Scenario One: Minimize Change



# Scenario One Comments: General

Comment	Frequency
Maintain the rural feel (low density and few vehicles).	5
Leave us and the area alone/keep the area the same.	4
It is not realistic to expect this area to stay as is (new water, sewer, etc.).	4
Support this scenario.	2
Do not support this scenario.	1
Concerned it pushes housing further into non-developed areas with less infrastructure.	1
Current pace of town growth is not sustainable.	1
There is a misperception on what the Future Land Use Map (FLUM) does. The FLUM does not force sales or require right-of-way dedication.	1
Allow people to stay in the area or sell if they choose.	1
Half of Bosco Road is destroyed.	1
*Update map to reflect Enhanced Voluntary Agricultural Districts and Voluntary Agricultural District properties.	

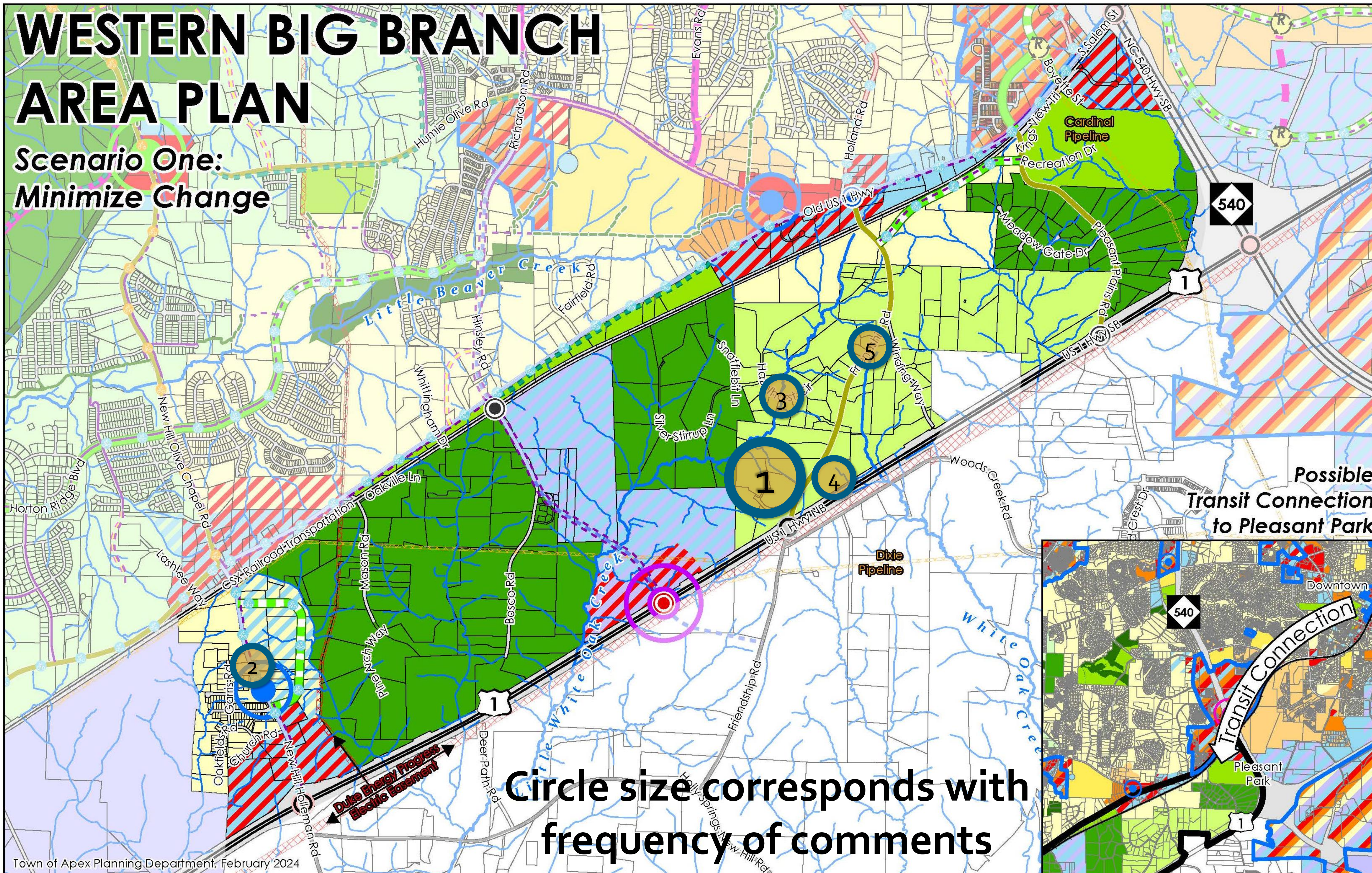
\* Comment submitted separately from survey





# WESTERN BIG BRANCH AREA PLAN

## Scenario One: Minimize Change



Town of Apex Planning Department, February 2024

Circle size corresponds with  
frequency of comments

### Location-Specific Land Use Comments

1. Change the Kilcastle Farms properties to Rural Density Residential
2. Change both sides of New Hill Holleman Rd to Low/Rural Density, apart from the US 1 interchange
3. Support the Rural Transition Density along Hazelhurst Cir
4. Change 3601 Friendship Rd to Rural Density Residential
5. Change both sides of Friendship Rd to Rural Density Residential

### General Land Use Comments

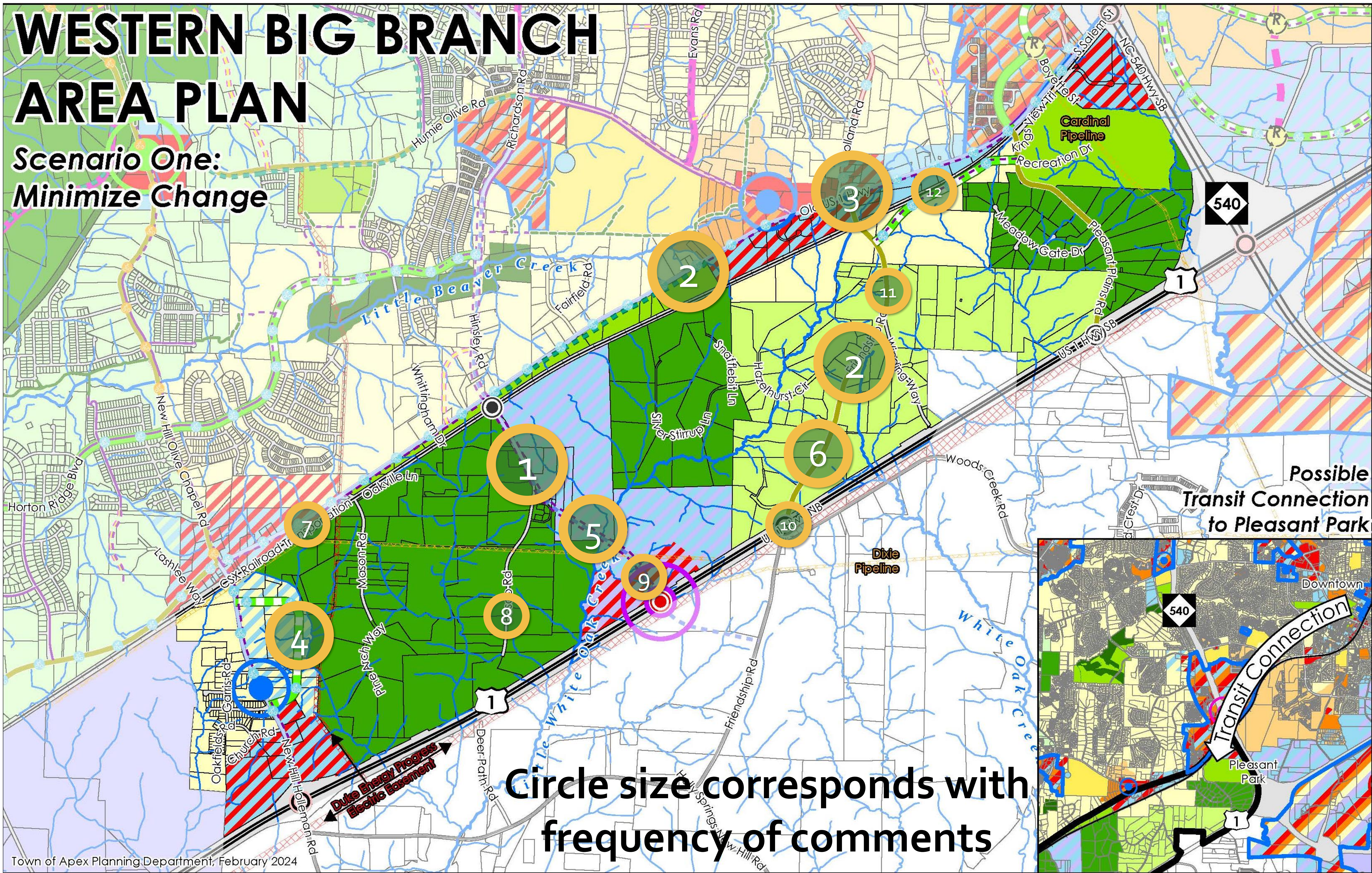
- Like the rural development levels/atmosphere (5)
- Support density around major intersections (1)
- Support life science campus (or similar) rather than subdivisions with commercial, with the exception of grocery (1)
- Concerned the medium density and commercial areas will have a domino effect (1)
- The US 1 / NC 540 area should not be fully preserved. Provide options for people to live and work. (1)





# WESTERN BIG BRANCH AREA PLAN

Scenario One:  
Minimize Change



Town of Apex Planning Department, February 2024

## Location-Specific Transportation Comments

1. Shift Richardson Rd away from Country Haven Ln and Bosco Rd
2. Transportation improvements are needed, particularly along Friendship Rd and Old US 1
3. Improve Friendship Rd/Old US 1 intersection
4. Against New Hill Loop collector
5. Against Richardson Rd extension
6. Against Friendship Rd widening – protect historic structure
7. Support side path along Old US 1
8. Support removal of Bosco Rd collector
9. Support Richardson Rd/Bosco Rd alignment
10. Close Friendship Rd bridge
11. Against removal of bike lanes from Friendship Rd
12. Against collector street between Friendship Rd and Pleasant Plains Rd

## General Transportation Comment

- Bike lanes are needed (1)





# Scenario Two: Incremental Change



# Scenario Two Comments: General

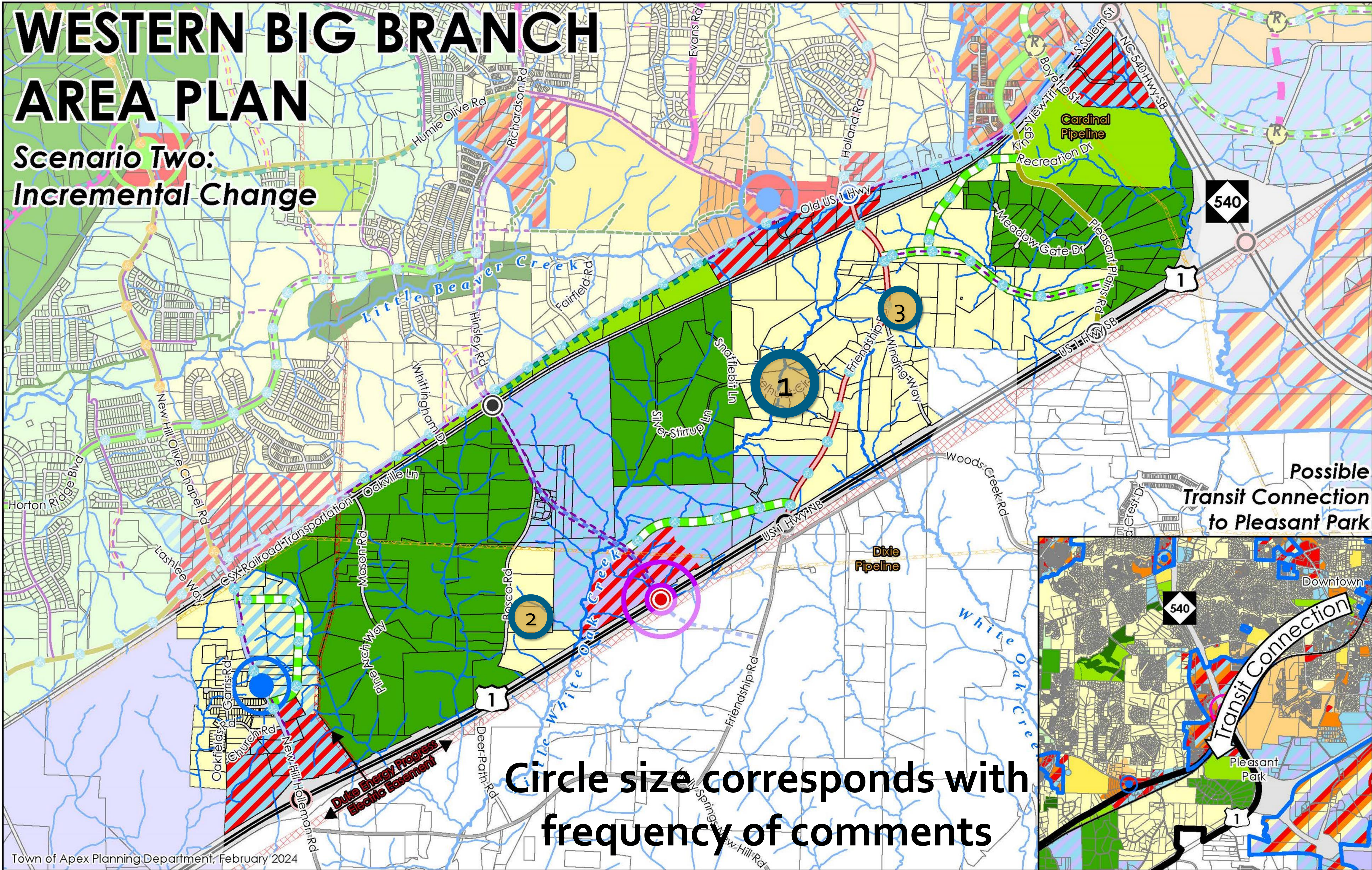
Comment	Frequency
Do not support.	5
Leave us/the area alone.	4
Best balance of development and road improvements.	3
Good overall.	2
Average / safe.	1
Hoping this will bring a good mix of housing and business with the necessary infrastructure improvements.	1
Since the current infrastructure is overwhelmed by growth, we need transportation updates. At the same time, this plan will help preserve the unique history and nature of the Friendship Community.	1
Support 3-lanes along Friendship Road, but without land use changes to Creeks Bend. Prefer rural density for Creeks Bend.	1
Buildings are often abandoned. Green areas and trees should be prioritized.	1
Keep the rural nature.	1
Receive resident approval before future planning.	1
Half of Bosco Road is destroyed.	1





# WESTERN BIG BRANCH AREA PLAN

## Scenario Two: Incremental Change



Town of Apex Planning Department, February 2024

### Location-Specific Land Use Comments

1. Prefer Rural Transition Density instead of Medium Density for Hazelhurst Cir
2. Concerned about Medium Density along Bosco Rd
3. Second choice because Friendship Rd area is Medium Density rather than Low Density

### General Land Use Comments

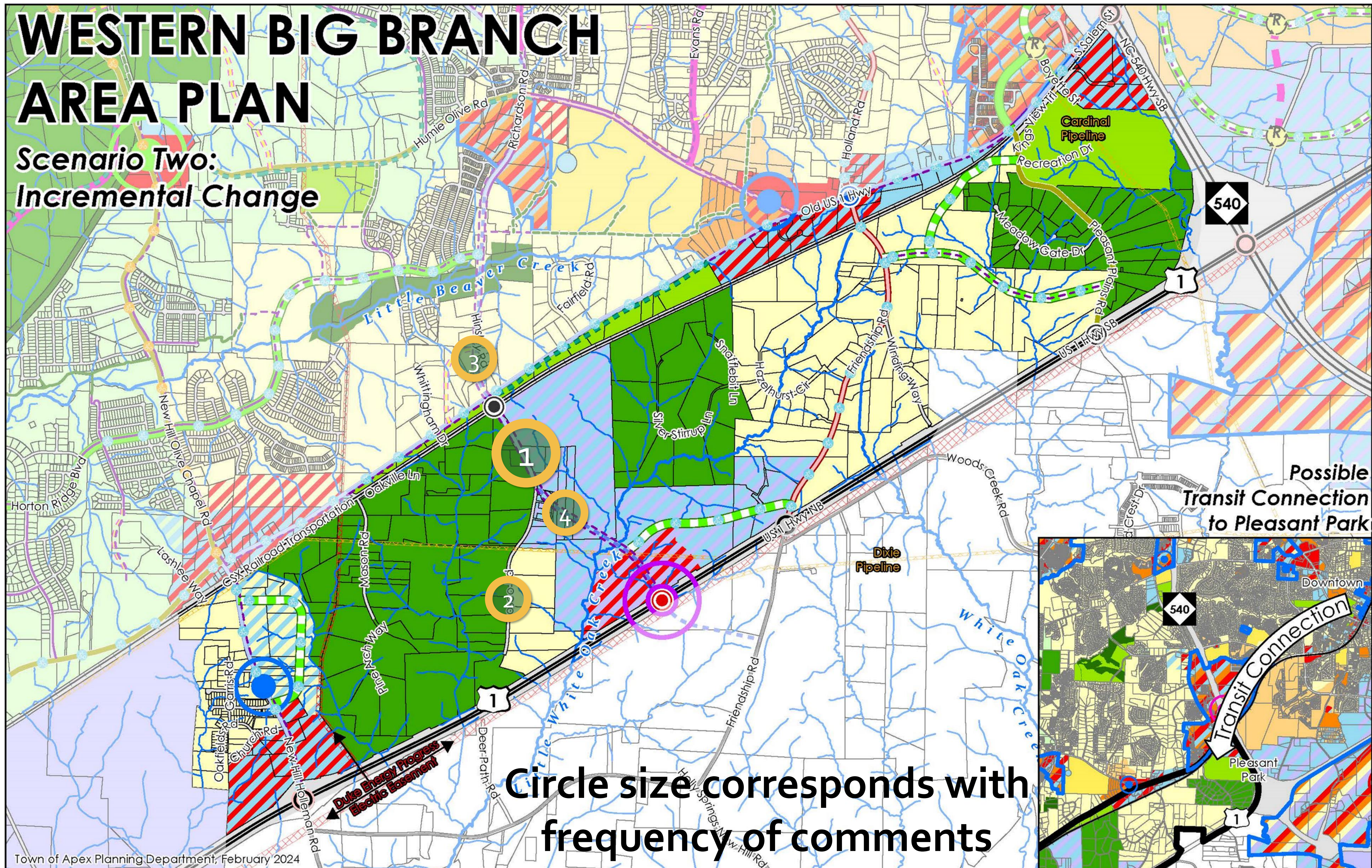
- Not balanced - development area is larger than rural area (2)
- Not sufficient - higher intensity is needed (2)
- Seems optimal - keep major retail along major corridors, especially US 1 (1)





# WESTERN BIG BRANCH AREA PLAN

## Scenario Two: Incremental Change



### Location-Specific Transportation Comments

1. Shift Richardson Rd away from Country Haven Ln and Bosco Rd
2. Support removal of Bosco Rd collector
3. Support Richardson Rd extension to Old US 1 only
4. Against Richardson Rd extension

### General Transportation Comments

- Support the bike lanes (2)
- Close, but improvements will not keep up with development (1)
- Prioritize infrastructure improvements that focus on public safety and congestion reduction (1)
- Raise fee in lieu costs to match actual costs (1)





# Scenario Three: Expand Transportation Network



# Scenario Three Comments: General

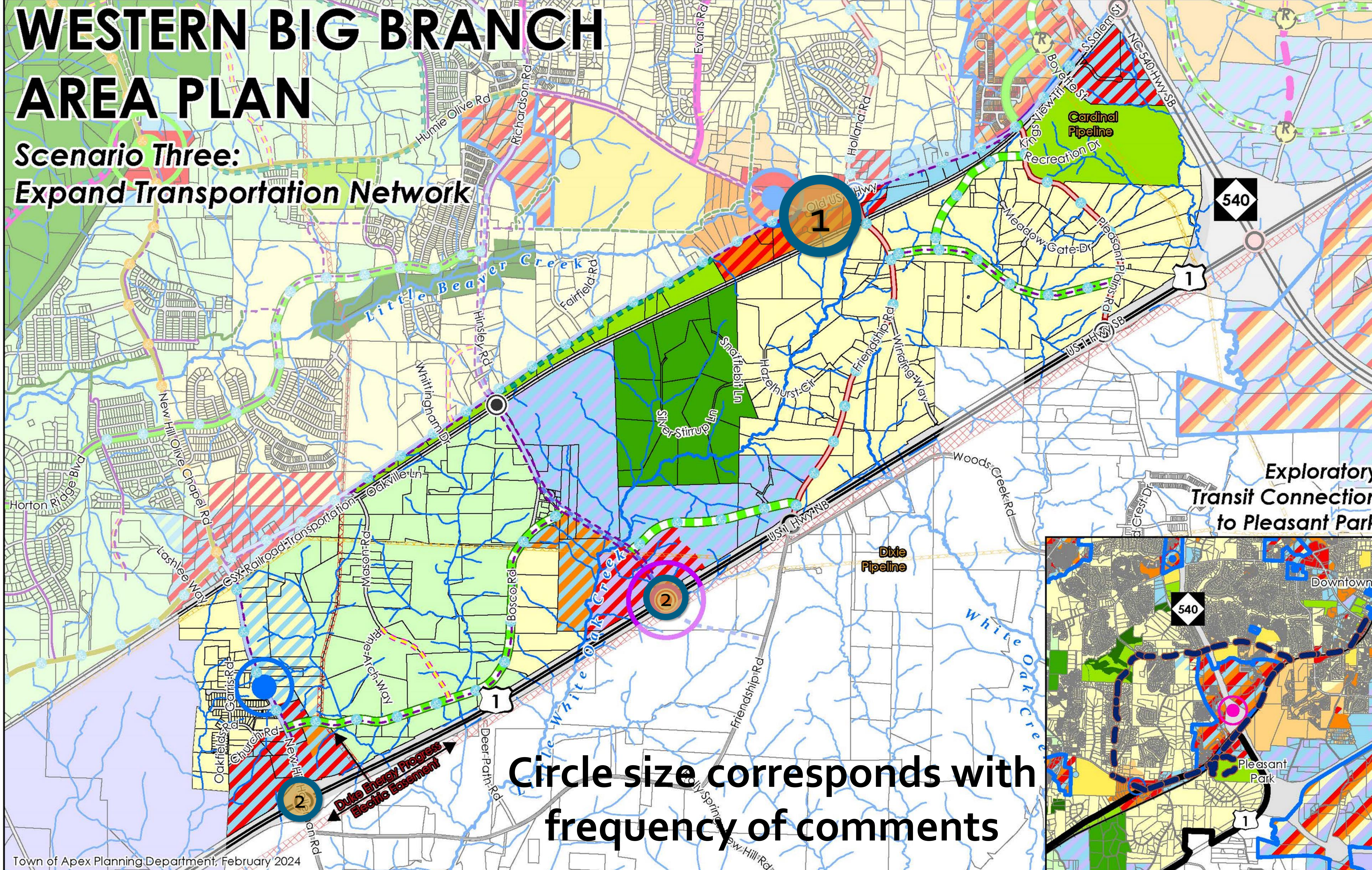
Comment	Frequency
Do not support.	6
Leave us/the area alone.	5
Costs to the Town and environmental impacts outweigh benefits.	2
If roads are changing, builders will offer more money and land will sell. Have a plan for future land owners, not current ones.	1
This scenario would destroy the rural character and historic structures in Friendship.	1
Good overall.	1
Half of Bosco Road is destroyed.	1
Expanding the street network and increasing density is needed to reduce traffic all over town.	1





# WESTERN BIG BRANCH AREA PLAN

## Scenario Three: Expand Transportation Network



Town of Apex Planning Department, February 2024

### Location-Specific Land Use Comments

1. Against Medium Density or High Density around Old US 1/Friendship Rd/Humie Olive Rd
2. Makes use of the existing and proposed interchanges at US 1 to provide economic growth

### General Land Use Comments

- Too dense (3)
- Community does not want more townhomes (1)
- Puts density near major intersections and possible public transit (1)
- Too much residential development (1)
- Increased density around Vicious Fishes will be good for Apex and surrounding areas (1)
- Fills the gap in residential density between north of Old US 1 and Holly Springs (1)
- Higher intensity uses will support public transit (1)





# WESTERN BIG BRANCH AREA PLAN

**Scenario Three:  
Expand Transportation Network**

The map displays the Western Big Branch area with various transportation features. Proposed transit routes are shown in green and red dashed lines. Existing roads include Horton Ridge Blvd, New Hill Olive Chapel Rd, Lashlee Way, Church Rd, New Hill Hollenbury Rd, Deer Path Rd, Holly Springs New Hill Rd, Friendship Rd, US 1 Hwy, Old US 1 Hwy, Holland Rd, Evans Rd, Humie Olive Rd, Richardson Rd, Fairfield Rd, Hinderly Rd, Whitingham Dr, Oakville Ln, Mason Rd, and Church Rd. Water features include Little Beaver Creek, White Oak Creek, and White Oak Creek. Other landmarks include Cardinal Pipeline, Dixie Pipeline, and Pleasant Park. Six numbered circles (1-6) indicate hotspots for comments, with circle 1 being the largest. An inset map shows the area's location relative to Downtown and Pleasant Park. A legend at the bottom right explains the circle sizes.

Circle size corresponds with frequency of comments

Town of Apex Planning Department, February 2024

**Circle size corresponds with frequency of comments**

1. Shift Richardson Rd away from Country Haven Ln and Bosco Rd
2. Remove the existing intersection of Bosco Rd and Richardson Rd to eliminate cut-through traffic
3. Two streets, Bosco Rd collector and new local connection, are proposed through 8164 Providence Oak Path
4. Against Bosco Rd collector
5. Against Richardson Rd extension
6. Additional travel lane needed on Old US 1 bridge over NC 540 to downtown

- Support expanded public transit (2)
- Against planning for transit (1)
- Roads will not handle traffic volumes (1)
- Improve safety for cyclists, beyond bike lanes (1)
- Add roadways through undeveloped land that is not historic (1)
- Against Church Rd extension through New Hill Community Center property (1)
- Expanding the street network is preferred to adding lanes to US 1 (1)
- Support expanding the transportation network to reduce congestion (1)





# Summary of Friendship and New Hill Community Land Use Map & Neighborhood Conservation Overlay District



# Overlay District Proposal

- Residential development:
  - Provisions regarding building height, fencing, buffers, stormwater, tree preservation, and seller disclosure
- Citizen Advisory Committee:
  - Review and provide non-binding comments on pre-applications for development
  - Participate in neighborhood meetings
  - Participate in Town Council Work Sessions, Technical Review Committee meetings, and public hearings





# Land Use Map Comments

- Residential development:
  - No more than one home per acre (Rural Transition Density Land Use Category)
- Commercial development:
  - Target commercial development along Old US 1, New Hill Holleman Road, and future Richardson Road
  - Do not allow mixed-use commercial with residential development
  - Encourage agritourism



# Transportation Plan Comments

- Focus on improvements to perimeter roads (Old US 1, NC 540, New Hill Holleman Road)
- Minimize interconnectivity
- Shift future Richardson Road east



# Next Steps

- Prepare & release a draft Plan Document for public comment
- Develop a Final Draft Plan and hold public hearings

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Amanda Grogan, Director

Department(s): Budget & Performance Management

### Requested Motion

Public Hearing to receive resident input on the Fiscal Year 2024-2025 Annual Operating Budget including proposed economic development expenditures.

### Approval Recommended?

N/A

### Item Details

The proposed Budget is summarized as follows:

General Fund	118,719,500
Electric Fund	60,103,900
Water/Sewer Fund	28,477,200
Stormwater	3,055,300
Other/Special Funds	9,469,600
<b>TOTAL</b>	<b>219,825,500</b>

The proposed Budget as presented includes a decrease of \$0.10 in the ad valorem tax rate to \$0.34 per \$100 valuation. There are proposed changes to the electric, water, sewer and solid waste rates.

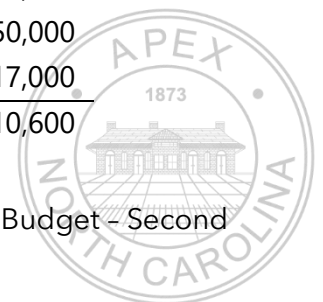
Pursuant to NCGS 158-7.1, notice is hereby given that said information will be a part of the Annual Budget Public Hearing of the Apex Town Council for the purpose of soliciting comments relative to the following monetary appropriations for economic development purposes:

### **Economic Development:**

Personnel Salaries & Benefits:	522,400
Operations, Training, Supplies and Equipment:	106,200
Professional Services - Potential site development:	15,000
Economic Incentives	150,000
Special Programs - Initiative to promote local spending & awareness:	17,000
<b>TOTAL</b>	<b>810,600</b>

### Attachments

- PH1-A1: Notice of Public Hearing - Fiscal Year 2024-2024 Annual Operating Budget - Second Budget Hearing







*"The Peak of Good Living"*

OFFICE OF THE TOWN CLERK

# TOWN OF APEX

## NORTH CAROLINA

### Media Contact:

Allen Coleman, Town Clerk to the Apex Town Council

### FOR IMMEDIATE RELEASE

### PUBLIC NOTICE – PUBLIC HEARING

APEX, N.C. (May 1, 2024) – The Apex Town Council provides notice of a Public Hearing during it's regularly scheduled Town Council Meeting on **Tuesday, May 14, 2024 at 6:00 PM** to receive input on the town's annual operating budget and capital investment plan for fiscal year 2024-2025. This meeting will be held at the Apex Town Hall located at 73 Hunter Street in Apex, North Carolina.

A copy of the proposed Budget is available for public inspection on the Town's website at [www.apexnc.org/budget](http://www.apexnc.org/budget) or in the Office of the Town Clerk. The Town Clerk's Office is open Monday through Friday from 8:00 a.m. until 5:00 p.m. The proposed budget is summarized as follows:

General Fund	118,719,500
Electric Fund	60,103,900
Water/Sewer Fund	28,477,200
Stormwater	3,055,300
Other/Special Funds	9,469,600
<b>TOTAL</b>	<b>219,825,500</b>

The proposed Budget as presented includes a decrease of \$.10 in the ad valorem tax rate to \$0.34 per \$100 valuation. There are proposed changes to the electric, water, sewer and solid waste rates.

Pursuant to NCGS 158-7.1, notice is hereby given that said information will be a part of the Annual Budget Public Hearing of the Apex Town Council for the purpose of soliciting comments relative to the following monetary appropriations for economic development purposes:



*"The Peak of Good Living"*

OFFICE OF THE TOWN CLERK

## TOWN OF APEX NORTH CAROLINA

### **Economic Development:**

Personnel Salaries & Benefits:	522,400
Operations, Training, Supplies and Equipment:	106,200
Professional Services - Potential site development:	15,000
Economic Incentives	150,000
Special Programs – Initiative to promote local spending & awareness:	17,000
<b>TOTAL</b>	<b>810,600</b>

A pre-budget public hearing was held on Tuesday, January 23, 2024. The initial budget public hearing was scheduled for Tuesday, January 9, 2024, however, the meeting was cancelled due to inclement weather.

Residents may submit written comments to the Town Council with attention marked to the Town Clerk Allen Coleman; P.O. Box 250; Apex, NC 27502 or by email at [annual.budget@apexnc.org](mailto:annual.budget@apexnc.org). Please use subject line "FY24-25 Budget - Public Comment" and include your first and last name, your address, and your phone number in your written statements. Written comments will be accepted until 3:00 PM on Tuesday, May 14, 2024.

Members of the public can access and view the meeting on the Town's YouTube Channel <https://www.youtube.com/c/TownofApexGov> or attend in-person.

Anyone needing special accommodations to attend this meeting and/or if this information is needed in an alternative format, please contact the Town Clerk's Office. The Town Clerk is located at 73 Hunter Street in Apex Town Hall on the 2<sup>nd</sup> Floor, (email) [allen.coleman@apexnc.org](mailto:allen.coleman@apexnc.org) or (phone) 919-249-1260. We request at least 48 hours' notice prior to the meeting to make the appropriate arrangements.

For more information, please contact the Town Clerk's Office at 919-249-1260.

###

# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: May 14, 2024

## Item Details

Presenter(s): Laurie Hohe, Town Attorney

Department(s): Legal Services

### Requested Motion

Motion to go into closed session pursuant to NCGS 143-318.11(a)(3) to discuss the handling of the matter of Williams v. Town of Apex.

### Approval Recommended?

Yes

### Item Details

#### **NCGS § 143-318.11(a)(3)**

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body"

### Attachments

- N/A





# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: May 5, 2024

## Item Details

Presenter(s): Randy Vosburg, Town Manager

Department(s): Town Manager's Office

### Requested Motion

Possible motion to enter into closed session pursuant to NCGS § 143-318.11(a)(6) to consider a personnel matter.

### Approval Recommended?

N/A

### Item Details

#### **NCGS § 143-318.11(a)(6)**

"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; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee"

### Attachments

- N/A



# | Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: May 5, 2024

## Item Details

Presenter(s): Laurie Hohe, Town Attorney

Department(s): Legal Services

### Requested Motion

Possible motion to enter into closed session pursuant to NCGS § 143-318.11(a)(6) to consider a personnel matter.

### Approval Recommended?

N/A

### Item Details

#### **NCGS § 143-318.11(a)(6)**

"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; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee"

### Attachments

- N/A

