



# TOWN OF CORNELIUS

Cornelius Town Hall

## BOARD OF COMMISSIONERS

July 15, 2019

Agenda

### PRE-MEETING - 5:45 PM

- Closed Session

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### TOWN BOARD - 7:00 PM

1. CALL TO ORDER
2. DETERMINATION OF QUORUM
3. APPROVAL OF AGENDA
4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
5. MAYOR/COMMISSIONERS/MANAGER REPORTS
6. CITIZEN CONCERNS/COMMENTS
7. CONSIDERATION OF APPROVAL
  - A. Planning Board Appointments
  - B. NC 115 South Corridor Feasability Study
  - C. Electric Rate Economic Development Rider to the Fee Schedule
  - D. Schedule of Fee Changes
  - E. Tripartite Agreement - Plum Creek Greenway
  - F. Memorandum of Agreement - Caldwell Station Creek Greenway
  - G. FY 2020 Operating Budget Amendment
  - H. Resolution Authorizing the Sale of Certain Real Property
8. CONSENT AGENDA
  - A. Approve Minutes - Closed Session
  - B. Approve Minutes - Regular Meeting
9. COMMISSIONER CONCERNS
10. ADJOURNMENT

Please note that to speak during **CITIZENS CONCERNS/COMMENTS** or **PUBLIC COMMENT**, please use the signup sheet provided before the Board meeting and list your name, address and topic. Each speaker will be allowed 3 minutes to speak. A "hard stop" will occur after 3 minutes for each speaker. Any information displayed must be submitted to the Town Clerk within 48 hours prior meeting.

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

**To:** Mayor and Board of Commissioners

**From:** Andrew Grant, Town Manager

**Action Requested:**

Hold a Closed Session to discuss:

1. Personnel Matter
2. Contractual Matter under Attorney-Client Privilege
3. Consult with the Town Attorney

**Manager's Recommendation:**

Hold a Closed Session.

**ATTACHMENTS:**

Name:	Description:	Type:
No Attachments Available		

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## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

**To:** Mayor and Board of Commissioners  
**From:** Wayne Herron, AICP  
Deputy Manager/Director of Planning

### Action Requested:

On behalf of Chairman Eicher, Staff would like to offer the following candidates to be considered for reappointment to the Planning Board:

Seat #1: Danielle Miller - Miss Miller was appointed to fill an unexpired term and is eligible to be reappointed for two full terms as a regular member. Chairman Eicher is recommending she be reappointed for her first full term on the Planning Board to expire in 2022.

Seat #2: Lee Peterson, Vice Chair - Mr. Peterson is completing his first full term and is eligible to be reappointed for one more full term as a regular member. Chairman Eicher is recommending Mr. Peterson be reappointed for a term to expire in 2022.

Seat #3: Keith Eicher, Chairman - Mr. Eicher is completing his first full term. Mr. Eicher is willing to be reappointed for his second full term to expire in 2022 as a regular member, if it is the desire of the Town Board.

Seat #9: Ed Marxen - Mr. Marxen is filling an unexpired term as an alternate. Chairman Eicher is recommending that Mr. Marxen be reappointed to his first full term as an alternate member to expire in 2022.

Planning Board Members are limited to two full terms of service and then must rotate off to allow other citizens an opportunity to serve. The current expiring terms were not advertised since each of these members has served in a positive manner, with good attendance. Each of these members have recently completed Planning Board/Board of Adjustment training and the Chairman is recommending the Town Board reappoint each of these members for continued service at this time.

### Manager's Recommendation:

Reappoint Danielle Miller to Seat #1, Lee Peterson to Seat #2, Keith Eicher to Seat #3 and Ed Marxen to Seat #9 on the Planning Board.

### ATTACHMENTS:

Name:	Description:	Type:
 <a href="#">Draft_Planning_Board_Members.7.2.19.xls</a>	Draft Roster	Backup Material



SEAT	NAME	ORIG APT DATE	TERM	TOWN/ ETJ	ADDRESS	BUS.NO.	HOME NO.	CELL NO.	E-MAIL
1	Danielle Miller	App 7/17(Alt)	07/19 - 07/22(1)	Town	19515 Deer Valley Drive			704-559-9005	<a href="mailto:miss.danielle.miller@gmail.com">miss.danielle.miller@gmail.com</a>
2	Lee Peterson Vice Chairman	App 07/13(Alt)	07/19 - 07/22(2)	Town	17605 Springwinds Drive			704-289-7726	<a href="mailto:lee52p@yahoo.com">lee52p@yahoo.com</a>
3	Keith Eicher Chairman	App 7/14 (Alt)	07/19 - 07/22(2)	Town	18116 Coulter Parkway	704-439-3858		910-274-2203	<a href="mailto:eicherk@bellsouth.net">eicherk@bellsouth.net</a>
4	Joseph Dean	App 08/16 (Alt)	07/17 - 07/20(1)	Town	20301 Church Street		704-892-7551	704-451-2767	<a href="mailto:ioejuggler@att.net">ioejuggler@att.net</a>
5	Susan Johnson	App 08/16(Alt)	07/17 - 07/20(1)	Town	20306 Northport Drive	704-439-5350		704-651-9023	<a href="mailto:susan@homecarolinas.com">susan@homecarolinas.com</a>
6	Michael Osborne	App 8/16 (Alt)	07/18 - 07/21(1)	Town	19425 Mary Ardrey Circle			704-281-6884	<a href="mailto:mike@shiptransportal.com">mike@shiptransportal.com</a>
7	Hardy McConnell	App 07/09	07/18 - 07/21	ETJ	13118 Mayes Road		704-655-0085	704-609-9505	<a href="mailto:hmccconnell@bellsouth.net">hmccconnell@bellsouth.net</a>
8	Cameron Bearder, Alt	App 7/18(Alt)	07/17 - 07/20*	Town	18805 Bluff Point Rd., Unit A			704-962-2156	<a href="mailto:drbearder@gmail.com">drbearder@gmail.com</a>
9	Edward Marxen, Alternate	App 7/18(Alt)	07/19 - 07/22(1)	Town	18830 Peninsula Cove Lane			704-651-9375	<a href="mailto:edmarxen@aol.com">edmarxen@aol.com</a>
10	Phil Bechtold, Alternate	App 7/18(Alt)	07/17-07/20*	Town	22102 Market Street			216-577-1366	<a href="mailto:Philbechtold20@yahoo.com">Philbechtold20@yahoo.com</a>



## REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** July 15, 2019

**To:** Mayor and Board of Commissioners  
**From:** Wayne Herron, AICP  
Deputy Manager/Director of Planning

### Action Requested:

For many years, Town Staff has submitted NC 115 into the Metropolitan Transportation Plan(MTP) and the State Transportation Improvement Program(STIP) for scoring and potential funding. The southern segment of NC 115 has historically scored low and not met the threshold for inclusion in the STIP. In discussions with NCDOT, it was determined the reason for the low STIP scores was a lack of plan or vision for congestion management and potential design for the corridor. In 2016, the Town applied for planning funding through the CRTPO to study the corridor. A stakeholder committee was established and the study began in March of 2017. The stakeholder group met on five occasions to discuss alternatives for the corridor.


The stakeholder group developed alternatives that were presented to the public on May 27, 2017. From that public meeting and the comments received, the stakeholder group refined the alternatives and ultimately have made the recommendation being presented to the Town Board.

AECOM Engineers presented the information to the Town Board in June and Staff will answer any follow up questions the Board may have for the July 15th meeting.

### Manager's Recommendation:

Adopt the NC 115 South Feasibility Study.

### ATTACHMENTS:

Name:	Description:	Type:
 <a href="#">Final Draft Presentation.pdf</a>	NC 115 South Presentation	Backup Material

# NC115 Corridor Feasibility Study



Town Council Meeting  
Cornelius, NC – June 17, 2019

**AECOM**



# Project Team

## AECOM

- Ryan Eckenrode, PE, PTOE, RSP1
  - Project Manager / Traffic Engineer
- Mickey Geiser, PE
  - Deputy Project Manager / Railroad



- John Cock
  - Vice President Planning



## AECOM



# Presentation Overview

- ❖ Project Summary
- ❖ Proposed Alternative
- ❖ Cost Estimates



# Project Summary

- ❖ 12-12-16 – AECOM Notice to Proceed
- ❖ 4-17-17 – 1st Stakeholder Meeting
- ❖ 5-25-17 – Public Meeting
- ❖ 10-13-17 – Conference call with  
NCDOT / Norfolk Southern
- ❖ 12-6-17 – Cornelius / Huntersville Meeting
- ❖ 4-17-18 – 2nd Stakeholder Meeting
- ❖ 6-17-19 – Presentation to Town Council



# Key Issues

- ❖ Growth potential
- ❖ Existing traffic congestion
- ❖ Pedestrian and bicycle facilities
- ❖ Multiple private and public railroad crossings
- ❖ Railroad and ROW constraints
- ❖ Connectivity



# Goals and Objectives

- ❖ Enhance Bike / Pedestrian Facilities
- ❖ Improve Vehicular Safety
- ❖ Minimize Railroad Interaction
- ❖ Encourage Economic Development
- ❖ Develop short term and long term projects





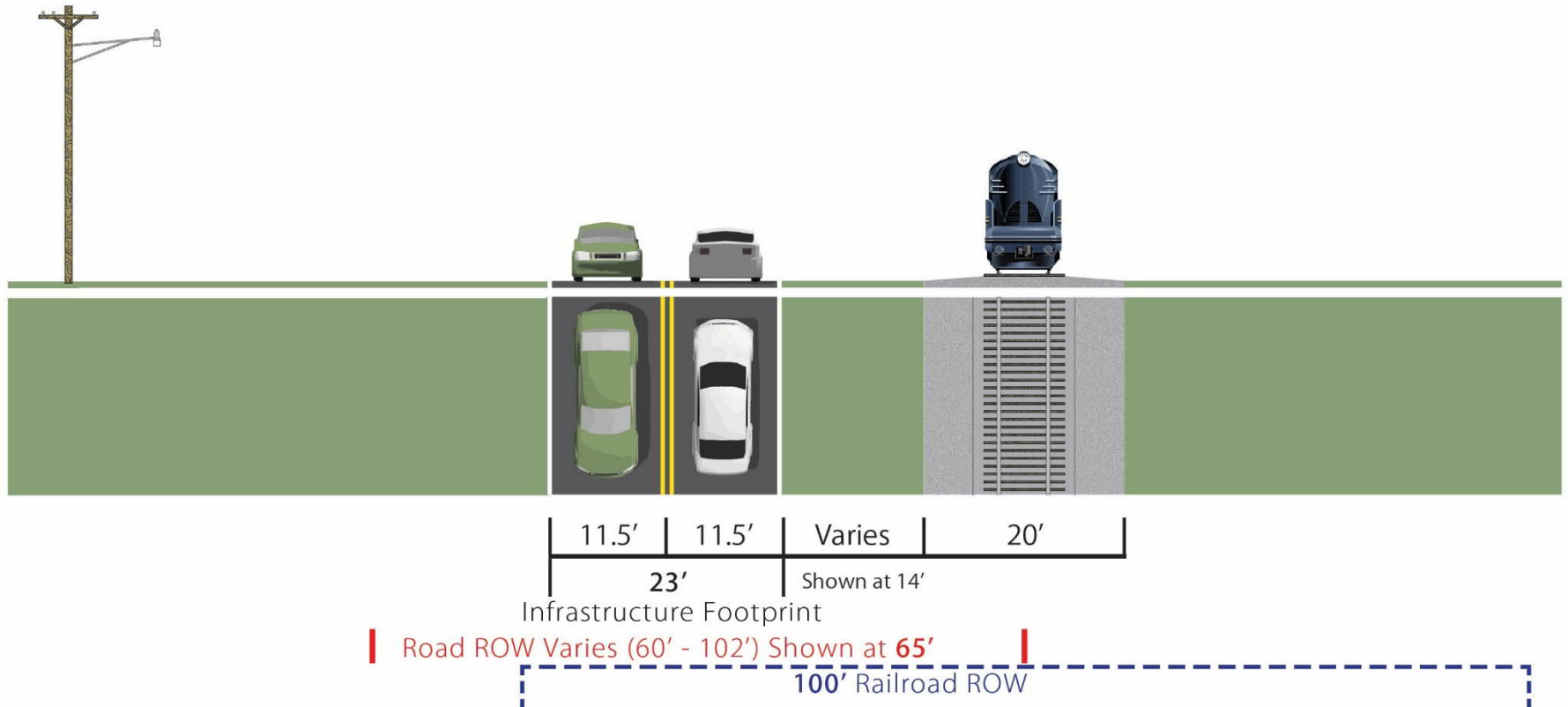
# Study Area (2.5 mi.)

1. Meadow Crossing Lane
2. Bailey Road 
3. Treynorth Drive
4. Recreational Park (Future)
5. Caldwell Depot Road
6. Mayes Road
7. Will Knox Road
8. Caldwell Station Road
9. Coach Lane (Future)
10. Sam Furr Road 





# Existing Conditions



# Existing and Future Operation

NC 115 Corridor "LOS", Level of Service (Capacity) in vehicles per day

LOS	2-Lane	2-Lane Divided with Left-turn Lanes	4-Lane Divided with Left-turn Lanes
A	*	*	*
B	*	*	*
C	14,400	18,000	34,000
D	16,200	20,300 ★	35,500 ★
E	*	*	*
F	*	*	*

\*Data provided (FDOT Handbook)

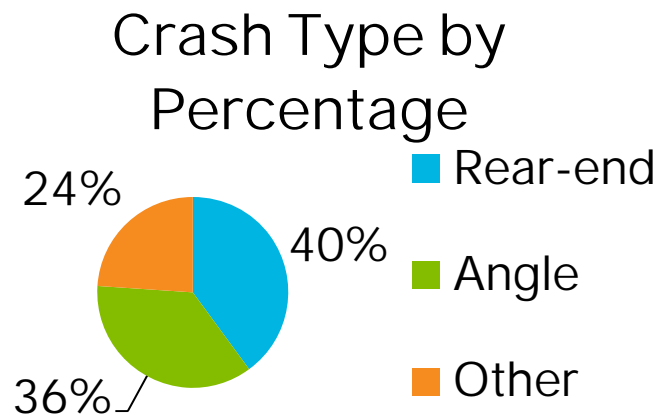
- ★ 2016 Existing Volumes = 18,160 (Chart indicates 20,300 is capacity threshold for a 2 lane highway)
- ★ 2036 Projected Volumes = 25,600 (Chart indicates 35,500 is capacity threshold for a 4 lane highway)



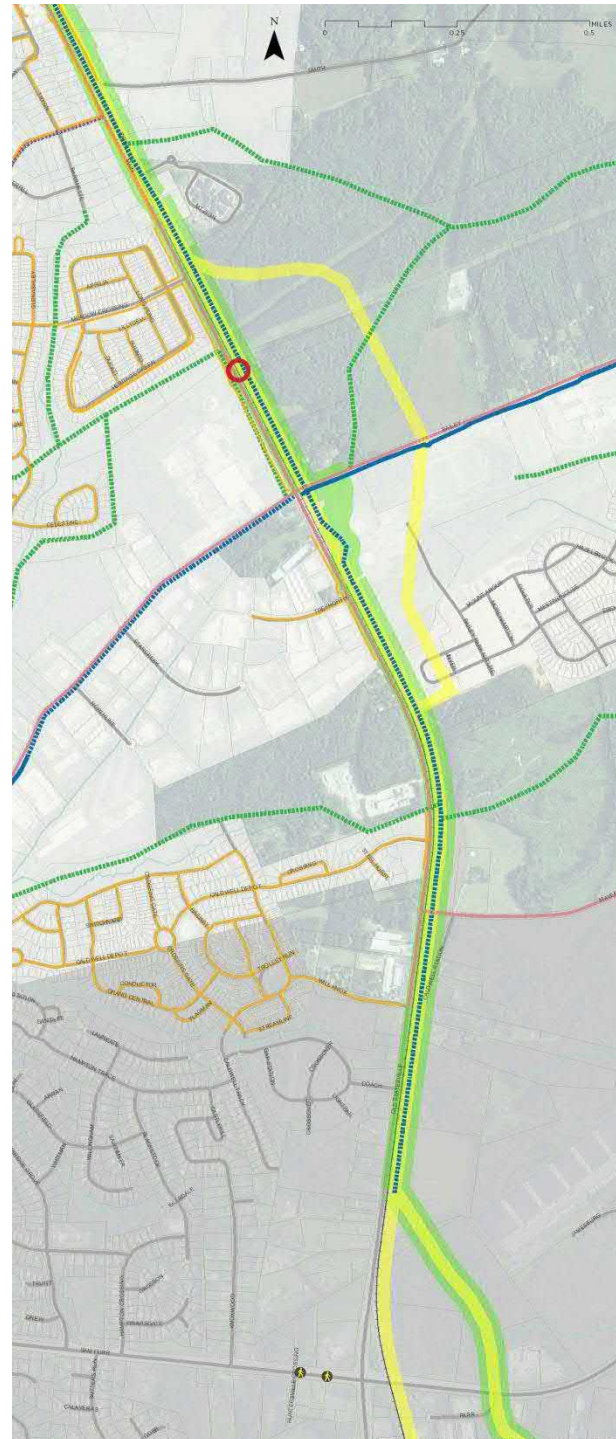
# Crash Analysis

**118** crashes between NC 73 and Washam Potts Rd (12-1-13 to 11-30-16)

- NC 115 at NC 73 (22 failure to yield crashes, 1 fatal)
- NC 115 at Will Knox Rd (5 failure to yield crashes)
- NC 115 at Bailey Rd (7 failure to yield crashes)



# Bike / Ped Facilities



## BICYCLE & PEDESTRIAN FACILITIES

- Existing Proposed\* Sidewalks
- Bike Lanes
- Multi-Use Path
- Greenways

\*Source for Proposed Facilities:  
Bike/Cornelius, the Bicycle Master Plan for the Town of Cornelius, NC

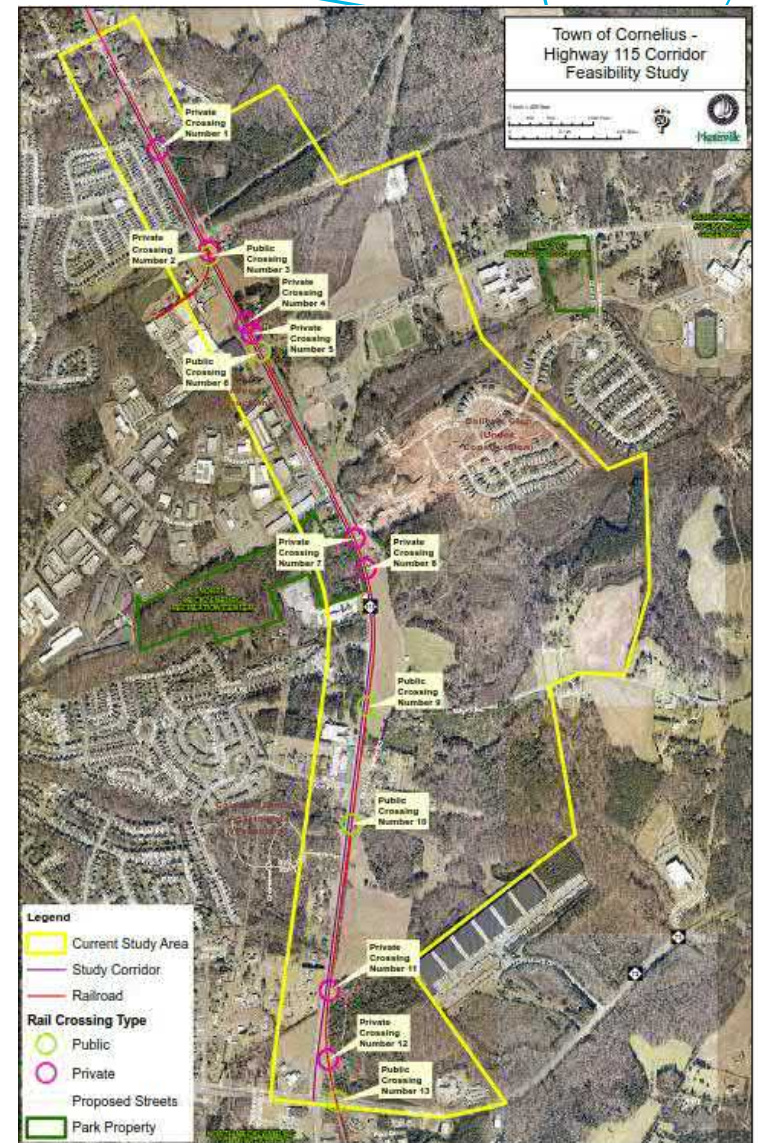
## BACKGROUND

- Bicycle-Involved Car Crashes
- Pedestrian-Involved Car Crashes
- CATS\_BusStops\_Cornelius
- Mooresville-Charlotte Trail alignment
- Carolina Thread Trail alignment
- Railroad
- Creek/Stream
- Street
- Parcels
- Cornelius town limits (white)
- Huntersville town limits



# Railroad Crossings

- NC 115 parallels the Norfolk Southern "O" Line
- There are currently 13 rail crossings on the study corridor
  - 5 Public Crossings
    - NC 115 at spur line – NS MP O-19.03
    - Bailey Road – NS MP O-18.76
    - Mayes Road – NS MP O-17.91
    - Caldwell Station Rd – NS MP O-17.65
    - Sam Furr Road – NS MP O-17.05
  - 8 Private Crossings



**AECOM**

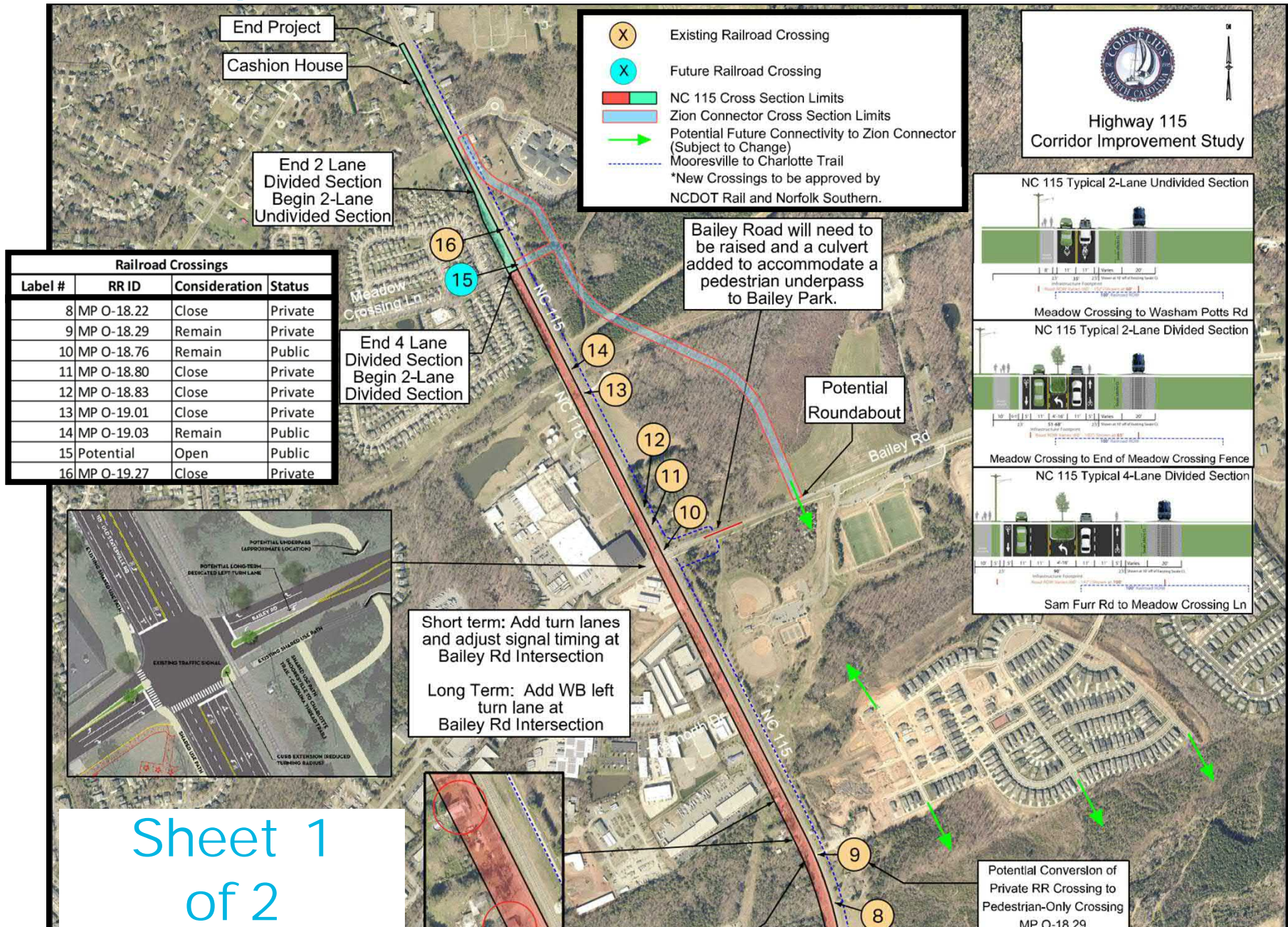
# Public Meeting Comments

- Traffic through Bailey Park
- Pedestrian Tunnels
- Private RR closures and access
- Zion Connector Alignment
- Zion Connector Overall Need
- Historic Property Impacts
- Bikes lane preferred on 4-lane section
- Bike lines needed through major intersections





# Proposed NC 115 4-Lane Divided



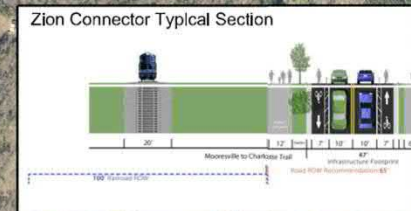
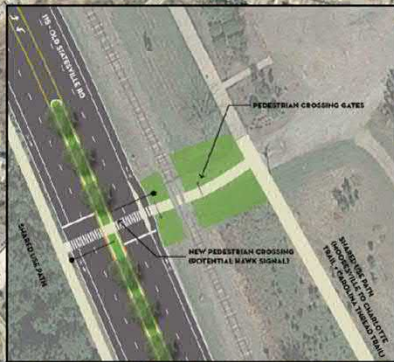
Sheet 1  
of 2



# Proposed NC 115 4-Lane Divided

## Sheet 2 of 2

Railroad Crossings			
Label #	RR ID	Consideration	Status
1	MP O-17.05	Remain	Public
2	MP O-17.10	Close	Private
3	MP O-17.30	Close	Private
4	Potential	Open	Public
5	MP O-17.65	Close	Public
6	MP O-17.91	Close	Public
7	Potential	Open	Public

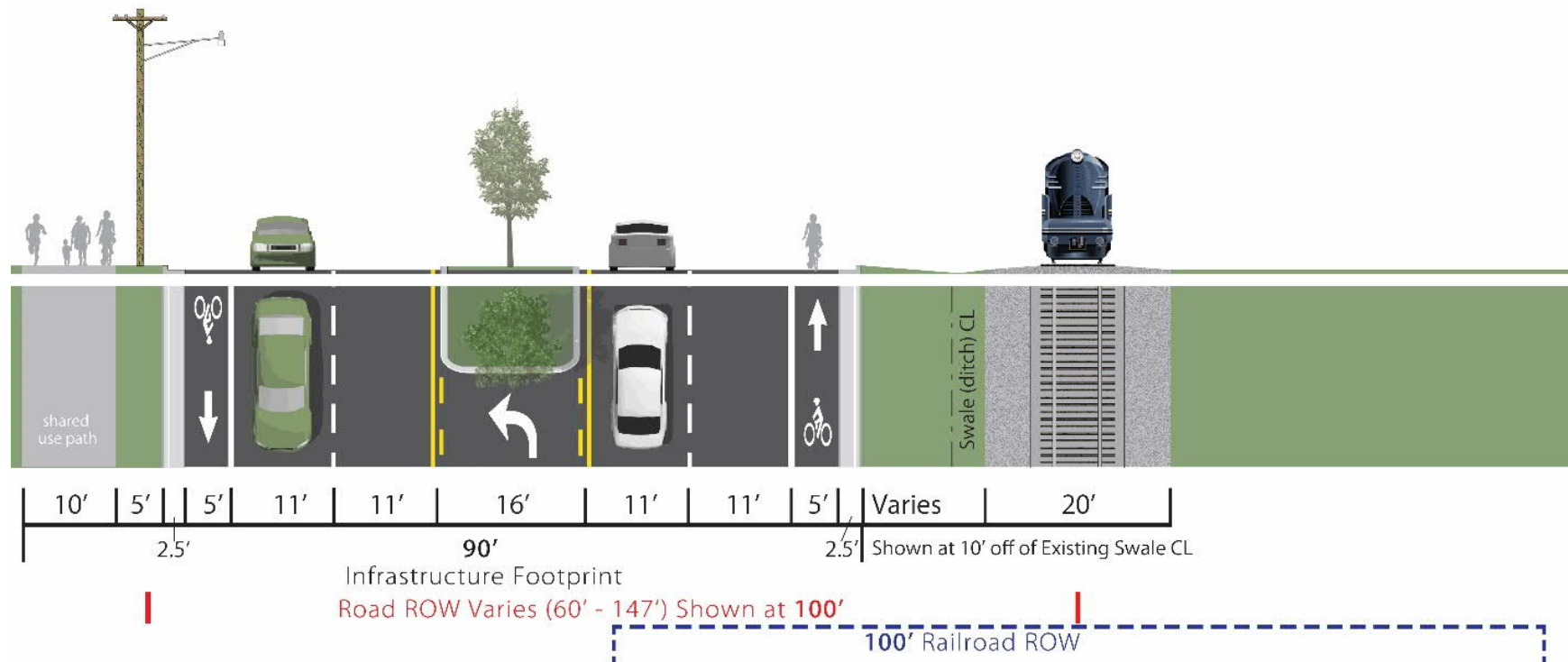


- X Existing Railroad Crossing
- X Future Railroad Crossing
- NC 115 Cross Section Limits
- Zion Connector Cross Section Limits
- Potential Future Connectivity to Zion Connector (Subject to Change)
- Mooresville to Charlotte Trail
- \*New Crossings to be approved by NCDOT Rail and Norfolk Southern.

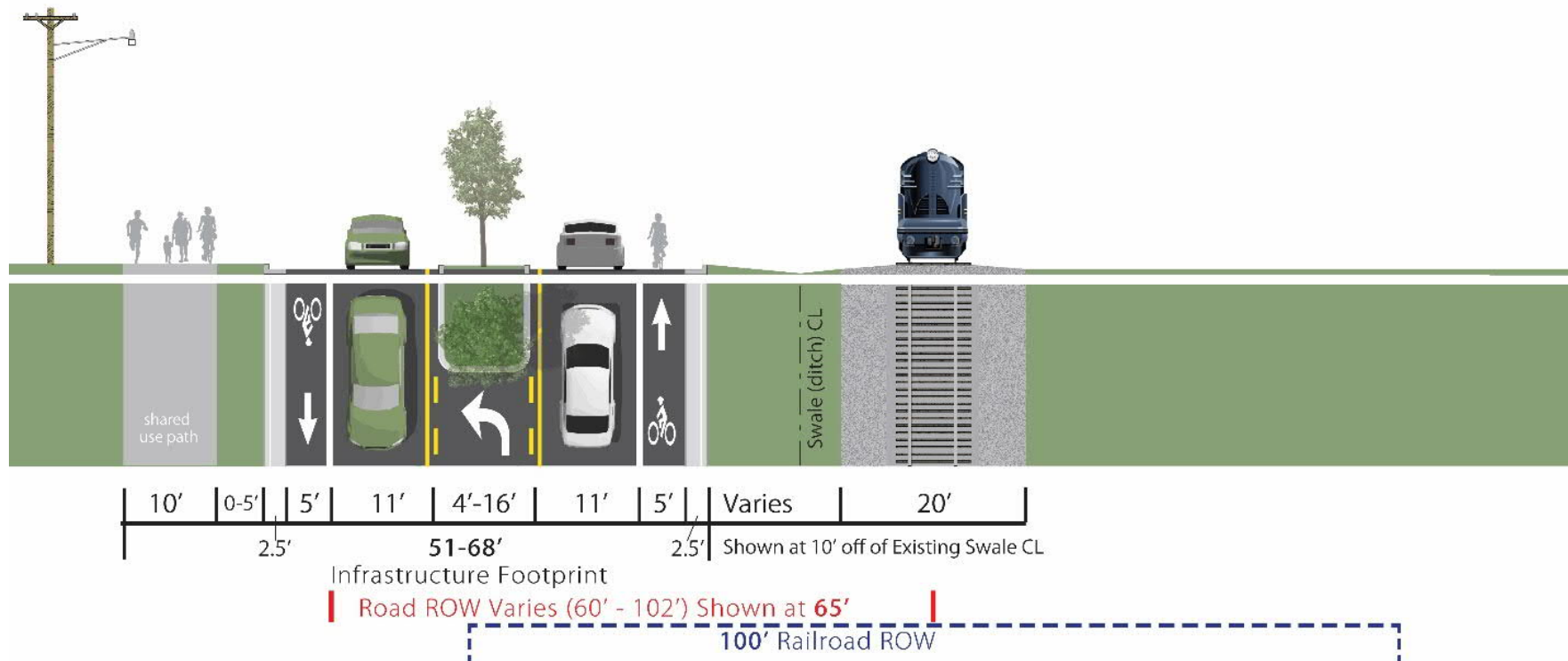
Begin Project



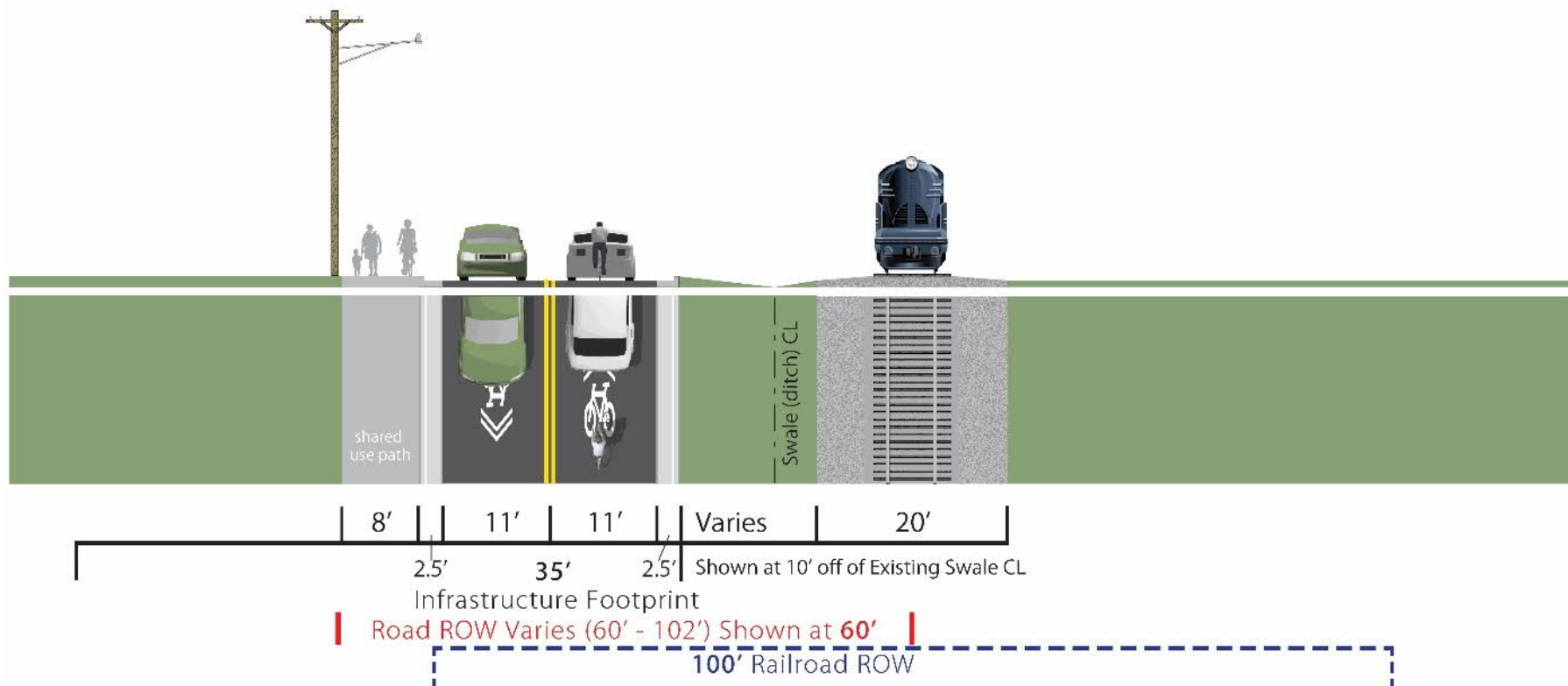
# 4 Lane Divided with Bike Lanes (NC 115 South of Meadow Crossing)



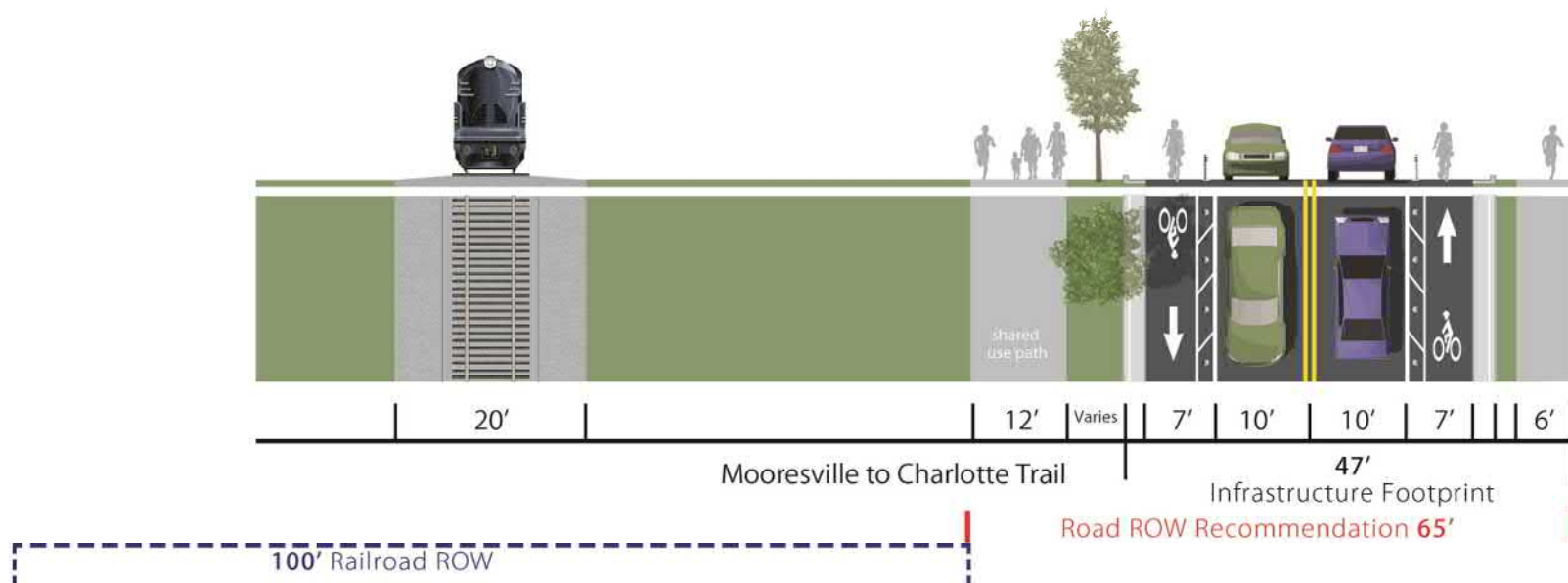
# 2 Lane Divided with Bike Lanes (NC 115 North of Meadow Crossing)



# 2 Lane Undivided (NC 115 North of Meadow Crossing to Washam Potts Road)



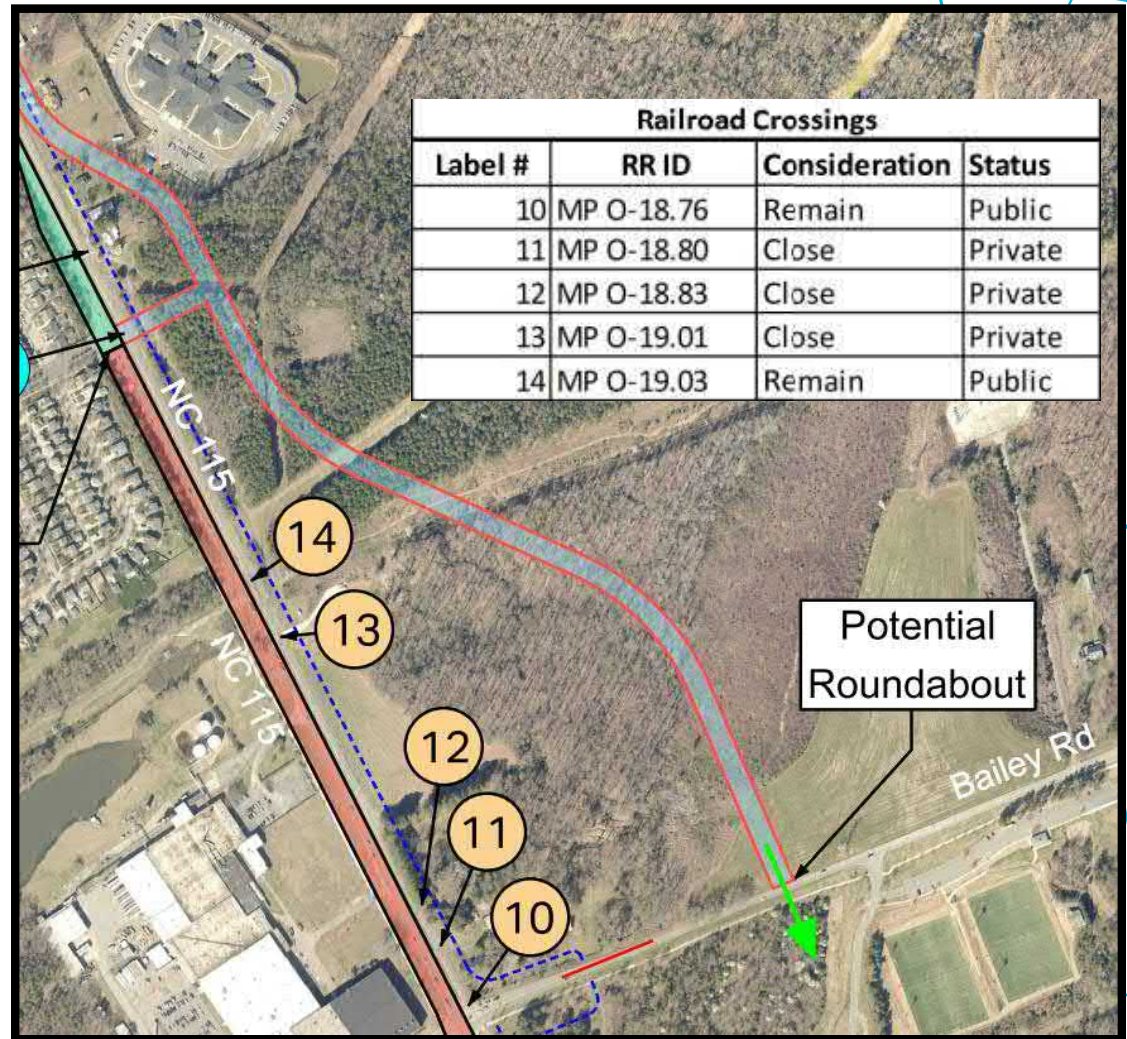
# 2 Lane Divided with Bike Lanes (Zion Connector)





# Northern Zion Connector

- Zion Connector would cross Bailey Road with a roundabout
- Expected to divert traffic and relieve congestion at Bailey Road at NC 115
- Expected to encourage economic development in the area





# NC 115 at Meadow Crossing



Proposed



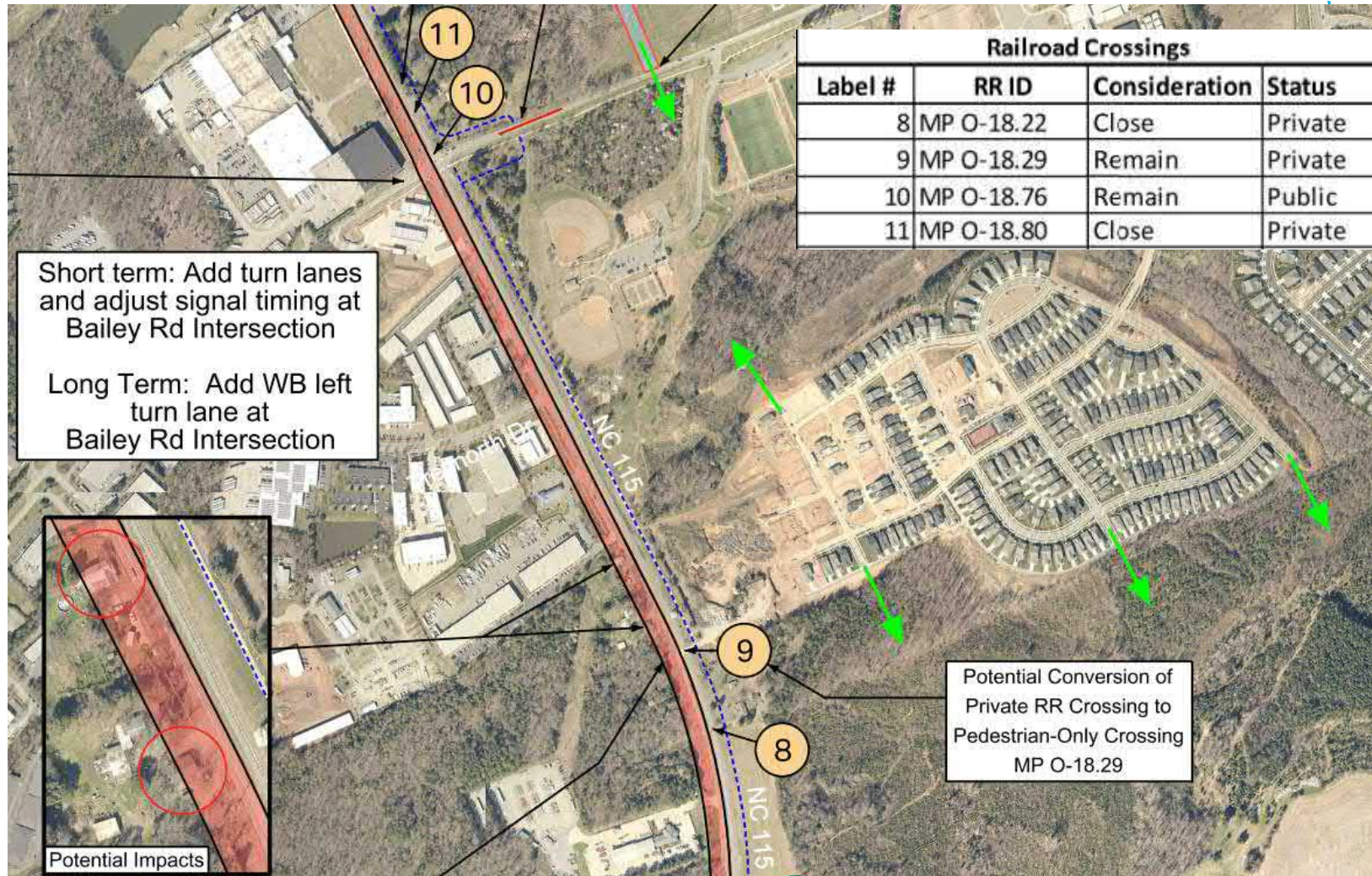
Proposed with Zion



**AECOM**



# Middle North Section

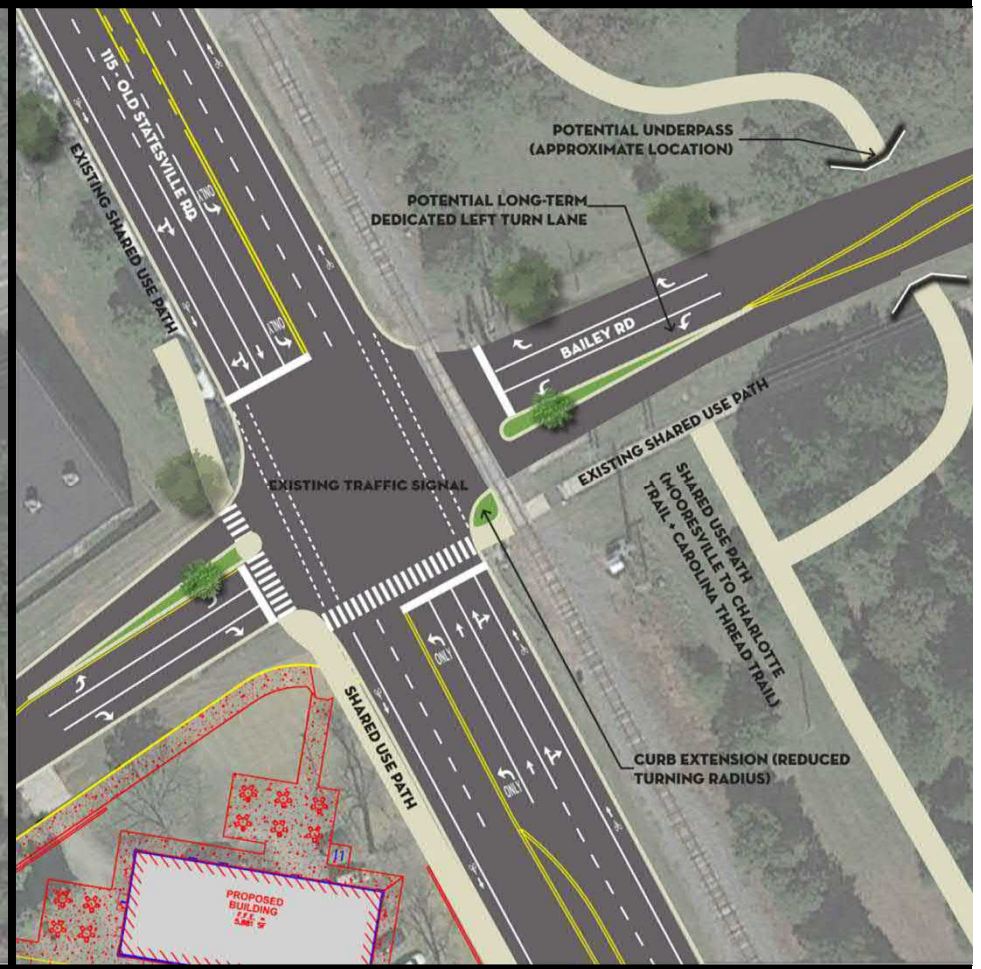




# NC 115 at Bailey Road



Existing

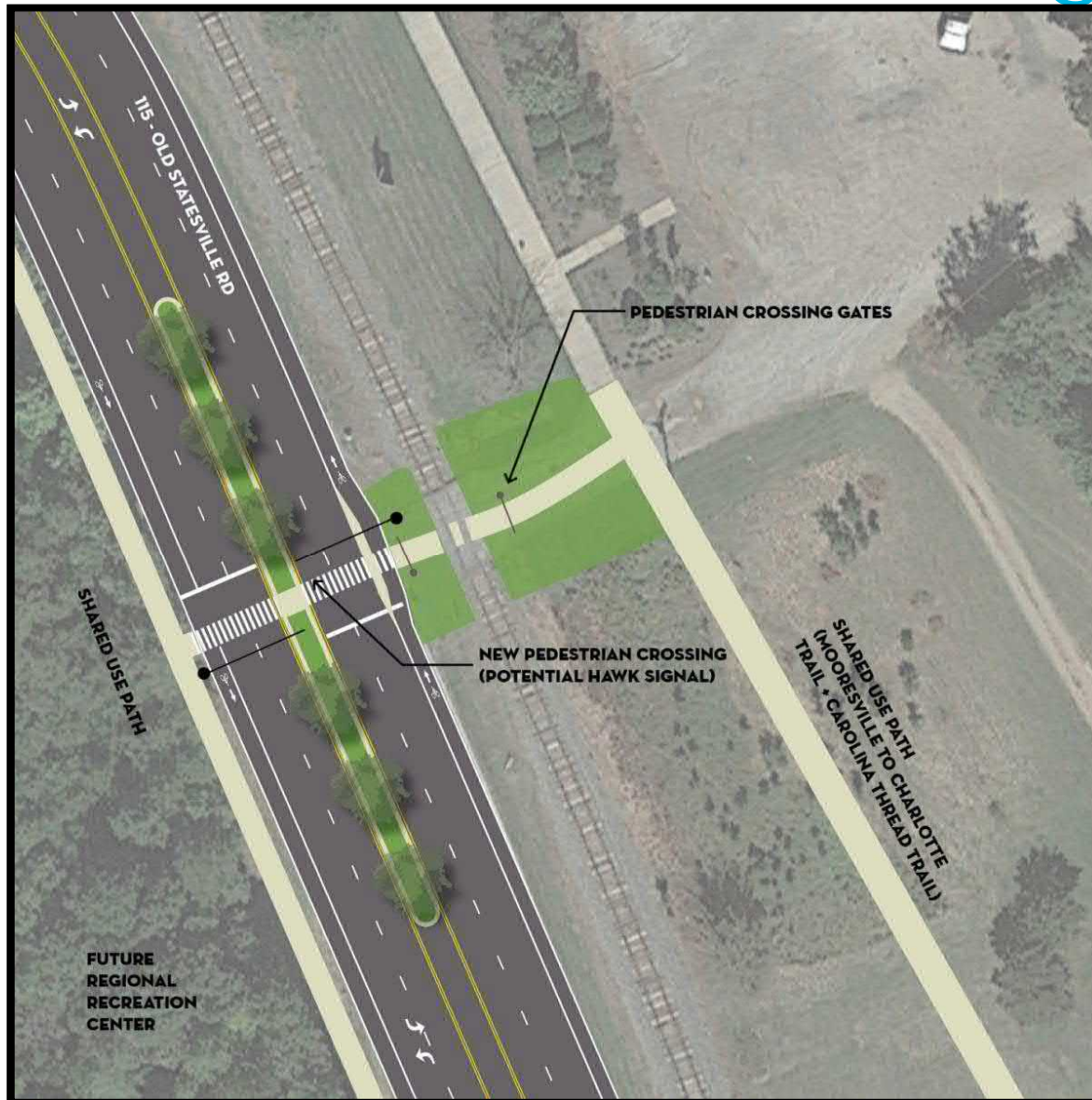


Proposed



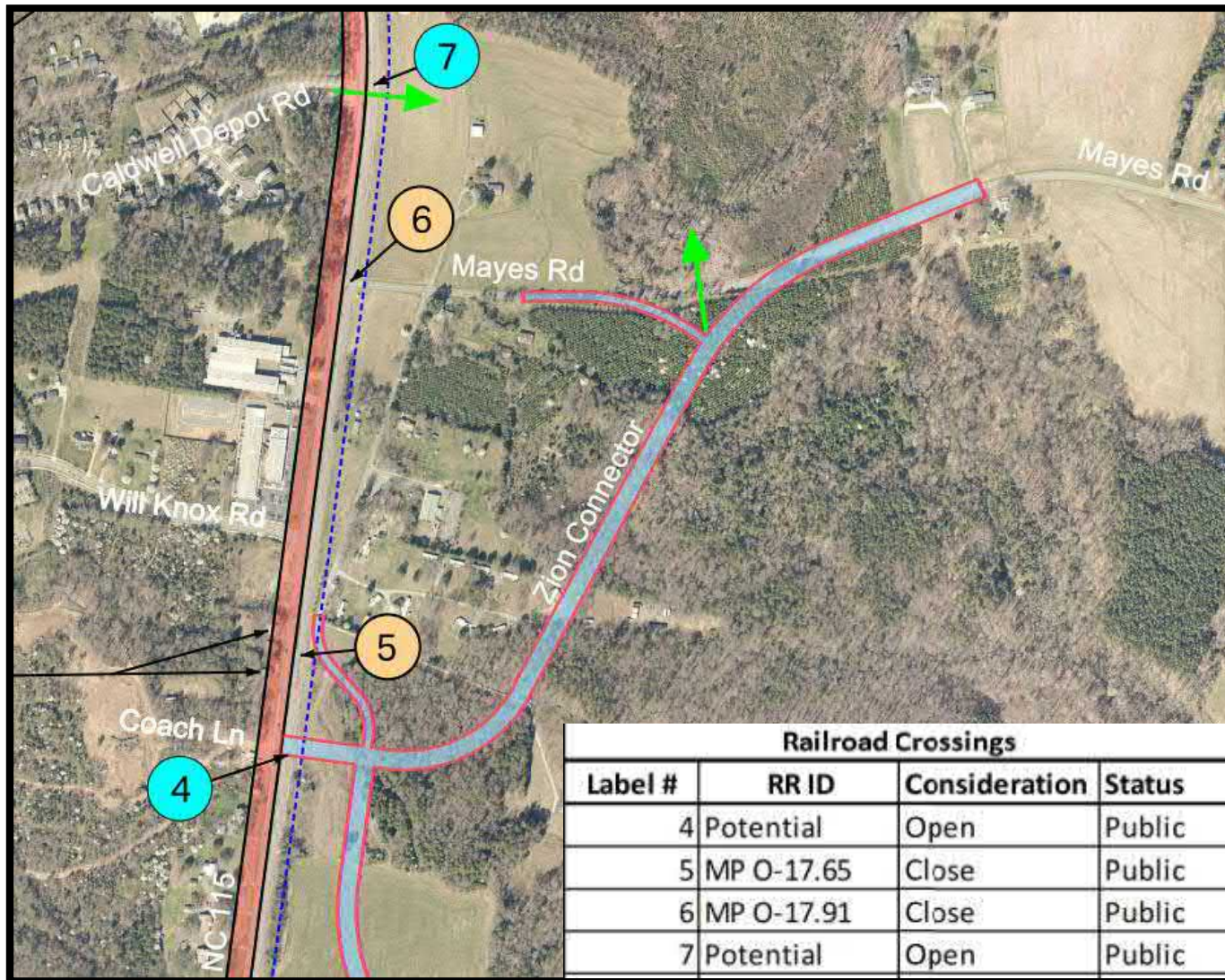


# NC 115 at Public Crossing



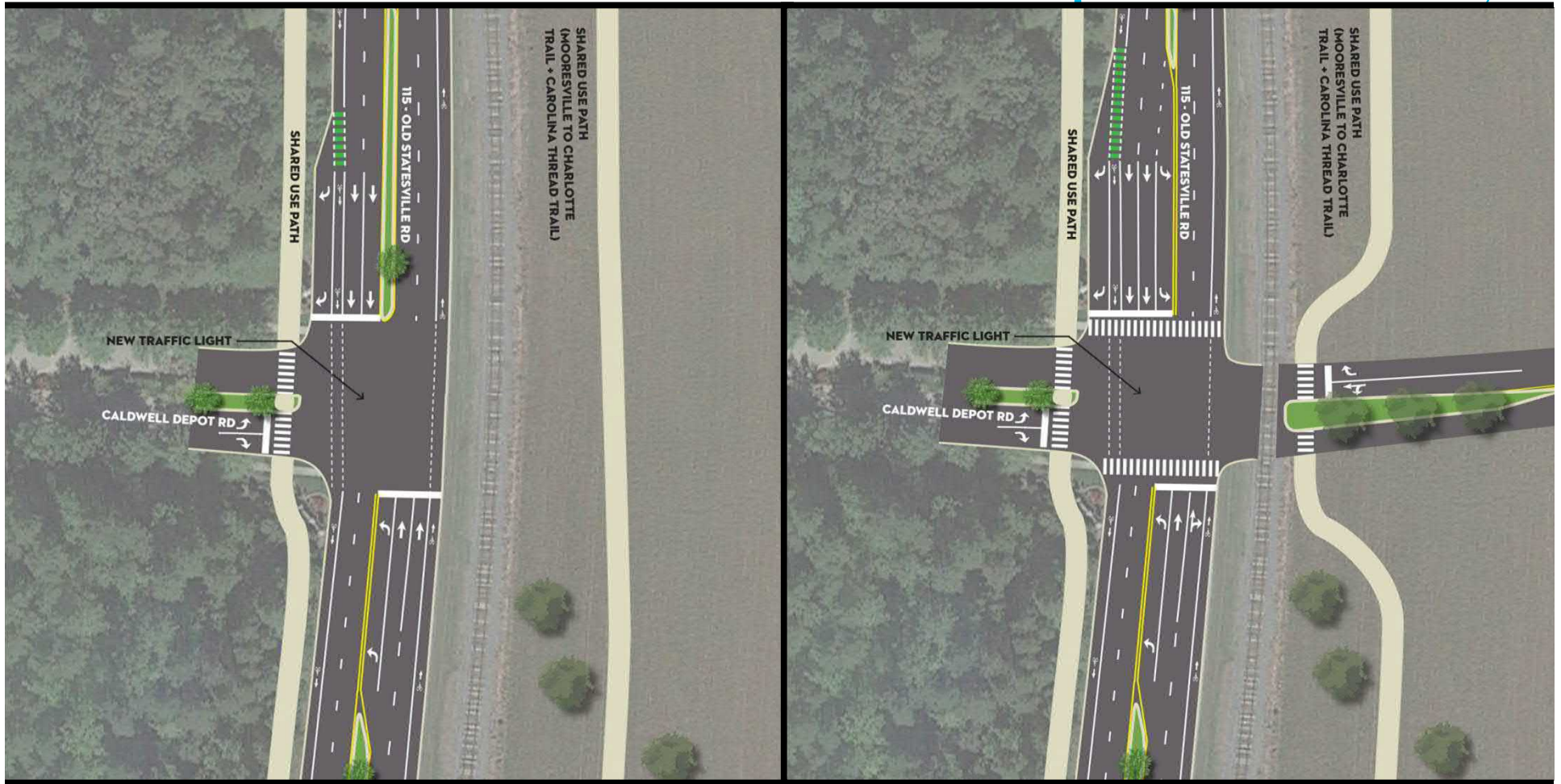


# Middle South Section





# NC 115 at Caldwell Depot Road



Proposed

Proposed with Zion





# NC 115 at Coach Lane



Proposed



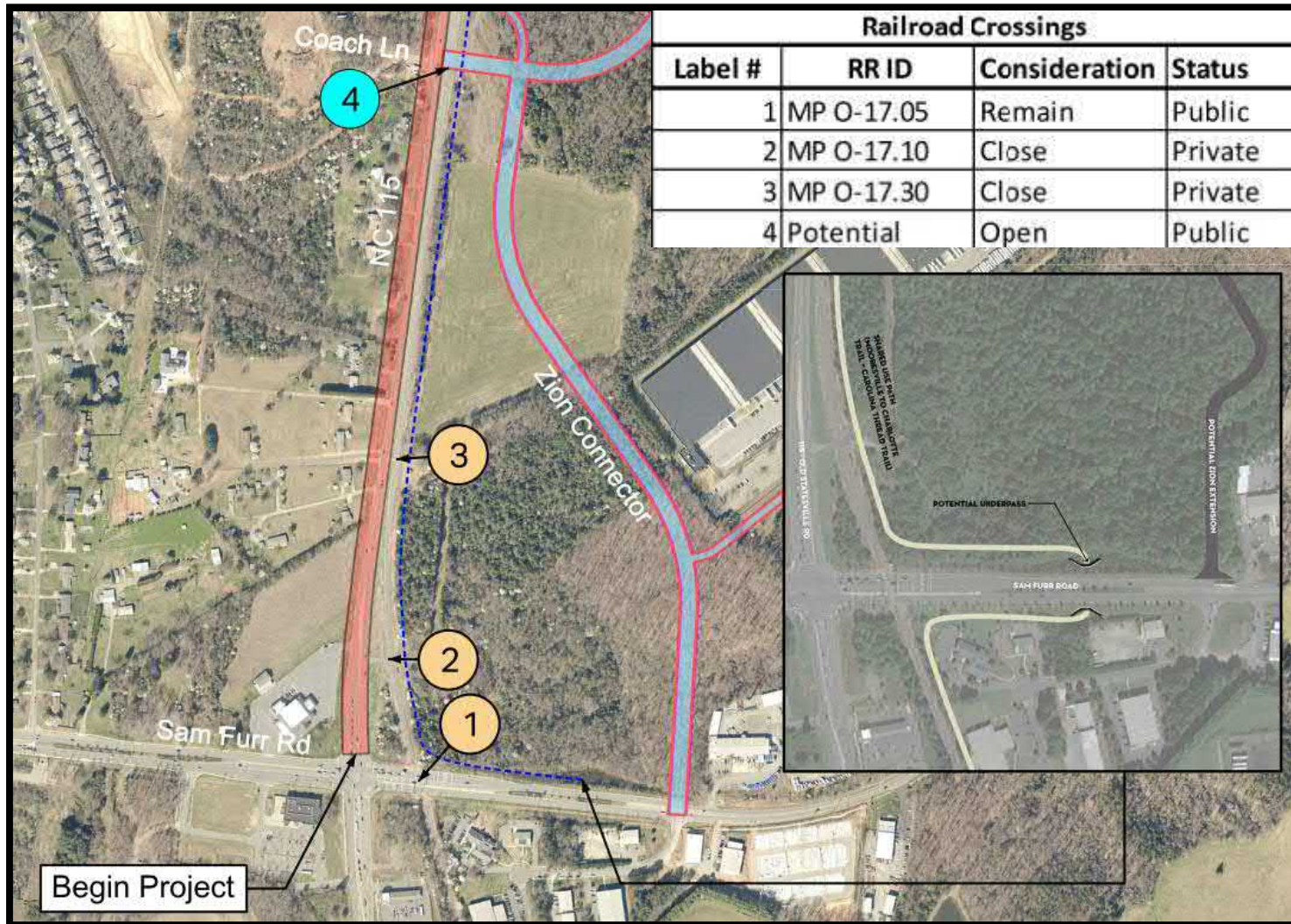
Proposed with Zion



**AECOM**



# Lower Section















# NC 115 at Sam Furr Rd





# Intersection LOS Comparison

## AM (PM) Peak Hour

Intersection	2016 Existing	2036 No-Build	2036 Build	4 Lane (V/C)	2036 Mitigate
Meadow Crossing	E (F)	F (F)	F (F)	0.81 (1.54)*	 A (B)
Bailey	 D (D)	 E (E)	 D (D)	0.92 (0.87)	 D (D)
Treynorth	C (D)	D (F)	C (E)	0.07 (0.58)	C (E)
Rec Center	-	F (F)	F (F)	0.48 (1.20)*	F (F)
Caldwell Depot	F (F)	F (F)	F (F)	1.41 (0.66)*	 A (A)
Mayes	D (E)	F (F)	D (F)	0.44 (0.77)	Close
Will Knox	E (E)	F (F)	F (F)	0.87 (0.85)	RCUT
Caldwell Station	D (E)	F (F)	E (F)	0.17 (0.25)	Close
Coach	-	F (F)	F (F)	1.06 (1.30)*	 A (A)
Sam Furr	 C (D)	 D (D)	 D (D)	0.98 (0.80)	 D (D)



\*  $V/C > 1$  (install signal when warranted)

**AECOM**

# NC 115 Corridor (2036 4-lane Divided)

- Corridor Improves from LOS E to LOS B with widening
- Northbound Direction
  - Minor Improvements in delay, travel time, and arterial speed
- Southbound Direction
  - Up to 70% reduction in delay
  - Up to 45% in travel time savings
  - Up to 75% increase in arterial speed



# Cost Assumptions

- Based on 2018 dollars using bid values from Charlotte Market and NCDOT Division 10 averages
- 20-30% Contingency volatile items (steel, etc...)
- 10% escalation for short term unit price values
- 30-35% fee for project development, design, management, and inspection
- 25-30% overall contingency due to conceptual level of design





# Short Term Project & Cost

- \$40K – NB Left-turn at Sam Furr (restripe)
- \$425K – 150' SB Left-Turn Lane at Mayes
- \$550K – SB Right-Turn Lane at Caldwell Depot
- \$150K – Signal at Meadow Crossing\*
- \$25K – Pedestrian Signal at Proposed Rec Park
- \$150K – Signal at Caldwell Depot Road\*
- \$150K – Signal at Coach Lane\*

\*Pending a signal warrant study



# Long Term Project & Cost

- \$40M – Widen NC 115
- \$1.2M – New RR Crossing (Meadow Crossing, Caldwell Depot, or Coach)
- \$1.3M – WB Left-Turn Lane at Bailey Road
- \$3.0M – Pedestrian Underpass Bailey Road
- \$10M – Pedestrian Underpass Sam Furr Road
- \$10M – Northern Zion
- \$20M – Southern Zion



# Next Steps

- Town Board consider adoption of recommendations
- Presentation to CRTPO
- Inclusion of all plan items in Comprehensive Transportation Plan (CTP)
- Request inclusion in the Metropolitan Transportation Plan (MTP) in 2020
- Seek funding through Transportation (TIP) or CRTPO discretionary funding





# Thank you!

## Stakeholder Committee

Woody Washam (Mayor)	Dr. Mike Miltich (Mayor Pro Tem)
Dr. Scott Higgins (Antiquity)	Troy Fitzsimmons (PARC Director)
Keith Eicher (Bailey's Glen)	Stuart Basham (NCDOT Division 10)
Gina Mayes-Harris (Mayes Family)	Scott Cole (NCDOT Division 10)
Jamie Rolewitz (Champion Tire)	Paul Worley (NCDOT Rail)
Ron Olszewski (Caldwell Station)	Brian Nadolny (CATS)
James Sanders (Heritage Green)	Jason Lawrence (CATS)
Charles Knox (Knox Group)	Sushil Nepal (Town of Huntersville)
David Keith (Artisan Signs)	Neil Burke, CRTPO
Wayne Herron (Deputy Manager / Director of Planning)	Lee Jones (Mecklenburg County Parks & Recreation)
Andrew Grant (Town Manager)	



# Questions





## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

To: Mayor and Board of Commissioners

From: Andrew Grant, Town Manager

### Action Requested:



The purpose of this rate rider is to provide the Town an economic development tool to be used in efforts to recruit commercial and industrial customers to utilize the Town's electric system for their electric needs. This rider will be used mainly in situations where the new customer is located such that they may choose their electric supplier. The rider provides for 48 months of discounts to the customer's electric charges. The customer will receive their normal electric bill based on the appropriate electric rate for the customer. The bill will then be discounted according to the monthly credit as spelled out in the EDR1 rider. For the initial 12 months of service the electric bill will be discounted by 30%. In subsequent 12 month periods the bill will be discounted 20%, 10%, and 5%, with no discounts following the 48th month of service. The EDR1 rider provides a mechanism for the Town to better match economic incentives and energy efficiency rebates offered by other electric providers; thus, providing additional incentives for new customers to select the Town as their electric supplier.

Attached is a copy of the Electric Rate Rider EDR1- Economic Development Rider.

### Manager's Recommendation:

Approve the Electric Rate Rider EDR1- Economic Development Rider and include it in the Town's fees schedule.

### ATTACHMENTS:

Name:	Description:	Type:
 <a href="#">ECONOMIC_DEVELOPMENT_RIDER.docx</a>	ED Rider	Backup Material
 <a href="#">Cornelius_Territory_Map.pdf</a>	Territory Map	Backup Material



## **ECONOMIC DEVELOPMENT RIDER- Electric Rate Rider EDR1**

### **AVAILABILITY**

This rider is available only to new commercial or industrial loads which begin receiving service after July 1, 2019 and is available in conjunction with service under any of the Town's commercial or industrial electric rate schedules. The demand of the new load must equal or exceed 300 kW during at least three months of a twelve month period, and the energy usage shall equal at least a 50% load factor during one month each calendar year.

Any customer desiring to receive service under this rider shall provide written notification to the Town of such desire. Such notice shall provide the Town with information concerning the load to be served and the Customer's facilities, and shall provide the basis that the characteristics of the load will meet the minimum eligibility requirements of the electric rate schedule to which this rider applies.

All terms and conditions of the electric rate schedule applicable to the Customer shall apply to service supplied to the Customer except as modified by this Rider.

### **MONTHLY CREDIT**

The Customer will receive a Monthly Credit on the bill calculated on the then-effective electric rate, whichever is applicable to the Customer. The schedule of Monthly Credits will be calculated as described below under the heading "Application of Credit".

### **APPLICATION OF CREDIT**

Beginning with the date of which service under the then-effective electric rate is to commence for the eligible load, a Monthly Credit based on the following schedule will be applied to the total bill, including Basic Facilities Charge, Demand Charges, Energy Charges, Purchased Power Adjustment, or Minimum Bill, excluding other applicable riders and special charges, if any.

<u>PERIOD</u>	<u>DISCOUNT</u>
Months 1-12	30%
Months 13-24	20%
Months 25-36	10%
Months 37-48	5%

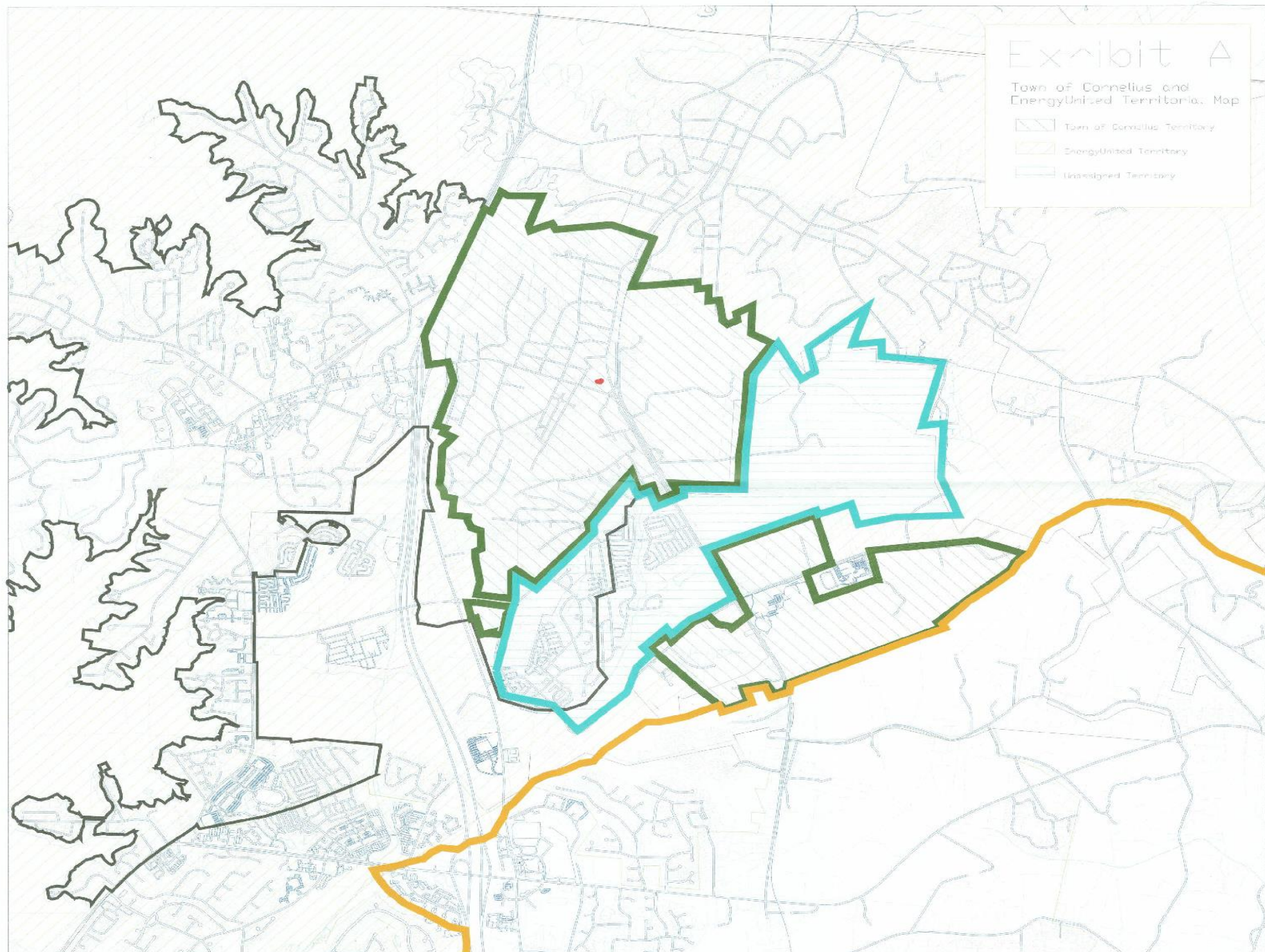
### **CONTRACT PERIOD**

Prior to receiving service under this rider, the Customer must complete a service agreement to purchase electricity from the Town. The contract will terminate at the end 48 months after commencing.

### **EFFECTIVE DATE**

The rider shall be effective for qualifying customers receiving permanent electrical service after July 1, 2019.

*Effective July 1, 2019*



## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

To: Mayor and Board of Commissioners

From: Julie Niswonger, Finance Director

**Action Requested:**

The Town amends its fee schedule independent of its budget document so that mid-year budget amendments do not require the several pages of fees to be approved.

The attached schedule shows two columns on the right: "Amount Current" and "Proposed Change." The "Proposed Change" column notes any new or revised fee in red with this Board's action.


The Electricities staff are recommending a new Economic Development Rider - Electric Rate Rider EDR1. This new rider is only for new commercial and industrial customers who begin receiving service after July 1, 2019. In order to qualify, certain load and Kw thresholds must be met by the new commercial or industrial customer.

Beginning with the date of which service under the then-effective electric rate is to commence for the eligible load, a Monthly Credit based on the attached schedule will be applied to the total bill, including Basic Facilities Charge, Demand Charges, Energy Charges, Purchased Power Adjustment, or Minimum Bill, excluding other applicable riders and special charges, if any.

**Manager's Recommendation:**

Approve the amended Schedule of Fees as presented.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">Town Fees FY20 7-11-19 with discount.pdf</a>	Schedule of Fees	Cover Memo



**Town of Cornelius  
Schedule of Fees**

		<b>AMOUNT CURRENT</b>	<b>PROPOSED CHANGE</b>
<b>FINANCE</b>			
	Returned check fees	25.00	
	Copies	0.15	
	Town Hall: (Community Room, per hour)		
	Security Deposit	250.00	
	Cancellation Fee	50.00	
	Kitchen Use Fee	30.00	
	A/V Equipment Fee	20.00	
	Resident		
	Non-Profit Users	50.00	
	For Profit Users	65.00	
	Non-Resident		
	Non-Profit Users	60.00	
	For Profit Users	75.00	
<b>PLANNING AND LAND DEVELOPMENT</b>			
SUBDIVISION APPLICATIONS			
	Construction Documents	250.00	
	Major / minor subdivision plat		
	Major subdivision final plat	100.00	
	Minor subdivision final plat	50.00	
	All other plats	50.00	
SITE PLAN			
	Applications:		
	Mixed use or commercial:		
	Under 10,000 square feet	250.00	
	10,000 - 29,999 square feet	500.00	
	30,000 - 49,999 square feet	750.00	
	50,000 + square feet	1,000.00	
REZONING PETITIONS			
	Conditional Zoning	1,250.00	
	Conditional Zoning Amendment	625.00	
	General Rezoning	1,000.00	
PERMITS AND VARIANCES			
	Special Use Permit (SUP)	500.00	
	Special Use Permit Amendment	250.00	
	Variance Request	350.00	
	Watershed Variance	500.00	
	Architectural Variations:		
	Major	250.00	
	Minor	100.00	
	House move on/off ( <b>\$1000 Bond required</b> )	150.00	
	Temporary Use Permit	25.00	
	Building Permits		
	Residential		
	New home construction	50.00	
	Home addition/expansion	25.00	
	Pier	10.00	
	Demolition	10.00	
	Accessory Structures	25.00	
	Upfit renovations	10.00	
	Non-Residential		
	Upfit renovations	75.00	
	Sign Permits		
	Single Business	25.00	
	Multi-tenant Building	50.00	
	Banner Permit	50.00	
	Home Occupation Permit	35.00	
	Transient Occupancy	100.00	
OTHER			
	Appeal of Zoning Decision	250.00	
	Text Amendment	400.00	

**Town of Cornelius  
Schedule of Fees**

		<b>AMOUNT CURRENT</b>	<b>PROPOSED CHANGE</b>
Zoning Compliance Letter	1 Single Family Residence	50.00	
	Commercial	100.00	
TRAFFIC IMPACT ANALYSIS		TBD Pursuant to Town Ordinance 2015-00607	
PUBLICATIONS			
Base Map	Color maps or plans		
	1:1100 scale (34" x 44")	15.00	
	1:1600 scale (22" x 34")	10.00	
	<i>Land Development Code</i> Book	25.00	
Miscellaneous:	24" x 36" copy, per page	1.00	
<b>POLICE</b>			
Police reports		2.00	
Finger print fees (Cornelius residents)		No charge	
Finger print fees (Cornelius non-residents)		10.00	
<b>ANIMAL SHELTER</b>			
Reclaim		25.00	
Boarding (after first 24 hours)		10.00 per day	
Rabies Vaccination		15.00	
Transportation		10.00	
Dog Adoption		95.00	
Cat Adoption		85.00	
Microchip (Impound only)		10.00	
Surrender Fee		40.00	
<b>ALARM FEES</b>			
Alarm registration fee		10.00	
Alarm annual renewal fee		10.00 annually	
Additional charges will be assessed as follows:			
a. False Alarms 1, 2		No charge (registered)	
b. False Alarms 3, 4, 5		\$50.00 per response	
c. False Alarms 6, 7		\$100.00 per response	
d. False Alarms 8, 9		\$250.00 per response	
e. False Alarms 10+		\$500.00 per response	
f. Audible Alarm over 15 minutes		\$100 per response	
Failure to register an alarm		\$100.00	
<b>PARKS &amp; RECREATION</b>			
Baseball/Softball Practice/Game Fees (fees based on one hour of facility use)			
Resident	Field, Natural	20.00	
	Field Lights	15.50	
	Field Prep (Basic) per Practice/Game	21.00	
	Field Prep (Full) per Practice/Game	35.00	
	Admission Remittance, All Facilities	100.00/day	
Non-Resident	Field, Natural	40.00	
	Field Lights	31.00	
	Field Prep (Basic) per Practice/Game	31.00	
	Field Prep (Full) per Practice/Game	57.00	
	Admission Remittance, All Facilities	100.00/day	
Multi-Purpose Practice/Game Fees (fees based on one hour of facility use)			
Resident	Field, Natural	20.00	
	Field Lights	15.50	
	Admission Remittance, All Facilities	100.00/day	
Non-Resident	Field, Natural	40.00	
	Field Lights	31.00	
	Admission Remittance, All Facilities	100.00/day	

**Town of Cornelius  
Schedule of Fees**

		<b>AMOUNT CURRENT</b>	<b>PROPOSED CHANGE</b>
Synthetic Turf Practice/Game Fees (fees based on one hour of facility use)			
Resident	Field	46.00	
	Field Lights	15.50	
Non-Resident	Field	93.00	
	Field Lights	31.00	
Baseball/Softball Tournament Fees (rates based on use of field per day [8am-8pm])			
	Baseball/Softball Field	175.00	
	Tournament Deposit	350.00	
	Field Lights Tournament	41.00	
	Concession Use	Contract	
	Admission Remittance, All Facilities	225.00/day	
	Field Prep (Basic)	35.00	
	Field Prep (Full)	57.00	
	Temporary Fence Fee (per field/per day)	65.00	
Multi-purpose fees/Tournament			
	Tournament Deposit	350.00	
	Field Lights Tournament- Resident	41.00	
	Field Lights Tournament- Non-Resident	82.00	
	Field Rental	52.00	
	Concessions	20% gross	
	Admission Remittance	100.00/day	
Gym Fees/Tournament (rates based on use of gym per day [8am-8pm])			
	Tournament Deposit	350.00	
	Team Fee	80.00/hour	
	Admission Remittance, All Facilities	100.00/day	
Tennis Court Rental (fees based on one hour of facility use)			
Resident	Court Rental	5.00	
Non-Resident	Court Rental	10.00	
Gym Rental (fees based on one hour of facility use)			
Resident	Gym Rental	50.00	
Non-Resident	Gym Rental	100.00	
	Admission Remittance, All Facilities	100.00/day	
Shelter Rental (fees based on one hour of facility use)[3-hour minimum rental]			
Resident	<b>Picnic Shelter</b>		
	Torrence Chapel, Bailey Road #1 & #2	10.00	
	Bailey Road #3, Robbins	15.00	
	<b>Picnic Shelter (30-50 people)</b>		
	Legion	15.00	
	Smithville (Off-season Mid-September to Mid-May)	15.00	
	Smithville (Peak season Mid-May to Mid-September)	25.00	
Non-Resident	<b>Picnic Shelter</b>		
	Torrence Chapel, Bailey Road #1 & #2	20.00	
	Bailey Road #3, Robbins	30.00	
	<b>Picnic Shelter (30-50 people)</b>		
	Legion	30.00	
	Smithville (Off-season Mid-September to Mid-May)	30.00	
	Smithville (Peak season Mid-May to Mid-September)	50.00	
Other (fees based on one hour of facility use)			
Resident	Outdoor Courts (Pickleball, Gaga, Volleyball, Basketbal	5.00	
	Bailey Road Track	17.50	
	Rec Center Rooms	26.00	
	Cafeteria (JV Washam or Bailey Middle)	41.00	
	Bailey Road Track	35.00	
	Rec Center Rooms	52.00	
	Cafeteria (JV Washam or Bailey Middle)	82.00	
Residential (some non-electric appliances):			
	Basic facilities charge	11.54	
	Energy charge		
	June - September (per kilowatt hour)	0.10327	
	Basic facilities charge	14.71	



**Town of Cornelius  
Schedule of Fees**

		<b>AMOUNT CURRENT</b>	<b>PROPOSED CHANGE</b>
3-Phase basic facilities charge		19.85	
Demand charge:			
	First 30 kW of billing demand per month	No charge	
	All over 30 kW of billing demand per mo	4.97	
Energy charge:			
	June - September		
	First 3,000 kWh	0.11540	
	Over 3,000 kWh	0.07700	
	October - May		
	First 3,000 kWh	0.11540	
	Over 3,000 kWh	0.07600	
Medium Commercial			
3-Phase basic facilities charge		37.62	
Demand charge for all billing demand per month		5.85	
Energy charge:			
	June - September		
	First 100 kWh per kW	0.08560	
	Over 100 kWh per kW	0.06312	
	October - May		
	First 100 kWh per kW	0.08560	
	Over 100 kWh per kW	0.04768	
Medium Industrial			
3-Phase basic facilities charge		357.54	
Demand charge:			
	Monthly billing demand		
	Summer (June-Sept.) per kW	17.88	
	Winter (Oct.-May) per kW	3.57	
	Excess Demand (all months) per kW	2.52	
Energy charge:			
	Summer (June-Sept.)		
	On-Peak per kWh	0.06258	
	Off-Peak per kWh	0.04573	
	Winter (Oct.-May)		
	On-Peak per kWh	0.05583	
	Off-Peak per kWh	0.04177	
REPS Rider			
Residential		0.72	
Commercial		3.93	
Industrial		40.51	
RECR-1 Rider			
Wind and Biomass Energy Credit (\$ Per kWh):			
	On-peak energy:		
	Variable	0.028	
	5 Years	No longer available	
	10 Years	No longer available	
	15 Years	No longer available	
	Off-peak energy:		
	Variable	0.0103	
	5 Years	No longer available	
	10 Years	No longer available	
	15 Years	No longer available	
Solar Photovoltaic Energy Credit (\$ Per kWh):			
	All Energy:		
	Variable	0.0304	
	5 Years	No longer available	
	10 Years	No longer available	
	15 Years	No longer available	

**Town of Cornelius  
Schedule of Fees**

	<b>AMOUNT CURRENT</b>	<b>PROPOSED CHANGE</b>
Return Check Fee:	25.00	
Late payment charge 2% or \$7.50, whichever is greater		
Reconnect fee		
prior to 5pm	30.00	
after 5pm	120.00	
Meter Tamper Fee	200.00	
Electric Connection/New Service Fee	25.00	
New Electric Services	50.00	
Underground Service Fee	150.00	

**ECONOMIC DEVELOPMENT RIDER- Electric Rate Rider EDR1**

<u>Months</u>	<u>Discount</u>
<b>1-12</b>	30%
<b>13-24</b>	20%
<b>25-36</b>	10%
<b>37-48</b>	5%

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

To: Mayor and Board of Commissioners

From: Troy Fitzsimmons, PARC Director



### Action Requested:

Consider approval of the Tripartite Agreement between the Town of Cornelius, the Town of Davidson, and Mecklenburg County for the development of the Plum Creek - South Bailey Road Greenway. Plum Creek Greenway is a critical 1/2 mile connection between the existing multi-use path at Hough High School and the existing South Prong Rocky River Greenway in Davidson. When complete nearly 7.5 contiguous miles of the Emerald Necklace from downtown Cornelius to Highway 21 near Home Depot will be complete. Mecklenburg County will build, operate and maintain the greenway in accordance with the agreement. This agreement was approved by the Mecklenburg County Board of County Commissioners at their June 4, 2019, meeting and Town of Davidson at their June 25, 2019 meeting.

### Manager's Recommendation:

Approve the Tripartite Agreement between the Town of Cornelius, the Town of Davidson, and Mecklenburg County for the development of the Plum Creek - South Bailey Road Greenway

### ATTACHMENTS:

Name:	Description:	Type:
 <a href="#">2019-6-19 TriPartite Development Agreement - Plum Creek - South Bailey Greenway (Final).DOC</a>	Tripartite Agreement - Plum Creek Greenway	Backup Material
 <a href="#">2018-10-02 Plum Creek layout.pptx</a>	Plum Creek Agreement Summary	Cover Memo



MEMORANDUM OF AGREEMENT – PLUM CREEK (SOUTH BAILEY ROAD) GREENWAY

THIS MEMORANDUM OF AGREEMENT – PLUM CREEK (SOUTH BAILEY ROAD) GREENWAY (“Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **TOWN OF CORNELIUS**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter “CORNELIUS”), **TOWN OF DAVIDSON**, a municipal corporation organized under the laws of the State of North Carolina (hereafter “DAVIDSON”) and **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (“COUNTY”, and together with CORNELIUS and/or DAVIDSON, each a “Party” and collectively, “Parties”).

WITNESSETH:

WHEREAS, as part of the adopted comprehensive greenway master plans for (i) COUNTY, (ii) CORNELIUS, and (iii) DAVIDSON, an approximate half-mile greenway, yet to be officially named by the Parties but known herein as the Plum Creek (South Bailey Road) Greenway (the “Greenway”), is planned to connect the existing South Prong Rocky River Greenway (located in Davidson) to the existing multi-use path on Bailey Road in the CORNELIUS;

WHEREAS, the Parties desire by this Agreement to enter into an agreement with respect to the Greenway, which is depicted at Exhibit A attached hereto.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein) and the mutual covenants and conditions hereinafter set forth, the Parties agree for themselves, their successors and assigns, as follows:

1. Term. This term of this Agreement (the “Term”) shall commence on the date set forth above and expire at midnight on June \_\_, 2029, unless terminated earlier pursuant to the terms hereof. At the conclusion of the Term, this Agreement shall automatically renew for successive twelve (12) month periods, unless terminated by either Party upon ninety (90) days’ prior written notice to the other Party. Notwithstanding the foregoing, either party hereto may terminate this Agreement at any time, upon thirty (30) days’ prior written notice to the other party, in the event the noticed party (i) uses the Greenway for any purpose other than a public greenway, or (ii) otherwise defaults in its obligations under this Agreement.
2. Purpose. The purpose of this Agreement is to define the Parties’ rights and obligations with respect to the development, maintenance, operation and use of the Greenway.
3. Obligations of Parties.
  - A. Land Ownership and Right-of-Entry:
    - (i) CORNELIUS has secured from The Charlotte-Mecklenburg Board of Education (“BOE”) that certain greenway easement recorded at Book 33346, Page 641 in the Mecklenburg County (N.C.) Registry (the “Registry”) with respect to Mecklenburg County Tax Parcel No. 00715232 (the “Easement”). To the extent not already granted in the Easement, CORNELIUS shall grant COUNTY an easement to construct and maintain the Greenway in accordance with the terms hereof.

- (ii) CORNELIUS owns Mecklenburg County Tax Parcel No. 00715392, which enjoys access to Avery Park Drive (a public right-of-way) via a public greenway easement created pursuant to plat recorded at Map Book 58, Page 587 in the Registry.
- (iii) County has secured, or shall secure, from DAVIDSON a greenway easement over a portion of Mecklenburg County Tax Parcel No. 00728113, which portion was (or shall be) donated by Lennar Carolinas, LLC (“Lennar”) to DAVIDSON as open space;
- (iv) County has secured, or shall secure, from DAVIDSON a greenway easement over a portion of Mecklenburg County Tax Parcel No. 00711149.
- (v) DAVIDSON has secured, or shall secure, from Lennar any easement(s) necessary to connect (a) the South Prong West Branch, Rocky River Tributary to (b) the greenway easement referenced in subsection (iii) above.
- (vi) Each of CORNELIUS and DAVIDSON warrants that it has, or will have, the legal right and/or authority to provide COUNTY all easements (or rights of entry) necessary for COUNTY to maintain the Greenway.
- (vii) Each of CORNELIUS and DAVIDSON hereby grants to COUNTY the legal right to maintain (to the extent of COUNTY’s maintenance responsibilities under this Agreement) the Greenway.
- (viii) COUNTY shall, upon five (5) days’ prior written notice from CORNELIUS and/or DAVIDSON, grant staff and/or firms contracted by CORNELIUS and/or DAVIDSON access to gates, locks, and park entrance areas related to the Greenway for purposes of maintenance and/or repair.

B. Development:

- (i) CORNELIUS shall, at its expense, complete and secure all construction drawings, specifications, costs estimates, and required permit approvals (collectively, the “Plans”) for the Greenway in accordance with generally accepted standards suitable for COUNTY’s bidding process.
- (ii) CORNELIUS shall provide COUNTY, for the latter’s review and approval, the Plans at both the seventy-five percent (75%) and one hundred percent (100%) completion thresholds thereof.
- (iii) CORNELIUS shall use best efforts to complete, and COUNTY shall use best efforts to review and approve, the Plans such that COUNTY bidding may commence during COUNTY fiscal year 2020. In the event COUNTY cannot or will not provide its approval of the Plans (within the timeframe set forth above, or otherwise), the Parties shall work together in good faith to revise the Plans so as to be reasonably acceptable to both Parties. Following COUNTY’s final approval of the Plans, any changes or modifications thereto shall be in COUNTY’s sole but reasonable discretion.
- (iv) COUNTY shall manage and provide funds for all bidding and contract administration for construction of the Greenway.

- (v) COUNTY shall provide all funds and/or capital necessary (a) for construction of the Greenway (including the furnishing of reasonable amenities related thereto [including but not limited to benches, trash cans, fencing, and signage in accordance with COUNTY standards], and (b) for management of the Greenway construction project.

C. Operations:

- (i) COUNTY shall respond to citizen calls regarding maintenance and operation concerns specific to the Greenway. Any issues reported or raised will be communicated between the Parties to ensure an appropriate response.
- (ii) Subject to subsection (i) immediately above, neither CORNELIUS nor DAVIDSON shall have any obligations related to the day-to-day operations of the Greenway.

D. Programming:

Any and all requests for recreational programming planned for the Greenway shall be submitted to COUNTY, for COUNTY's approval (not to be unreasonably withheld), not less than thirty (30) days prior to such event.

E. Maintenance:

- (i) Subject to subsection (ii) below, COUNTY hereby assumes responsibility for (and shall be permitted to contract for) all routine maintenance, repair and upkeep of the Greenway and related improvements (including the trail, boardwalks, site furnishings, amenities, signage and improved shoulder areas), in accordance with the standards (i) set forth at Exhibit B attached hereto, and (ii) consistent with those for other greenways owned or maintained by COUNTY.
- (ii) Intentionally omitted.
- (iii) COUNTY is not responsible for maintaining any improvements on the Greenway installed and owned by either CORNELIUS or DAVIDSON (any substantial improvements to be approved by County prior to installation), or upgrading such equipment to meet local, state, and federal requirements.
- (iv) CORNELIUS and/or DAVIDSON shall be responsible for addressing and resolving any encroachment or similar issues involving or raised by landowners adjacent to the Greenway.

F. Capital Improvement Projects and Major Repairs:

- (i) The Parties will consult one another to determine levels of financial participation in any future capital projects or improvements planned for the Greenway.
- (ii) Intentionally omitted.
- (iii) In the event of casualty or force majeure resulting in significant damage to the Greenway, the Parties will cooperate in good faith to repair any such damage.



G. Fees:

Neither Party shall charge fees for daily use of the Greenway (excluding any special programming events approved by County, any fees for which shall be determined in accordance with County's schedule of fees for similar events). If either CORNELIUS and/or DAVIDSON has an officially sanctioned event or program, then CORNELIUS and/or DAVIDSON may request a fee waiver in accordance with the most recently adopted Mecklenburg County Park & Recreation Fee Waiver Guidelines.

H. Utilities:

Each Party shall pay for any future lighting (including monthly electricity charges) desired by such Party with respect to the Greenway. COUNTY shall be responsible for payment of any stormwater fees associated with or assessed upon the Greenway.

I. Security:

COUNTY will provide park ranger patrol for the Greenway on a schedule consistent with standards for similar greenways owned or maintained by COUNTY. The CORNELIUS and DAVIDSON police departments will assist as reasonably requested by COUNTY with foot, bicycle and vehicle patrols.

J. Signage:

The Parties will cooperate to incorporate branding needs specific to each Party within the standard COUNTY park and recreation wayfinding and signage system.

4. Meetings. The Parties agree to (i) take such other and further steps as may be reasonably necessary to accomplish the purposes of this Agreement, and (ii) meet as needed to (a) review each Party's performance (and/or improve delivery of the services required of each) hereunder, (b) conduct inspections of the Greenway, (c) assess then-current standards of maintenance and operations for the Greenway, and (d) consider capital improvements for the Greenway. Furthermore, CORNELIUS and/or DAVIDSON shall promptly relay to COUNTY any concerns with respect to items (i-ii) in the preceding sentence, and COUNTY shall promptly address any such concerns in a manner consistent with COUNTY's standards for other greenways in its system.
5. Entire Agreement. This Agreement contains the entire agreement between the Parties concerning development, maintenance and operation of the Greenway. There are no other agreements (either oral or written) with respect to the subject matter of this Agreement, which may not be altered, amended, or terminated except by a writing signed by the Parties.
6. Force Majeure. Neither Party shall be deemed in default with respect to any of the terms, covenants and conditions of this Agreement if such Party fails to perform and its failure is due (in whole or in part) to: any strike, lockout, labor trouble (whether legal or illegal, and except for such events which are caused by that party's own employees), civil disorder, inability to procure material, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, civil strife, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees), or any other cause beyond the commercially reasonable control of the non-performing party.

7. Indemnification.

- (i) To the extent permitted by applicable law, each of CORNELIUS and DAVIDSON agrees to indemnify, defend and save harmless COUNTY (and its agents, officers and employees) from and against any and all liability, expenses (including reasonable attorneys' fees), and claims for damages including (but not limited to) bodily injury, death, personal injury, or property damage, arising from or connected with CORNELIUS or DAVIDSON's (as applicable) operations, installations, plantings, construction or its services hereunder. Each of CORNELIUS and DAVIDSON's duty to indemnify COUNTY shall survive the expiration or other termination of this Agreement.
- (ii) To the extent permitted by applicable law, COUNTY agrees to indemnify, defend and save harmless CORNELIUS and DAVIDSON (and its agents, officers and employees) from and against any and all liability, expenses (including reasonable attorneys' fees), and claims for damages including (but not limited to) bodily injury, death, personal injury, or property damage, arising from or connected with COUNTY's operations, installations, plantings, construction or its services hereunder. COUNTY's duty to indemnify CORNELIUS and DAVIDSON shall survive the expiration or other termination of this Agreement.

8. Assignment. No Party hereto shall assign its rights or obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

CORNELIUS:

**TOWN OF CORNELIUS,**  
a municipal corporation organized  
under the laws of the State of North Carolina

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

DAVIDSON:

**TOWN OF DAVIDSON,**  
a municipal corporation organized  
under the laws of the State of North Carolina

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

COUNTY:

**MECKLENBURG COUNTY,**  
a political subdivision of the State of North Carolina

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

Approved as to Form:

\_\_\_\_\_  
David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune LLP  
Counsel for Mecklenburg County

Exhibit A

[Greenway Depiction]



Exhibit B

Mecklenburg County Standards for Greenway Operations and Maintenance

#### Mowing

1. Maintain open corridor of trail and 3ft mowed areas either side of trail
2. Bush hog from mowed area at least 8ft up to tree line. – 1-2 times a year or as needed
3. Weed eat and brush cut any growth that falls or droops into 3ft mowed area along the trail

#### Brush Cutting

1. As needed to maintain sight visibility; safety around curves
2. Drainage ditches and swales, as needed
3. Ditch slopes and bottoms
4. Removal of heavy vegetation, within guidelines for water quality

#### Pruning

1. Remove tree limbs that encroach into trail
2. Lift tree branches in bush hog areas as needed to permit mowing and safe passage
3. Trail clearance heights should be 10 to 12 feet, maintained to mowed areas

#### Drains / Erosion

1. Keep pipes clear of debris

#### Leaf Removal

1. Blow leaves and debris material from trail surface and drain areas – Seasonal, as needed

#### Weed Control / Pesticides

1. Application of vegetative pesticides
2. General non-select pesticide
3. Chemical control of vegetation along designated trail edges
4. Chemical control of vegetation over rip rap, pipe heads and drain ways -- follow water quality guidelines. Use of chemicals will be minimized wherever possible. Products will be applied in accordance with current laws and industry standards.

#### Fallen trees / Tree work

1. Remove when encountered while working
2. Remove trees that present safety concern for greenway trail user
3. Contract removal as necessary

#### Tunnel Cleaning

1. Remove silt and sediment within 48 hours after any flood event
2. Contract tunnel cleaning as necessary

#### Bridge/Boardwalk Repair

1. Repair/replace any loose or broken boards or rails

#### Trail repair / Patch work

1. Maintain trails as needed
2. Repair potholes, cracks, tree roots in trail surface
3. Install bollards where needed

#### Signage

1. Install signs as needed.
2. Replace signs as needed.
3. Clean signs as needed.

#### Lighting

1. Replace bulbs/lenses
2. Repair as needed to keep functional

#### Greenway requests for service

1. Perform site visits to determine necessary action
2. Respond to homeowners concerns with direct phone call and suggested action

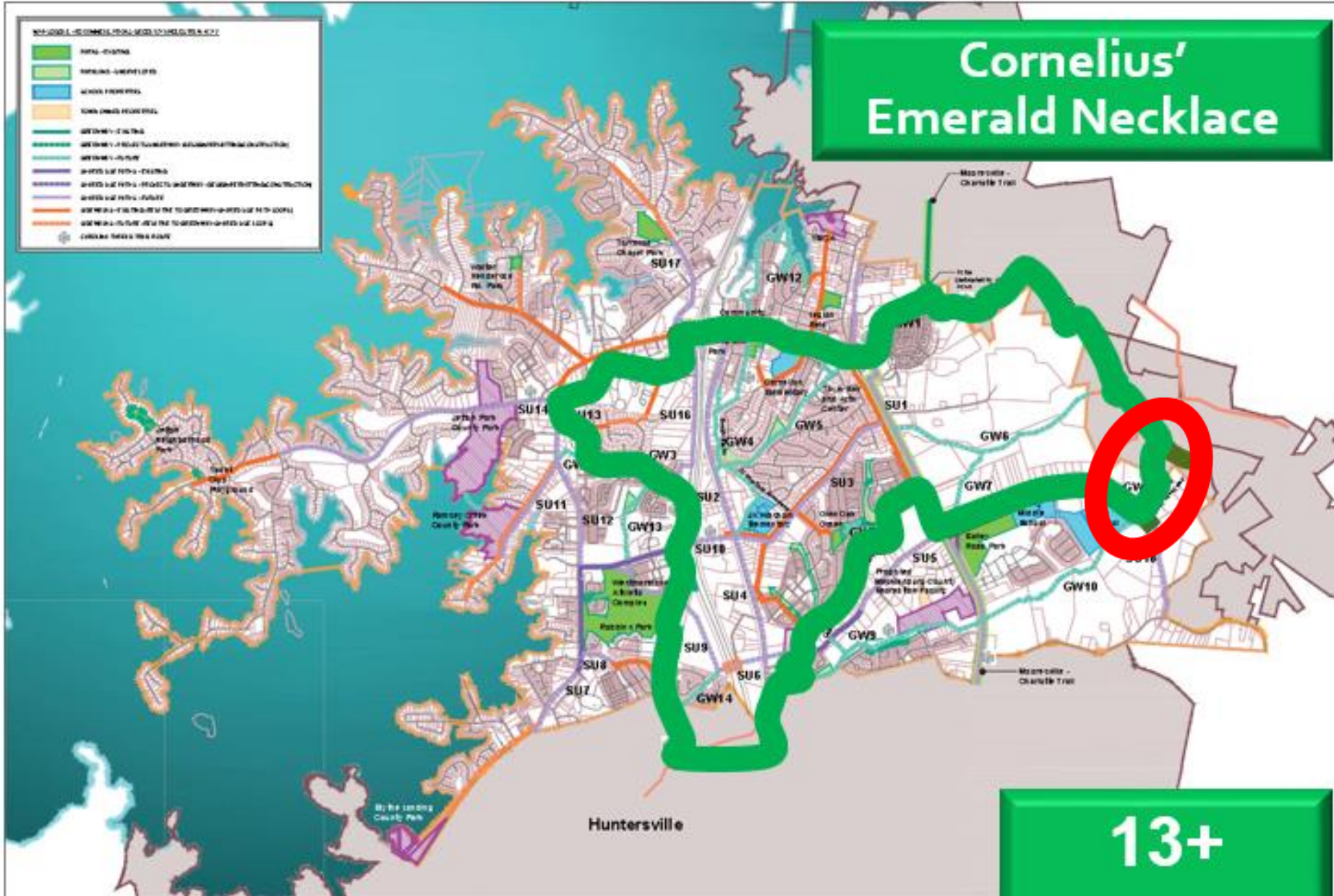
#### Trash removal – 1-2 times a week, based on volume

# Plum Creek Greenway





# Cornelius' Emerald Necklace



13+ miles



Town of Cornelius - PARC  
Comprehensive Parks and  
Greenways Master Plan

Master Plan  
Greenway and Pedestrian-way

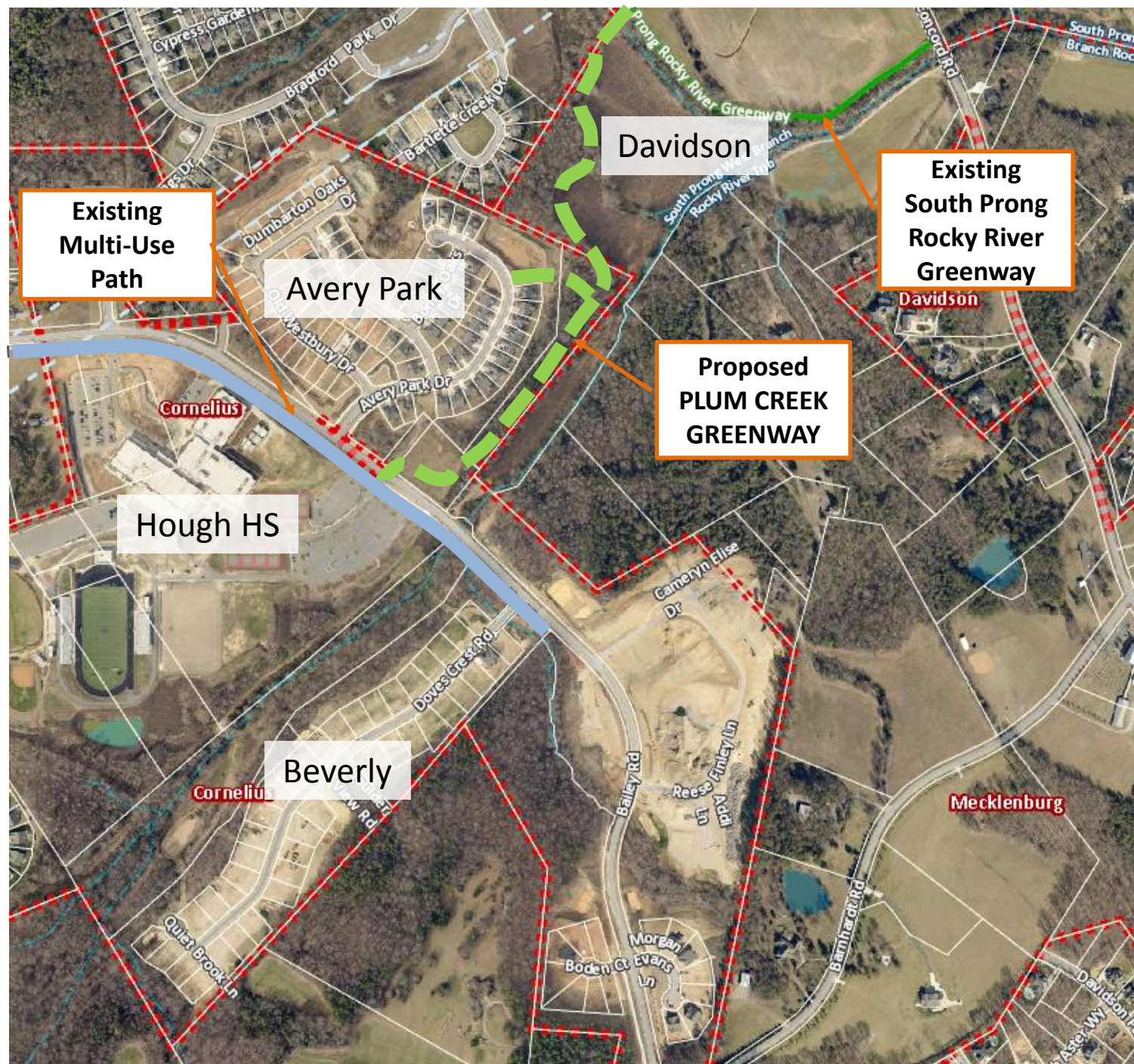
May 22, 2016

www.corneliusnc.org



# Plum Creek Greenway

0.5 miles +/-  
from Hough  
HS multi-use  
path to  
existing South  
Prong Rocky  
River  
Greenway in  
Davidson



# **Plum Creek Agreement Summary**

- **Term: 10 years plus annual renewal option**
- **Land Acquisition: Cornelius – complete**  
**Davidson – nearly complete**
- **Design: Cornelius**
- **Construction: County (bid opening July 18, 2019)**
- **Operations and Maintenance: County**

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

To: Mayor and Board of Commissioners

From: Troy Fitzsimmons, PARC Director



**Action Requested:**

Consider approval of a Memorandum of Agreement between the Town of Cornelius and Mecklenburg County for the operation and maintenance of Caldwell Station Creek Greenway. Caldwell Station Creek Greenway is a 2.6 mile greenway between Bailey Road Park and Highway 21 near Home Depot. The County has been maintaining the greenway since its opening in May 2017, but the Town and County desire to formalize the relationship with the Memorandum of Agreement. This agreement was approved by the Mecklenburg County Board of County Commissioners at their June 4, 2019 meeting.

**Manager's Recommendation:**

Manager recommends approval of agreement.

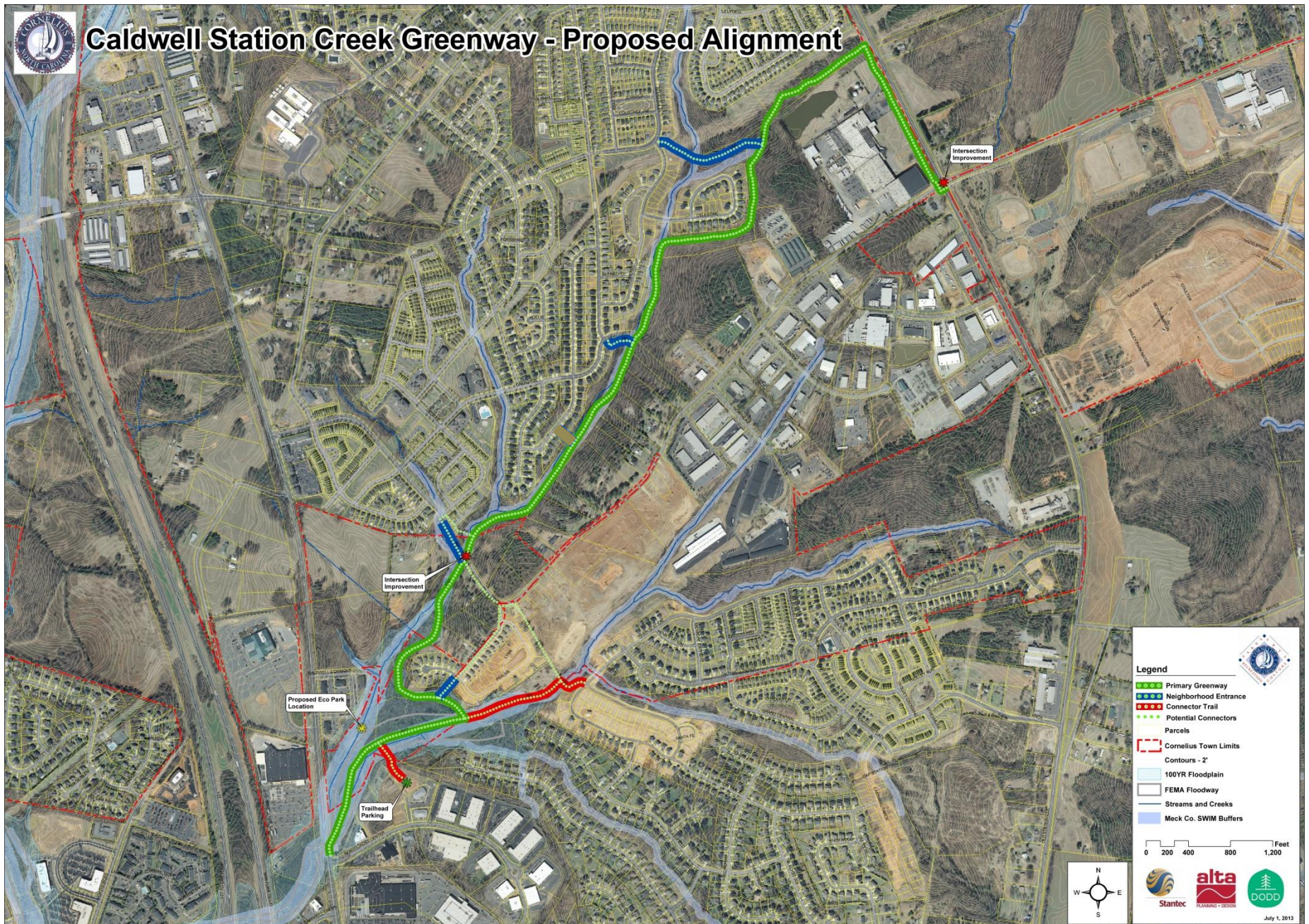
**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">CSCG_master_plan.pptx</a>	Caldwell Station Creek Greenway master plan	Cover Memo
 <a href="#">2019-07-10_Cornelius - Caldwell_Station_Development_Agreement_(200505x96BE2).DOC</a>	Caldwell Station Creek Greenway Memorandum of Agreement	Cover Memo





# Caldwell Station Creek Greenway - Proposed Alignment



## Legend

- Primary Greenway
- Neighborhood Entrance
- Connector Trail
- Potential Connectors
- Parcels
- Cornelius Town Limits
- Contours - 2'
- 100YR Floodplain
- FEMA Floodway
- Streams and Creeks
- Meck Co. SWIM Buffers

0 200 400 800 1,200 Feet



July 1, 2013



## MEMORANDUM OF AGREEMENT – CALDWELL STATION CREEK GREENWAY

THIS MEMORANDUM OF AGREEMENT – CALDWELL STATION CREEK GREENWAY (“Agreement”), is made and entered into this \_\_\_\_ day of July, 2019, by and between the **TOWN OF CORNELIUS**, a municipal corporation organized under the laws of the State of North Carolina (hereinafter “TOWN”) and **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (“COUNTY”, and together with TOWN, each a “Party” and collectively, “Parties”).

### WITNESSETH:

WHEREAS, the Parties are party to that certain “Interlocal Cooperation Agreement (Cornelius/Caldwell Station Creek Greenway)” dated as of June 13, 2014 (the “ILA”);

WHEREAS, pursuant to Section 7 and Section 13 of the ILA, the Parties established certain obligations with respect to the Greenway (as defined herein), including their future execution of a “Greenway Maintenance/Lease Agreement” addressing the same (the “GMLA”); and

WHEREAS, in lieu of executing the GMLA, the Parties now instead desire, by this Agreement, to enter into an agreement with respect to the Caldwell Station Creek Greenway (“Greenway”) as depicted and described illustrated at Exhibit A attached hereto.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein) and the mutual covenants and conditions hereinafter set forth, the Parties agree for themselves, their successors and assigns, as follows:

1. Term. This term of this Agreement (the “Term”) shall commence on the date set forth above and expire at midnight on July \_\_\_, 2029, unless terminated earlier pursuant to the terms hereof. At the conclusion of the Term, this Agreement shall automatically renew for successive twelve (12) month periods, unless terminated by either Party upon ninety (90) days’ prior written notice to the other Party. Notwithstanding the foregoing, either party hereto may terminate this Agreement at any time, upon thirty (30) days’ prior written notice to the other party, in the event the noticed party (i) uses the Greenway for any purpose other than a public greenway, or (ii) otherwise defaults in its obligations under this Agreement.
2. Purpose. The purpose of this Agreement is to define the Parties’ rights and obligations with respect to the development, maintenance, operation and use of the Greenway.
3. Obligations of Parties.
  - A. Land Ownership and Right-of-Entry:
    - (i) TOWN warrants that it is the sole beneficiary under the following easements (collectively, the “Town Easements”):
      - (x) Easement Agreement dated as of May 19, 2014, between Town and Environmental Liability Transfer Inc. (“ELI”), and recorded at Book 29299, Page 314 of the Mecklenburg County (N.C.) Registry (the “Registry”);

- (y) Easement Agreement dated as of April 23, 2014, between TOWN and Bailey Road Company, LLC ("Bailey Road"), and recorded at Book 29299, Page 306 of the Registry; and
- (z) Easement Agreement dated as of May 16, 2014, between TOWN and FXI, Inc., a Delaware corporation ("FXI"), and recorded at Book 29299, Page 323 of the Registry.

Pursuant to TOWN's rights set forth in the Town Easements, and to the extent not already granted in the Town Easements, TOWN shall grant COUNTY an easement to maintain the Greenway in accordance with the terms hereof.

- (ii) TOWN warrants that it has the legal right and/or authority (pursuant to the TOWN Easements, or otherwise) to provide COUNTY all easements (or rights of entry) necessary for COUNTY to maintain the Greenway.
- (iii) TOWN hereby grants to COUNTY the legal right to maintain (to the extent of COUNTY's maintenance responsibilities under this Agreement) the Greenway, of which Town has completed construction as of the date of this Agreement.
- (iv) COUNTY shall, upon five (5) days' prior written notice from TOWN, grant staff and/or firms contracted by TOWN access to gates, locks, and park entrance areas related to the Greenway for purposes of maintenance and/or repair.

B. Operations:

- (i) COUNTY shall respond to citizen calls regarding maintenance and operation concerns specific to the Greenway. Any issues reported or raised will be communicated between the Parties to ensure an appropriate response.
- (ii) Subject to subsection (ii) immediately above, TOWN shall have no obligations related to the day-to-day operations of the Greenway.

C. Programming:

Any and all requests for recreational programming planned for the Greenway shall be submitted to COUNTY, for COUNTY's approval (not to be unreasonably withheld), not less than thirty (30) days prior to such event.

D. Maintenance:

- (i) Subject to subsection (ii) below, as of the date of this Agreement, County assumes responsibility for (and shall be permitted to contract for) all routine maintenance, repair and upkeep of the Greenway and related improvements (including the trail, boardwalks, site furnishings, amenities, signage and improved shoulder areas), in accordance with the standards (i) set forth at Exhibit B attached hereto, and (ii) consistent with those for other greenways owned or maintained by COUNTY.



- (ii) Intentionally omitted.
- (iii) COUNTY is not responsible for maintaining any improvements on the Greenway installed and owned by TOWN (any substantial improvements to be approved by COUNTY prior to installation), or upgrading such equipment to meet local, state, and federal requirements.
- (iv) TOWN shall be responsible for addressing and resolving any encroachment or similar issues involving or raised by landowners adjacent to the Greenway.

E. Capital Improvement Projects and Major Repairs:

- (i) The Parties will consult one another to determine levels of financial participation in any future capital projects or improvements planned for the Greenway.
- (ii) Intentionally omitted.
- (iii) In the event of casualty or force majeure resulting in significant damage to the Greenway, the Parties will cooperate in good faith to repair any such damage.

F. Fees:

Neither Party shall charge fees for daily use of the Greenway (excluding any special programming events approved by COUNTY, any fees for which shall be determined in accordance with COUNTY's schedule of fees for similar events). If TOWN has an officially sanctioned event or program, TOWN may request a fee waiver in accordance with the most recently adopted Mecklenburg County Park & Recreation Fee Waiver Guidelines.

G. Utilities:

Each Party shall pay for any future lighting (including monthly electricity charges) desired by such Party with respect to the Greenway. COUNTY shall be responsible for payment of any stormwater fees associated with or assessed upon the Greenway.

H. Security:

COUNTY will provide park ranger patrol for the Greenway on a schedule consistent with standards for similar greenways owned or maintained by COUNTY. The TOWN's police department will assist as reasonably requested by COUNTY with foot, bicycle and vehicle patrols.

I. Signage:

The Parties will cooperate to incorporate branding needs specific to each Party within the standard COUNTY park and recreation wayfinding and signage system.

4. Meetings. The Parties agree to (i) take such other and further steps as may be reasonably necessary to accomplish the purposes of this Agreement, and (ii) meet as needed to (a) review each Party's performance (and/or improve delivery of the services required of each) hereunder, (b) conduct inspections of the Greenway, (c) assess then-current standards of maintenance and

operations for the Greenway, and (d) consider capital improvements for the Greenway. Furthermore, TOWN shall promptly relay to COUNTY any concerns with respect to items (i-ii) in the preceding sentence, and COUNTY shall promptly address any such concerns in a manner consistent with COUNTY's standards for other greenways in its system.

5. Entire Agreement. This Agreement contains the entire agreement between the Parties concerning development, maintenance and operation of the Greenway. There are no other agreements (either oral or written) with respect to the subject matter of this Agreement, which may not be altered, amended, or terminated except by a writing signed by the Parties.
6. Force Majeure. Neither Party shall be deemed in default with respect to any of the terms, covenants and conditions of this Agreement if such Party fails to perform and its failure is due (in whole or in part) to: any strike, lockout, labor trouble (whether legal or illegal, and except for such events which are caused by that party's own employees), civil disorder, inability to procure material, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, civil strife, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees), or any other cause beyond the commercially reasonable control of the non-performing party.
7. Indemnification.
  - (i) To the extent permitted by applicable law, TOWN agrees to indemnify, defend and save harmless COUNTY (and its agents, officers and employees) from and against any and all liability, expenses (including reasonable attorneys' fees), and claims for damages including (but not limited to) bodily injury, death, personal injury, or property damage, arising from or connected with TOWN's operations, installations, plantings, construction or its services hereunder. TOWN's duty to indemnify COUNTY shall survive the expiration or other termination of this Agreement.
  - (ii) To the extent permitted by applicable law, COUNTY agrees to indemnify, defend and save harmless TOWN (and its agents, officers and employees) from and against any and all liability, expenses (including reasonable attorneys' fees), and claims for damages including (but not limited to) bodily injury, death, personal injury, or property damage, arising from or connected with COUNTY's operations, installations, plantings, construction or its services hereunder. COUNTY's duty to indemnify TOWN shall survive the expiration or other termination of this Agreement.
8. Assignment. Neither Party shall assign its rights or obligations under this Agreement.
9. Substitution. The Parties acknowledge that this Agreement is intended to replace the GLMA as initially contemplated in the ILA, and each Party acknowledges that the other Party's execution hereof shall be deemed satisfaction of the latter's obligations under Section 7 of the ILA.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

TOWN:

**TOWN OF CORNELIUS,**  
a municipal corporation organized  
under the laws of the State of North Carolina

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

COUNTY:

**MECKLENBURG COUNTY,**  
a political subdivision of the State of North Carolina

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

Approved as to Form:

\_\_\_\_\_  
David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune LLP  
Counsel for Mecklenburg County



Exhibit A

[Greenway Depiction]

## Exhibit B

### Mecklenburg County Standards for Greenway Operations and Maintenance

#### Mowing

1. Maintain open corridor of trail and 3ft mowed areas either side of trail
2. Bush hog from mowed area at least 8ft up to tree line. – 1-2 times a year or as needed
3. Weed eat and brush cut any growth that falls or droops into 3ft mowed area along the trail

#### Brush Cutting

1. As needed to maintain sight visibility; safety around curves
2. Drainage ditches and swales, as needed
3. Ditch slopes and bottoms
4. Removal of heavy vegetation, within guidelines for water quality

#### Pruning

1. Remove tree limbs that encroach into trail
2. Lift tree branches in bush hog areas as needed to permit mowing and safe passage
3. Trail clearance heights should be 10 to 12 feet, maintained to mowed areas

#### Drains / Erosion

1. Keep pipes clear of debris

#### Leaf Removal

1. Blow leaves and debris material from trail surface and drain areas – Seasonal, as needed

#### Weed Control / Pesticides

1. Application of vegetative pesticides
2. General non-select pesticide
3. Chemical control of vegetation along designated trail edges
4. Chemical control of vegetation over rip rap, pipe heads and drain ways -- follow water quality guidelines. Use of chemicals will be minimized wherever possible. Products will be applied in accordance with current laws and industry standards.

#### Fallen trees / Tree work

1. Remove when encountered while working
2. Remove trees that present safety concern for greenway trail user
3. Contract removal as necessary

#### Tunnel Cleaning

1. Remove silt and sediment within 48 hours after any flood event
2. Contract tunnel cleaning as necessary

#### Boardwalk Repair

1. Repair any loose or broken boards or rails

#### Trail repair / Patch work

1. Maintain trails as needed
2. Repair potholes, cracks, tree roots in trail surface
3. Install bollards where needed

#### Signage

1. Install signs as needed.
2. Replace signs as needed.
3. Clean signs as needed.

#### Lighting

1. Replace bulbs/lenses
2. Repair as needed to keep functional

#### Greenway requests for service

1. Perform site visits to determine necessary action
2. Respond to homeowners concerns with direct phone call and suggested action

Trash removal – 1-2 times a week, based on volume

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

To: Mayor and Board of Commissioners

From: Julie Niswonger, Finance Director

**Action Requested:**

There is one item for this budget amendment that represents a project initiated but not yet completed in FY 2019.

In FY19, the Town entered into a contract with Red Clay to conduct street resurfacing. Red Clay completed the majority of resurfacing prior to July 1, 2019; however, due to the construction schedule, one street, Lakehouse Point Drive remains and will be complete in August. This item brings forward general fund balance for the FY 2019 Resurfacing Program in the amount of \$218,359 to finish resurfacing streets within the Town limits.

**Manager's Recommendation:**

Approve an ordinance to amend the FY20 Operating Budget.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">Amend_FY20_#1.pdf</a>	FY20 Operating Budget Amendment	Cover Memo

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**TOWN OF CORNELIUS**  
**AN ORDINANCE AMENDING**  
**THE OPERATING BUDGET FOR**  
**FISCAL YEAR 2019-2020**

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF  
COMMISSIONERS OF THE TOWN OF CORNELIUS:**

**SECTION 1.** The following amounts are hereby authorized for all appropriations, expenditures and inter-fund transfers necessary for the administration and operation of the Town of Cornelius for the fiscal year beginning July 1, 2019 and ending June 30, 2020 in accordance with the following schedule of accounts heretofore established for this Town:



SCHEDULE A: GENERAL FUND

	Original Budget	This Amendment 7/15/2019	Change
<b>General Fund Revenues</b>			
Ad Valorem Taxes	\$ 16,090,128	\$ 16,090,128	
Local Option Sales Tax	3,841,700	\$ 3,841,700	
Utility Franchise Tax	1,905,280	\$ 1,905,280	
Powell Bill Allocation	777,233	\$ 777,233	
Other Taxes and Licenses	554,333	\$ 554,333	
Unrestricted Intergovernmental	1,269,370	\$ 1,269,370	
Restricted Intergovernmental	731,108	\$ 731,108	
Permits and Fees	828,100	\$ 828,100	
Sales and Services	186,460	\$ 186,460	
Investment earnings	250,500	\$ 250,500	
Donations	20,000	\$ 20,000	
Micellaneous	19,300	\$ 19,300	
Debt Issued	1,000,000	\$ 1,000,000	
Appropriated Fund Balance	(1,381,129)	\$ (1,162,770)	\$ 218,359
<b>Total General Fund Revenues</b>	<b>\$26,092,383</b>	<b>\$26,310,742</b>	<b>\$218,359</b>
<b>General Fund Expenditures</b>			
Governing Board	\$ 77,931	\$ 77,931	
General Government	1,804,186	\$ 1,804,186	
General Services	650,506	\$ 650,506	
Police	7,119,938	\$ 7,119,938	
Communications	693,463	\$ 693,463	
Fire Operations	1,759,241	\$ 1,759,241	
Animal Control	194,627	\$ 194,627	
Public Works	1,358,085	\$ 1,358,085	
Powell Bill	970,500	\$ 1,188,859	\$ 218,359
Solid Waste/Recycling	2,099,390	\$ 2,099,390	
Stormwater	336,000	\$ 336,000	
Planning / Land Development	627,660	\$ 627,660	
Tourism	444,064	\$ 444,064	
Art Center	620,505	\$ 620,505	
Parks, Arts, Recreation, and Culture	3,066,800	\$ 3,066,800	
Transfer to Capital Project Funds/ 911 Fund	1,072,874	\$ 1,072,874	
Debt Service	3,196,613	\$ 3,196,613	
<b>Total General Fund Expenditures</b>	<b>\$26,092,383</b>	<b>\$26,310,742</b>	<b>\$218,359</b>

SCHEDULE B: ELECTRIC FUND

**Electric Fund Revenues**

	Original Budget	This Amendment 7/15/2019	Change
Sales and Services	\$ 6,692,359	\$ 6,692,359	
Fund Balance	-	\$ -	
Miscellaneous	10,000	\$ 10,000	
<b>Total Electric Fund Revenues</b>	<b>\$ 6,702,359</b>	<b>\$ 6,702,359</b>	<b>\$ -</b>

**Electric Fund Expenditures**

Electric Department	\$6,702,359	\$6,702,359	
<b>Total Electric Fund Expenditures</b>	<b>\$ 6,702,359</b>	<b>\$ 6,702,359</b>	<b>\$ -</b>

SCHEDULE C: 911 FUND

**911 Fund Revenues:**

911 Fee Revenue	\$115,182	\$115,182	
Fund Interest Earnings	\$1,650	\$1,650	
911 Appropriated Fund Balance	\$0	\$0	
<b>Total 911 Fund Revenues</b>	<b>\$ 116,832</b>	<b>\$ 116,832</b>	<b>\$ -</b>

**911 Fund Expenditures:**

911 Department	\$116,832	\$116,832	
<b>Total 911 Fund Expenditures</b>	<b>\$ 116,832</b>	<b>\$ 116,832</b>	<b>\$ -</b>

**SECTION 2.** An ad valorem tax rate of \$.222 per \$100 of assessed valuation is hereby established as the official tax rate for the Town of Cornelius for the fiscal year 2019-20. This rate is based on an estimated valuation of \$7,156,768,213 and an estimated 98.5% percent collection rate, which is at least the collection rate expected during the 2018-19 fiscal year.

**SECTION 3.** In accordance with G.S. §159-9 and G.S. §159-15, the Town Manager shall serve as the budget officer and is hereby authorized to reallocate appropriations among the objects of expenditure under the following conditions:

- a. The Town Manager may transfer amounts between line-item expenditures even among departments as believed to be necessary and prudent.
- b. He may not transfer any amounts between funds, except as approved by the Board of Commissioners in the Budget Ordinance as amended.

Adopted this the 15th day of July, 2019.

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Woody T. Washam Jr., Mayor

SEAL

ATTEST:

APPROVED AS TO FORM:

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Lori A. Harrell, Town Clerk

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Karen Wolter, Town Attorney

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

To: Mayor and Board of Commissioners  
From: Tyler Beardsley, Assistant Town Manager

### Action Requested:

The Town Board declared the Town-owned Hyde Park Storage Suites units B-7, B-8, & B-9 as surplus in September 2018. The Town has received an offer of \$216,000 for the three units. A May 2019, appraisal valued the property at \$216,000.

Approving the attached Resolution will start the upset bid process, which will allow other offers to be submitted to the Town for a 10 day period. If no other offers are submitted, the original offer is accepted and the sale can proceed to closing.




The units were purchased for \$165,000 with asset forfeiture money, therefore, \$165,000 of the sale proceeds must be designated for eligible asset forfeiture uses and the remaining funds will go to the General Fund account.

Any new upset bid offers are required to be 10% higher for the 1st \$1,000 and 5% higher for the remainder than the previous offer. If another offer is received, a new 10 day period will start. This process shall be repeated until no further upset bids are received.

### Manager's Recommendation:

Approve Resolution and start the upset bid process.

### ATTACHMENTS:

Name:	Description:	Type:
 <a href="#">DOC071019-07102019153433.pdf</a>	Offer to Purchase Contract	Backup Material
 <a href="#">Images_of_Hyde_Park_Units.docx</a>	Images of Hyde Park Storage Units	Cover Memo
 <a href="#">RES-Hyde_Park_Units_B-7_B-8_B-9.docx</a>	Resolution of Authorization	Backup Material



[Consult "Guidelines" (form 12G) for guidance in completing this form]

**1. TERMS AND DEFINITIONS:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

- (b) "Buyer": JAS property Holdings LLC

BEING all of Unit Nos. B-7, B-8 and B-9 in BUILDING B in HYDE PARK STORAGE SUITES CONDOMINIUMS, as described and designated in the Declaration of Condominiums under the North Carolina Unit Ownership Act covering HYDE PARK STORAGE SUITES CONDOMINIUMS, as described and recorded in Book 12247, Page 372, as amended, and in Unit Ownership File No. 570, of the Mecklenburg County, North Carolina, Public Registry, reference to such Declaration and the Exhibits attached thereto as amended being hereby made for a more specific description of said Unit, together with an undivided percentage interest in and to the Common Areas and Facilities as described and set forth in said Declaration and the Exhibits attached thereto as amended, reference to which Declaration and Exhibits thereto as amended is specifically made for a more detailed description of said Common Areas and Facilities.

- \$ 205,200.00

BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Page 10 of 10



2(d) for damage to the Property or Seller's right to retain the Due Diligence Fee. It is acknowledged by the parties that payment of the Earnest Money Deposit to Seller in the event of a breach of this Contract by Buyer is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of such breach. The payment of the Earnest Money Deposit to Seller shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.

(f) "Escrow Agent" (insert name): Clerk to Town or Designee.

**NOTE:** In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

(g) "Effective Date": \_\_\_\_\_ [Date of Final Town of Cornelius Board of Commissioners Approval]

(h) "Due Diligence": Buyer's opportunity during the Due Diligence Period to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 2 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.

(i) "Due Diligence Fee": A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to conduct Due Diligence during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 6(l) or Paragraph 9, or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.

(j) "Due Diligence Period": The period beginning on the Effective Date and extending through 5:00 p.m. on [90 days from Effective Date]. **TIME BEING OF THE ESSENCE** with regard to said date.

(k) "Settlement": The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney's receipt of all funds necessary to complete such transaction.

(l) "Settlement Date": The parties agree that Settlement will take place on [100 days from Effective Date] (the "Settlement Date"), unless otherwise agreed in writing, at a time and place designated by Buyer.

(m) "Closing": The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph 13 (Delay in Settlement/Closing).

(n) "Special Assessments": A charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property. A Special Assessment may be either proposed or confirmed.



**“Proposed Special Assessment”:** A Special Assessment that is under formal consideration but which has not been approved prior to Settlement.

**“Confirmed Special Assessment”:** A Special Assessment that has been approved prior to Settlement whether or not it is fully payable at time of Settlement.

**2. BUYER'S DUE DILIGENCE PROCESS:**

(a) **Loan:** During the Due Diligence Period, Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

(b) **Property Investigation:** During the Due Diligence Period, Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

- (i) **Soil and Environmental:** Reports to determine whether the soil is suitable for Buyer's intended use and whether there is any environmental contamination, law, rule or regulation that may prohibit, restrict or limit Buyer's intended use.
- (ii) **Septic/Sewer System:** Any applicable investigation(s) to determine: (1) the condition of an existing sewage system, (2) the costs and expenses to install a sewage system approved by an existing Improvement Permit, (3) the availability and expense to connect to a public or community sewer system, and/or (4) whether an Improvement Permit or written evaluation may be obtained from the County Health Department for a suitable ground absorption sewage system.
- (iii) **Water:** Any applicable investigation(s) to determine: (1) the condition of an existing private drinking water well, (2) the costs and expenses to install a private drinking water well approved by an existing Construction Permit, (3) the availability, costs and expenses to connect to a public or community water system, or a shared private well, and/or (4) whether a Construction Permit may be obtained from the County Health Department for a private drinking water well.
- (iv) **Review of Documents:** Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Owners' Association And Addendum (Standard Form 2A12-T) provided by Seller prior to signing this offer.
- (v) **Appraisals:** An appraisal of the Property.
- (vi) **Survey:** A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.
- (vii) **Zoning and Governmental Regulation:** Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.
- (viii) **Flood Hazard:** Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan.
- (ix) **Utilities and Access:** Availability, quality, and obligations for maintenance of roads and utilities including electric, gas, communication services, stormwater management, and means of access to the Property and amenities.

(c) **Buyer's Obligation to Repair Damage:** Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices applicable to any N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

(d) **Indemnity:** Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.

(e) **Buyer's Right to Terminate:** Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), **TIME BEING OF THE ESSENCE**. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.

**WARNING:** If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, prior to the expiration of the Due Diligence Period, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period shall constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under paragraph 6 of this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.



**(f) CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

AT OR BEFORE THE EXPIRATION OF THE DUE DILIGENCE PERIOD, BUYER WILL HAVE APPROVED THE PHYSICAL AND ENVIRONMENTAL CHARACTERISTICS AND CONDITION OF THE PROPERTY, AS WELL AS THE ECONOMIC CHARACTERISTICS OF THE PROPERTY. EXCEPT AS OTHERWISE SET FORTH IN THIS CONTRACT, IF BUYER DOES NOT TERMINATE THIS CONTRACT PURSUANT TO THE TERMS OF THIS CONTRACT ON OR PRIOR TO THE EXPIRATION OF THE FEASIBILITY STUDY PERIOD, BUYER SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL DEFECTS IN THE PHYSICAL, ENVIRONMENTAL AND ECONOMIC CHARACTERISTICS AND CONDITION OF THE PROPERTY WHICH WOULD BE DISCLOSED BY ANY INSPECTION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES THAT NEITHER SELLER NOR ANY OF SELLER'S BOARD MEMBERS, EMPLOYEES, AGENTS, ATTORNEYS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS OR ANY OTHER PERSON OR ENTITY ACTING ON BEHALF OF SELLER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, HAVE MADE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS (EXPRESS OR IMPLIED) BY OR ON BEHALF OF SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY, THE ECONOMIC RESULTS TO BE OBTAINED OR PREDICTED, OR THE PRESENT USE THEREOF OR THE SUITABILITY FOR BUYER'S INTENDED USE OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: SUITABILITY OF THE TOPOGRAPHY; THE AVAILABILITY OF WATER RIGHTS OR UTILITIES; THE PRESENT AND FUTURE ZONING, BUILDING CODE, SUBDIVISION AND ANY AND ALL OTHER LAND USE MATTERS; THE CONDITION OF THE SOIL, SUBSOIL, OR GROUNDWATER; ENVIRONMENTAL MATTERS INCLUDING WITHOUT LIMITATION THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES OR ANY VIOLATION OF ENVIRONMENTAL LAWS; THE PURPOSE(S) TO WHICH THE PROPERTY IS SUITED; DRAINAGE; FLOODING; ACCESS TO PUBLIC ROADS; OR PROPOSED ROUTES OF ROADS OR EXTENSIONS THEREOF. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS TO BE PURCHASED, CONVEYED AND ACCEPTED BY BUYER IN ITS PRESENT CONDITION, "AS IS", "WHERE IS," AND "WITH ALL FAULTS".

EXCEPT AS OTHERWISE SET FORTH IN THIS CONTRACT, ANY DOCUMENTS FURNISHED TO BUYER BY SELLER RELATING TO THE PROPERTY, SHALL BE DEEMED FURNISHED AS A COURTESY TO BUYER BUT WITHOUT WARRANTY FROM SELLER UNLESS OTHERWISE SPECIFICALLY STATED IN THIS CONTRACT. BUYER IS A SOPHISTICATED BUYER THAT IS FAMILIAR WITH THE OWNERSHIP AND OPERATION OF REAL ESTATE PROJECTS SIMILAR TO THE PROPERTY AND THAT BUYER HAS OR WILL HAVE ADEQUATE OPPORTUNITY TO COMPLETE ALL PHYSICAL AND FINANCIAL EXAMINATIONS (INCLUDING ALL OF THE EXAMINATIONS, REVIEWS AND INVESTIGATIONS REFERRED TO IN SECTION 2) RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER THAT BUYER DEEMS NECESSARY, AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF AND IN RELIANCE UPON SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER (OTHER THAN AS EXPRESSLY PROVIDED HEREIN). ALL WORK DONE IN CONNECTION WITH PREPARING THE PROPERTY FOR THE USES INTENDED BY BUYER INCLUDING ANY AND ALL FEES, STUDIES, REPORTS, APPROVALS, PLANS, SURVEYS, PERMITS, AND ANY EXPENSES WHATSOEVER NECESSARY OR DESIRABLE IN CONNECTION WITH BUYER'S ACQUIRING, DEVELOPING, USING AND/OR OPERATING THE PROPERTY SHALL BE OBTAINED AND PAID FOR BY, AND SHALL BE THE SOLE RESPONSIBILITY OF BUYER. BUYER HAS INVESTIGATED AND HAS KNOWLEDGE OF OPERATIVE OR PROPOSED GOVERNMENTAL LAWS AND REGULATIONS INCLUDING LAND USE LAWS AND REGULATIONS TO WHICH THE PROPERTY MAY BE SUBJECT AND SHALL ACQUIRE THE PROPERTY UPON THE BASIS OF ITS REVIEW AND DETERMINATION OF THE APPLICABILITY AND EFFECT OF SUCH LAWS AND REGULATIONS. BUYER HAS NEITHER RECEIVED NOR RELIED UPON ANY REPRESENTATIONS CONCERNING SUCH LAWS AND REGULATIONS FROM SELLER.

**3. BUYER REPRESENTATIONS:**

(a) **Loan:** Buyer ☐ does ☒ does not have to obtain a new loan in order to purchase the Property. If Buyer is obtaining a new loan, Buyer intends to obtain a loan as follows: ☐ Conventional ☐ Other: \_\_\_\_\_ loan at a ☐ Fixed Rate ☐ Adjustable Rate in the principal amount of \_\_\_\_\_ for a term of \_\_\_\_\_ year(s), at an initial interest rate not to exceed \_\_\_\_\_ % per annum (the "Loan").

(NOTE: Buyer's obligations under this Contract are not conditioned upon obtaining or closing any loan. If Buyer represents that Buyer does not have to obtain a new loan in order to purchase the Property, Seller is advised, prior to signing this offer, to obtain documentation from Buyer which demonstrates that Buyer will be able to close on the Property without the necessity of obtaining a new loan.)

(b) **Other Property:** Buyer ☐ does ☐ does not have to sell or lease other real property in order to qualify for a new loan or to complete purchase. (NOTE: If Buyer does have to sell, Buyer and Seller should consider including a Contingent Sale Addendum (Standard Form 2A2-T) with this offer.)



(c) **Performance of Buyer's Financial Obligations:** To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.

**4. BUYER OBLIGATIONS:**

(a) **Owners' Association Fees/Charges:** Buyer shall pay any fees required for confirming account payment information on owners' association dues or assessments for payment or proration and any charge made by the owners' association in connection with the disposition of the Property to Buyer, including any transfer and/or document fee imposed by the owners' association. Buyer shall not be responsible for fees incurred by Seller in completing the Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement (Standard Form 2A12-T).

(b) **Responsibility for Proposed Special Assessments:** Buyer shall take title subject to all Proposed Special Assessments.

(c) **Responsibility for Certain Costs:** Buyer shall be responsible for all costs with respect to any loan obtained by Buyer, appraisal, title search, title insurance, recording the deed and for preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.

**5. SELLER REPRESENTATIONS:**

[intentionally deleted]

**6. SELLER OBLIGATIONS:**

(a) **Evidence of Title:** Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property. Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys.

(b) **Access to Property/Walk-Through Inspection:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyer, including, but not limited to, allowing the Buyer an opportunity to conduct a final walk-through inspection of the Property. To the extent applicable, Seller shall also be responsible for timely clearing that portion of the Property required by the County to perform tests, inspections and/or evaluations to determine the suitability of the Property for a sewage system and/or private drinking water well.

(c) **Removal of Seller's Property:** N/A

(d) **Affidavit And Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

(e) **Designation of Lien Agent, Payment and Satisfaction of Liens:** N/A

(f) **Good Title; Form of Deed:** Seller shall execute and deliver a North Carolina Bar Form SPECIAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement) and all matters of record.

(NOTE: Buyer's failure to terminate this Contract prior to the expiration of the Due Diligence Period as a result of any encumbrance or defect that is or would have been revealed by a title examination of the Property or a current and accurate survey shall not relieve Seller of any obligation under this subparagraph)

(g) **Deed, Excise Taxes:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes required by law. The deed is to be made **as directed by Buyer**.



(h) **Agreement to Pay Buyer Expenses:** [intentionally deleted]

(i) **Payment of Confirmed Special Assessments:** [intentionally deleted]

(j) **Late Listing Penalties:** All property tax late listing penalties, if any, shall be paid by Seller.

(k) **Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement** (Standard Form 2A12-T): If applicable, Seller shall provide the completed Owners' Association Disclosure and Addendum For Properties Exempt from Residential Property Disclosure Statement to Buyer on or before the Effective Date.

(l) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph 6 or Seller materially breaches this Contract, the Buyer's sole remedy is to terminate this Contract.

**7. PRORATIONS AND ADJUSTMENTS:** Unless otherwise provided, the following items shall be prorated through the date of Settlement and either adjusted between the parties or paid at Settlement:

(a) **Taxes on Real Property:** Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;

(b) **Rents:** N/A;

(c) **Dues:** N/A.

**8. CONDITION OF PROPERTY AT CLOSING:** Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted.

**9. RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyer may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit and any Due Diligence Fee shall be refunded to Buyer. In the event Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

**10. DELAY IN SETTLEMENT/CLOSING:** Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the Non-Delaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

**11. POSSESSION:** Unless otherwise provided herein, possession shall be delivered at Closing as defined in Paragraph 1(m). No alterations, excavations, tree or vegetation removal or other such activities may be done before possession is delivered.

**12. OTHER PROVISIONS AND CONDITIONS:** CHECK ALL STANDARD ADDENDA THAT MAY BE A PART OF THIS CONTRACT, IF ANY, AND ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONTRACT, IF ANY, AND ATTACH HERETO.

(NOTE: UNDER NORTH CAROLINA LAW, REAL ESTATE BROKERS ARE NOT PERMITTED TO DRAFT CONDITIONS OR CONTINGENCIES TO THIS CONTRACT.)

☐ Additional Provisions Addendum (Form 2A11-T)

☐ Back-Up Contract Addendum (Form 2A1-T)

☐ Contingent Sale Addendum (Form 2A2-T)

☐ Loan Assumption Addendum (Form 2A6-T)

☐ Owners' Association Disclosure And Addendum For Properties Exempt from Residential Property Disclosure Statement (Form 2A12-T)

☐ Seller Financing Addendum (Form 2A5-T)

☐ Short Sale Addendum (Form 2A14-T)

☐ OTHER:



13. **ASSIGNMENTS:** This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.

14. **TAX-DEFERRED EXCHANGE:** [intentionally deleted]

15. **PARTIES:** This Contract shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

16. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

17. **ENTIRE AGREEMENT:** This Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.

18. **NOTICE:** Any notice or communication to be given to a party herein may be given to the party or to such party's agent. Any written notice or communication in connection with the transaction contemplated by this Contract may be given to a party or a party's agent by sending or transmitting it to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Seller and Buyer agree that the "Notice Information" and "Escrow Acknowledgment" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

19. **EXECUTION:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument, and the parties adopt as their seals the word "SEAL" beside their signatures below.

20. **COMPUTATION OF DAYS:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

This offer shall become a binding contract on the Effective Date.

Date: 6-13-19  
Buyer: SAS Properties Holdings LLC [SEAL]  
By: [Signature]  
Title: pres

Date: \_\_\_\_\_  
Seller: Town of Cornelius [SEAL]  
By: \_\_\_\_\_  
Town Manager

Approved as to form

\_\_\_\_\_  
Kevin M. Bringewatt, Attorney







**A RESOLUTION AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY  
PURSUANT TO N.C. GEN. STAT. § 160A-269**

**WHEREAS**, the Town of Cornelius (“Town”) is authorized by N.C. Gen. Stat. §160A-269 to convey real property via negotiated offer, advertisement, and upset bid; and

**WHEREAS**, the Town has received an offer for the purchase of the property described below (the “Property”) of **Two Hundred Sixteen Thousand Dollars (\$216,000)** (the “Offer”), which, if accepted, will be subject to terms set out in a sale contract approved by the Town Manager or designee; and

**WHEREAS**, the Property constitutes surplus property; and

**WHEREAS**, the Town will publish notice in accordance with N.C. Gen. Stat. §160A-269, and in the event that the initial upset bid period expires and no further upset bids are received, the Town desires to accept the Offer without further action; and

**WHEREAS**, in the event that any upset bids are received in accordance with law, the Town will meet to further consider any such new offers.

**PROPERTY DESCRIPTION:**

BEING all of Unit Nos. B-7, B-8 and B-9 in BUILDING B in HYDE PARK STORAGE SUITES CONDOMINIUMS, as described and designated in the Declaration of Condominiums under the North Carolina Unit Ownership Act covering HYDE PARK STORAGE SUITES CONDOMINIUMS, as described and recorded in Book 12247, Page 372, as amended, and in Unit Ownership File No. 570, of the Mecklenburg County, North Carolina, Public Registry, reference to such Declaration and the Exhibits attached thereto as amended being hereby made for a more specific description of said Unit, together with an undivided percentage interest in and to the Common Areas and Facilities as described and set forth in said Declaration and the Exhibits attached thereto as amended, reference to which Declaration and Exhibits thereto as amended is specifically made for a more detailed description of said Common Areas and Facilities.

**NOW, THEREFORE, BE IT RESOLVED:**

1. If no further upset bids are received, then the Town Manager or designee is authorized to contract for and consummate the sale the Property to the current bidder for **Two Hundred Sixteen Thousand Dollars (\$216,000)** which represents the fair market value for the Property, subject to terms to be set out in a contract approved by the Town Manager or designee.



2. If any upset bids are received in accordance with law, then any such offers shall be considered by the Town at a subsequent meeting.

Adopted this 15<sup>th</sup> day July, 2019.

SEAL

\_\_\_\_\_  
Woody Washam, Jr., Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Town Attorney

## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

**To:** Mayor and Board of Commissioners

**From:** Lori Harrell, Town Clerk


**Action Requested:**

Review the minutes from the June 17th Closed Session meeting.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">06-17-19_Closed_Session.pdf</a>	Closed Session Minutes	Backup Material

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## REQUEST FOR BOARD ACTION

 [Print](#)

Date of Meeting: July 15, 2019

**To:** Mayor and Board of Commissioners

**From:** Lori Harrell, Town Clerk

**Action Requested:**

Review the minutes from the June 17th Regular Meeting.

**Manager's Recommendation:**

Approve minutes.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">06-17-19_Regular_Meeting_draft.docx</a>	Regular Meeting Minutes	Backup Material

---





## BOARD OF COMMISSIONERS

**June 17, 2019  
MINUTES**

### **PRE-MEETING – 5:45PM**

❖ Projects Update

Deputy Manager Wayne Herron gave an update (*Exhibit Book 31*) on the various transportation projects throughout Town. Commissioner Miltich stated that he would like to review the revised QT plan when it is submitted.

Asst. Manager Tyler Beardsley gave an update on the construction of Nannie Potts Lane.

❖ ElectriCities Maintenance Discussion

ElectriCities Supervisor Don Mitchell gave an update on the Town's Substation and transformer maintenance.

❖ Closed Session

Mayor Washam called for motion to go into Closed Session to consult with the Town Attorney.

*Commissioner Miltich made a motion to go into Closed Session at 6:27PM. Commissioner Bilodeau seconded the motion and it passed unanimously, 5-0.*

Upon return from Closed Session, Mayor Washam stated that Manager Grant's annual review is due. He asked Commissioner Bilodeau for his assistance in compiling input from the other Commissioners and prepare to discuss on July 15<sup>th</sup>.

### **REGULAR MEETING – 7:00PM**

1. CALL TO ORDER

Mayor Washam called the meeting to order at 7:06PM.

2. DETERMINATION OF QUORUM

All commissioners were present for the meeting.

3. APPROVAL OF AGENDA

*Commissioner Miltich made a motion to approve the agenda as presented. Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Jim Duke led the pledge after a moment of silence was observed.

5. MAYOR/COMMISSIONERS/MANAGER REPORTS

Commissioner Bilodeau reported on the following:

- Attended the ASC Community Investment meeting on June 12<sup>th</sup>
- Attended the Four Town Dinner on June 13<sup>th</sup>
- Symphony in the Park will be held on June 22<sup>nd</sup> (6:00PM-10:00PM) at Bailey Road Park

Commissioner Ross reported on the following:

- Attended the four town dinner on June 13<sup>th</sup>

- Chamber – UNC Charlotte 49ers PowerLuncheon will be held at Northstone Country Club on June 20<sup>th</sup> (11:45AM-1:30PM); Focus Friday will be held on June 21<sup>st</sup> (8:30AM-10:00AM); and applications for the 23<sup>rd</sup> class of Leadership Lake Norman are now being accepted

Commissioner Miltich reported on the following:

- Attended the TAB meetings on June 4<sup>th</sup> and 10<sup>th</sup>
- Attended the four town dinner on June 13<sup>th</sup>
- Attended the Ocular Melanoma Task Force meeting on June 14<sup>th</sup>

Manager Grant reported on the following:

- Connecting Cornelius evening event will be held on June 18<sup>th</sup> at Eleven Lakes Brewery
- The Town Board meeting for July 1<sup>st</sup> has been cancelled
- Cornelius Police event Cool Off with a Cop will be held at Smithville Splash Park on July 12<sup>th</sup> (1:00PM-3:00PM)
- Antiquity Greenway project continues to progress
- Recognized newly hired police officers – Officers Heather Allen and Brian Cardona
- Recognized Lt. Steve Davis for earning his Associates Degree in Criminal Justice

Mayor Washam reported on the following:

- Attended the four town dinner on June 13<sup>th</sup>. Mooresville Mayor Miles Atkins presented plaques of gratitude and appreciation to Huntersville, Davidson and Cornelius for their support during their time of crisis with the shooting of Officer Jordan Sheldon. Mayor Washam presented the plaque to Chief Kevin Black
- The new Starbuck's Coffee is now open on West Catawba
- Connecting Cornelius morning event for July 1<sup>st</sup> has been cancelled

## 6. CITIZEN CONCERNS/COMMENTS

Leigh Altman introduced herself and stated that she was running for an At-Large seat on the Mecklenburg County Board of Commissioners.

## 7. MAYORAL PROCLAMATIONS

### A. Big Day at the Lake

Dave Yochum introduced the volunteers on the committee and stated that \$145K has been raised for this year's event to be held on July 20, 2019.

Mayor Washam executed and presented Mr. Yochum with a Big Day at the Lake Proclamation.

## 8. PRESENTATIONS

### A. Ten80 STEM League National Champs

Coach Brock Shipley introduced the STEM team members and gave an overview of the national championship competition in which the Hough Iditarod Motorsports finished in first place out of 30 teams across the US and China. This is the second consecutive National Championship for the team.

Mayor Washam presented the team with a certificate of recognition by the Town and congratulated them on their win.

B. Street Smarts Update

Asst. Planning Director Aaron Tucker gave an update on the Street Smarts program. He stated that the interactive map has identified approximately 100 issues by citizens that staff and TAB members are reviewing and responding to.

9. PUBLIC HEARING AND CONSIDERATION OF APPROVAL

A. REZ 04-19 The Forest at Bailey's Glen Phase 3

Mayor Washam called for a motion to reconvene the public hearing on REZ 04-19.

*Commissioner Miltich made a motion to reconvene the public hearing. Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

Deputy Manager Wayne Herron gave a brief overview of staff's 16 conditions. Commissioner Ross asked if the applicant has agreed to all 16 conditions. Deputy Manager Herron stated that he has.

Commissioner Naas asked if staff had looked at the need for a left turn lane on Bailey Road to Barnhardt Road. Deputy Manager Herron stated that according to NCDOT the traffic does not warrant a left turn lane or traffic improvements.

Mayor Washam invited the applicant to speak.

Mr. Jake Palillo – 17532 Sail View Drive, distributed aerial photos (*Exhibit Book 31*) of Mr. Violette's property and the views from the proposed rezoning site. He gave an overview of the conversations and meetings with Mr. Violette and his attorney during the past two weeks. Mr. Palillo stated that in his attempt to please Mr. Violette, he has limited the height of the light poles in the parking lot to 15 feet, he would donate 50 Giant Arborvitae to be planted for additional buffering on Mr. Violette's property, and if Mr. Violette would agree not to file a lawsuit he would help him get sewer access vs. putting in a septic system. Mr. Violette's attorney notified Mr. Palillo's attorney at 4:15PM that Mr. Violette would agree to the conditions but asked Mr. Palillo to sign a letter giving Mr. Violette the right to enforce regulations upon Mr. Palillo. Mr. Palillo stated that he has tried very hard to work through Mr. Violette's concerns but at this point he is finished negotiating. Commissioner Gilroy stated that the pictures are very helpful.

Mayor Washam invited the public to speak and the following comments were made:

Kevin Violette – 18320 Barnhardt Road, stated that he believed an agreement with Mr. Palillo had been reached and that his request for Mr. Palillo to sign a letter was to ensure performance. He still believes that internal connectivity should be made to the community in which the amenity center serves.

Attorney Ken Davies, representing Kevin Violette, thanked the Board for granting the two week extension. He stated that he believed that the agreement reached with Mr. Palillo included: preserving the tree line with the exception of what is required by NCDOT to be removed for line of sight triangles, filling in the gaps along the tree line with similar trees and spacing, the driveways to be used as one way in and one way out, the multiuse path to be located behind the tree line, 15' light poles in the parking lot, and no outdoor amplified sound after 10PM. Attorney Davies asked the Board to consider adding these specified conditions to the rezoning.



Commissioner Naas stated that in a retirement community he does not believe amplified music after 10PM will ever be an issue and finds it ironic that Mr. Violette is concerned with amplified noise, yet his family rides dirt bikes on their property. He believes that Mr. Palillo has done a great job in committing to conditions requested by Mr. Violette and as far as zoning enforcement is concerned, that's the Town's job.

Commissioner Gilroy suggested identifying the conditions that both parties are in agreement with and list them out. Deputy Manager Herron displayed a revised list of 18 Conditions (redline version) that incorporated requests made by Attorney Davies earlier in the afternoon. He outlined Conditions #6, 13, 17 and 18.

Attorney Bringewatt stated that as a procedural matter the Board could consider the redline version of conditions for approval as part of the conditional zoning if Mr. Palillo was in agreement with the revisions being presented (redline version). Mr. Palillo stated that he would agree to the revised conditions.

Kathy Martin – 17007 Morgan Evans Lane, stated that as a resident of Bailey's Glen she can assure Mr. Violette that noise from the amenity center will not be an issue. The community is rapidly growing and the amenity center will greatly benefit the residents of Bailey's Glen.

There being no further comments, Mayor Washam called for a motion to close the public hearing.

*Commissioner Ross made a motion to close the public hearing. Commissioner Naas seconded the motion and it passed unanimously, 5-0.*

*Commissioner Ross made a motion to approve Ordinance #2019-00708 to amend the zoning map with the revised 18 Conditions (redline version presented). Commissioner Miltich seconded the motion and it passed unanimously, 5-0.*

**Ordinance #2019-00708 is hereby made part of the minutes by reference.**

*Commissioner Miltich made a motion to approve Resolution #2019-00934 declaring REZ 04-19 is consistent with the Town's Land Use Plan and reasonable in the public's interest. Commissioner Naas seconded the motion and it passed unanimously, 5-0.*

**Resolution #2019-00934 is hereby made part of the minutes by reference.**

## 10. CONSIDERATION OF APPROVAL

### A. NC115 South Corridor Feasibility Study

Deputy Manager Herron introduced Ryan Eckenrode and Mickey Geiser with AECOM who gave a presentation on the NC115 corridor study. Mr. Eckenrode gave an overview of the project summary, proposed alternatives and cost estimates. He identified key issues, goals and objectives.

Commissioner Naas stated that he would like more time to review the study before making a decision to approve what has been presented. Commissioner Gilroy asked Deputy Manager Herron if he loved the study. Deputy Manager Herron stated that the study identifies what the stakeholders have asked for and from staff's standpoint the goals to relieve congestion and recommend alternative options have been met. He explained that the study gets the project into the hopper at CRTPO.

*Commissioner Miltich made a motion to approve the NC115 South Corridor Feasibility Study as presented. Commissioner Gilroy seconded the motion.*

Commissioner Naas asked that the approval be tabled until the July 15<sup>th</sup> meeting.

*Commissioner Miltich made a motion to continue the discussion until the July 15<sup>th</sup> meeting. Commissioner Naas seconded the motion and it passed unanimously, 5-0 (Commissioner Gilroy was not present for the vote but had not been excused).*

**B. Construction Contract for Nannie Potts Lane**

Asst. Manager Tyler Beardsley explained the bid process held for the construction of Nannie Potts Lane and stated the Blythe Development Co. was the only responsive bidder for both bid processes.

*Commissioner Miltich made a motion to award Blythe Development Co. the construction contract and authorize the Town Manager and Town Attorney to finalize the terms and conditions and execute the contract. Commissioner Gilroy seconded the motion and it passed unanimously, 5-0.*

**C. FY2019 Operating Budget Amendment**

Finance Director Julie Niswonger explained that the budget amendment recognizes a \$100K grant from the State to partially fund the design of the new Cain Center for the Arts; a \$25K grant from the State to fund performing arts at local schools; a \$50K grant from the NC Department of Environmental Quality for the Upper McDowell Creek Stream restoration; a \$19,341 increase to the police budget for insurance proceeds related to vehicle accidents; and a transfer of \$6,180 from the General Fund to the Caldwell Station Creek Greenway fund to zero out the project balance.

*Commissioner Miltich made a motion to approve Ordinance #2019-00709 to amend the FY19 Operating Budget as presented. Commissioner Naas seconded the motion and it passed unanimously, 5-0.*

**Ordinance #2019-00709 is hereby made part of the minutes by reference.**

**D. Capital Project Ordinance Amendment – CSCG**

Finance Director Julie Niswonger explained that the Ordinance amendment recognizes the \$6,180 transfer from General Funds to close out the project.

*Commissioner Miltich made a motion to approve Ordinance #2019-00710 amending and closing out the Capital Project Ordinance for Caldwell Station Creek Greenway. Commissioner Bilodeau seconded the motion and it passed unanimously, 5-0.*

**Ordinance #2019-00710 is hereby made part of the minutes by reference.**

**E. Capital Project Ordinance Amendment – Park Bonds**

Finance Director Julie Niswonger explained that the Capital Project Ordinance amendment for Park Bonds recognizes \$747K received in a NCDOT supplemental grant to fund construction costs associated with the Antiquity Greenway. She stated there is no impact to fund balance.

*Commissioner Miltich made a motion to approve Ordinance #2019-00711 amending the Capital Project Ordinance Park Bonds as presented. Commissioner Bilodeau seconded the motion and it passed unanimously, 5-0.*

**Ordinance #2019-00711 is hereby made part of the minutes by reference.**

11. CONSENT AGENDA

A. Tax Refunds = 1,240.19

B. Approve Minutes – Closed Session (June 3<sup>rd</sup>) (Approved 5-0)

C. Approve Minutes – Regular Meeting (June 3<sup>rd</sup>) (Approved 5-0)

*Commissioner Ross made a motion to approve the Consent Agenda as presented. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.*

12. COMMISSIONER CONCERNS

A. Noise Ordinance and Continued Noise Issues at BYE

Commissioner Naas asked if LDCAB will take another look at the Noise Ordinance to address the continued noise concerns coming from Boat Yard Eats (BYE). Deputy Manager Herron stated that it will be discussed at their meeting next Monday.

13. ADJOURNMENT

*There being no further business to discuss, Commissioner Ross made a motion to adjourn at 9:31PM. Commissioner Miltich seconded the motion and it passed unanimously, 5-0.*