

**Durham-Orange Transit Governance Study**  
**DCHC MPO Board Interim Update Memo – Spring 2022**  
**From: Adam Howell, AICP, Atkins**

Coordination across multiple agencies, jurisdictions, and stakeholders to achieve a specific goal requires clear direction and guidance. In 2021, through a partnership between Orange and Durham Counties, a need was identified for new Interlocal Agreements and supporting policies & procedures to be developed that reflected the priorities of updated transit plans. These sets of documents are to consider new or refined roles and responsibilities among the partners through a joint process. The primary partners include the County, DCHC-MPO and GoTriangle. This study kicked off in August 2021 and will align with each County's transit plan update schedule for adoption of a new ILA and approval of supporting policies and procedures.

### **Project Goals**

Goals were identified early on through a joint conversation between County representatives. Craig Benedict & Travis Myren participate for Orange County; Ellen Beckmann participates for Durham County. Critical aspects for this study to accomplish were identified to be:

- To create a clear, operationally efficient governance structure that ensures that Durham and Orange Counties' priorities are funded and implemented with the County transit taxes and fees.
- To form new levels of accountability, that includes development of an equitable set of processes which seek to gain community trust.

To achieve the identified needs and goals, the Counties, DCHC-MPO and GoTriangle selected Atkins to conduct this study. Atkins also partnered with Fountainworks to help facilitate joint stakeholder dialogues throughout the study process.

### **State Enabling Legislation**

There are key State Statutes that inform the purposes of this governance study:

- **N.C.G.S Chapter 160A** defines how a government body exists. A portion of this chapter (**Article 26 – 'Regional Public Transportation Authority Act'**) defines how such a body functions to support public transportation services.
- **N.C.G.S Chapter 105** defines how a government body is enabled to raise and provide revenue for necessary uses and purposes. A portion of this chapter (**Article 43 – 'Local Government Public Transportation Sales Tax Act'**) defines how such revenues can be raised for the specific purpose of public transportation services and associated governance oversight.
- **N.C.G.S. Chapter 153A** defines enumerated powers and responsibilities for County's, but also defines the County role with levying revenue sources to support public transportation services (property tax assessment only).

### **Study Process to date**

After the study kickoff, the process included two parallel tracks. The first is to review existing governance structures with respect to transit plan implementation/administration, both within the counties, as well as peer organizations (i.e., Wake County). The second is to develop a policies and procedures manual, which will be a set of support documents to guide detailed elements of each county's transit plan implementation efforts. The process to date has included the following major actions:

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Initial Stakeholder Interviews (Sept-Oct '21) – discussions with nearly 70 individuals from all local jurisdictions and regional coordinating agencies across Durham & Orange Counties that share an interest in public transportation investment. Goals of the interviews were to capture needs, wants and desires for how a new governance framework should serve the local and regional communities within and across the two counties.

Joint Elected Officials Workshop (Nov '21) – Facilitated a half-day forum, which included elected officials from each County and each local municipality within each County, to build on the Initial Stakeholder Interviews and begin to quantify desired level of change to be made on major elements that support a governance framework. A majority of elected officials in attendance indicated that there should be some aspect of change with almost every element highlighted. Such elements included:

- changing the structure to allow for more collaboration between municipalities within each County (*83% indicated more collaboration was needed*),
- defining a significant change in voting representation (both for governing board roles & responsibilities, as well as staff representation on the technical recommending body, the Staff Working Group; *100% indicated some level of change from existing framework regarding voting representation*), and
- as well as defining how the annual budget development and decision-making process to meet the desired change for greater representation (*67% indicated that some level of change was necessary to better define/guide the annual budget development and decision-making process*).

Wake County Transit Program Peer Interview (Dec '21) – learned from neighboring peer to the east, Wake County, regarding successes and challenges relative to the governance framework supporting the Wake County Transit Plan/Program.

Alternatives Development (Jan-Feb '22) – alternative concepts for consideration in a new governance framework were reviewed and developed. While peer examples were used as models to inform initial direction, the concept of a comprehensive governance framework was deconstructed to focus on the critical elements that were necessary for collaborative dialogue during joint stakeholder workshops by all stakeholders before moving forward.

Joint Staff Workshop #1 (Mar '22) – Facilitated a half-day workshop with staff from each of the four coordinating organizations (Durham & Orange Counties, DCHC-MPO and GoTriangle), as well as staff from City of Durham/GoDurham, Town of Chapel Hill/Chapel Hill Transit and Orange Public Transit. This workshop focused on 17 proposed alternatives (each with a proposed recommendation) for consideration across 5 major elements that should comprise a transit plan governance framework. These 5 major elements are:

- Membership
- Voting Structures
- Financial Planning
- Multi-Year Plan Development
- Annual Work Program Development

Workshop participants were asked to provide feedback on each proposed alternative and the indicated recommendation. Upon conclusion of each topic's discussion, a 'pulse-check' confirmation was sought to provide direction on how to best incorporate language in draft governance documents. Many proposed

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recommended alternatives were met with consensus by all participants. Where a consensus was not met, one or more parties offered an alternative perspective for further consideration by all parties.

Joint Staff Workshop #2 (Apr '22) – Facilitated a two-hour workshop with same staff representation as the Joint Staff Workshop #1. This workshop focused on 6 proposed alternatives (each with a proposed recommendation) for consideration across the 5 major elements from the first workshop. All topics discussed were items that were either tabled to allow for further research OR were highlighted as related elements during the first Joint Staff Workshop.

**Major Outcomes from Joint Staff Workshops #1 & #2**

The table on the following page highlights the topics discussed. The colors indicate action taken by the participants:

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Joint Stakeholder Workshop #1 (Mar '22)			Joint Stakeholder Workshop #2 (Apr '22)	
Membership	Durham County Primary Agreement (ILA)		Orange County SWG (SWG Bylaws)	
	Orange County Primary Agreement (ILA)			
	Durham County SWG (SWG Bylaws)			
	Orange County SWG (SWG Bylaws)			
Voting Structures	Durham SWG (ILA Defined)		Orange County SWG (ILA defined; SWG Bylaws)	
	Orange SWG (ILA Defined)			
	SWG Quorum (SWG Bylaws)			
	SWG Chair & Assignment Role (SWG Bylaws)			
	Voting on Annual Work Program (& Budget) Approval (ILA)			
	Conflict Mediation (ILA)			
Financial Planning	Critical Definitions – Revenue (ILA)		Equitable Use of Net Proceeds	
	Critical Definitions – Model & Financial Plan (ILA)		Supporting Increased Cost of Existing Services	
	Equitable Use of Net Proceeds (ILA)			
	Process Definitions – Financial Model & Plan Development (ILA)			
	Financial Policy Needs (supporting policy outline)			
Multi-Year Plan Development	Multi-Year Vision Plan Update – Elements & Process (ILA)		Multi-Year Plan Development Amendment Process & Thresholds for Initiation/Approval	
Annual Work Program Development	Annual Work Program Elements Defined (ILA)		Annual Work Program Amendment Process & Thresholds for Initiation for Initiation/Approval	
Consensus by all Appropriate Parties on Proposed Recommendation		Majority/Minority Perspectives Documented	Tabled for Further Discussion*	Consensus, but desire for more detail/discussion

\*Topics were either tabled or highlighted during the 1<sup>st</sup> Joint Stakeholder Workshop; All became points of discussion during the 2<sup>nd</sup> Joint Stakeholder Workshop

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**Primary Outcomes Resulting from Consensus at both Workshops**

Overall, several sections of an updated ILA will contain references to state statutes and provide additional context as needed. This will help to ensure that any user or party of the ILA will be fully informed on requirements that enable further terms of each County's new ILA.

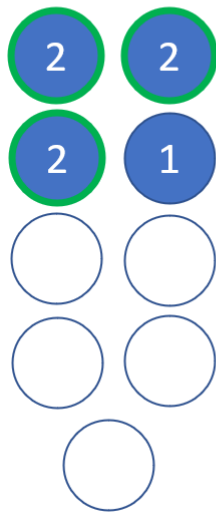
Membership to new Primary Agreement (ILA)

Parties to each County Transit Plan ILA agreed that the primary signatories to the primary agreement (updated ILA) should be maintained. Each agreement would include the following parties ONLY:

- Durham or Orange County
- DCHC-MPO
- GoTriangle

Membership & Voting Structure to Durham County Staff Working Group (SWG)

## Recommended Alternative



### Voting Members:

- Durham County
- DCHC-MPO
- GoTriangle
- City of Durham

PAS = 2 Votes each

Non-PAS = 1 vote each

### Non-Voting Members:

- Research Triangle Foundation
- TJCOG
- Duke University
- NC Central University
- Durham Tech

### Legend



PAS = Primary Agreement Signatory with vote(s)



Non-PAS with vote(s)



Non-Voting Members

Critical Definitions to include in the ILA

Differentiating between County Tax Revenues and Non-County Tax Revenues that are eligible to support public transportation services.

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Clearly defining terminology for all parties – Annual Work Program, Financial Model, Financial Plan (with references to N.C.G.S 105-508.1(2)) and the Transit Plan (multi—year vision plan)

Processes that dictate County management and finance staff involvement in the development of the financial model and any updates made to the financial plan, as well as all elements of the annual work program. This includes the creation of a new working group, convened by each County and comprised of the primary ILA parties, which is responsible for providing final recommendation of the financial model, financial plan and annual work program updates to the SWG.

Defined Outline for New Financial Policy

The recommendation is to develop a set of comprehensive, but efficient financial policies based on the elements defined below. Roles assigned based on the agency acting as Tax District Administrator, and should be adopted by the County BOCC and GoTriangle BOT.

- 1. Non-Supplantation Clause (referencing NCGS 105-508.2 & 105-564; dates for which non-supplantation applies to pre-sales-tax general and/or other funding appropriations)*
- 2. Fund Balance (for both Operating & Capital) & Liquidity (tying procedures back to the financial model development)*
- 3. Incorporating existing Policy/Guidance documentation (3/2021) to maintain carryover protocols for both Capital & Operating Funds.*
- 4. Billing, Payment & Reimbursement Policy/Guidelines*
- 5. Debt Policy & Guidelines*

New Definitions for Required Elements in the Multi-Year Vision Plan Update (Transit Plan) and the Annual Work Program (to be defined in the ILA):

Multi-Year Vision Plan Elements

1. Multi-Year Capital Improvement Plan
2. Multi-Year Operating Program
3. Update of the Financial Model Assumptions (if applicable)

Annual Work Program Elements

1. Annual Operating Budget Ordinance
2. Annual Tax District Administration Budget (which should include all revenues, with restrictions notes)
3. Reference to Multi-Year Capital Improvement Plan
4. Annual Capital Budget Ordinance
5. Reference to Multi-Year Operating Program
6. Update of the County Transit Financial Plan
7. Multi-Year Capital Funding Agreements or Master Agreements
8. Multi-Year Operating Agreements or Master Agreements

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Defining Equitable Use of Net Proceeds

This was a topic originally highlighted during the 1<sup>st</sup> Joint Stakeholder Workshop, which was tabled due to a desire for more clarity beyond originally presented definitions. During the 2<sup>nd</sup> Joint Stakeholder Workshop, a simple yet firm definition was provided and a level of consensus was achieved from all four parties. This definition essentially states:

With reference to N.C.G.S 105-108.1 – the revenues collected in a County must be spent for the benefit of that county. That does not mean they have to be spent in the County. Furthermore, for Cross-County project application - The rates that are negotiated on some agreed upon periodic basis by the counties are by definition equitable. A cost-share agreement should be developed and include committed funding allocations from each party - either by percent or by dollar amount (applicable to major projects ONLY – *alternative thresholds for ‘major’ to be suggested in draft agreement documentation*) . And, finally, If a County was to secede from the special district, they should provide tax district administrator a 1-year notice to allow for proper reallocation of costs that support administration and operations of plan implementation.

**Topics Achieving Consensus – BUT Further Refinement Still Necessary**

Supporting Increased Cost of Existing Services (ICES)

A series of alternative split-formulas were discussed by all parties. A specific formula that suggested focus of the ICES be maintained at the level of funding committed as of a certain date, and not routes or specific service issues. The suggested formula also considered a limitation (or ‘cap’) that would prevent transit service providers receiving more than a certain agreed upon value/proportion from a specific revenue source, which should be negotiated annually. This suggested formula would provide all transit providers access to ICES (whereas currently, GoTriangle is not eligible to claim funding to support ICES). All stakeholders agreed with the new logic but want to understand the impact on the financial model before codifying something new.

Multi-Year and Annual Work Program Amendment Process and Thresholds

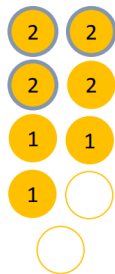
A robust discussion was had around suggested language to incorporate to define process for developing/reviewing amendments, as well as what thresholds trigger such process. While clear direction was not fully achieved, the group engaged in cooperative dialogue that helped frame expectations beyond the existing ILA. The process should follow the annual work program approval process (which a majority of stakeholders agreed upon), first through a recommendation by the SWG, and then review by the County and then GoTriangle. If thresholds are triggered, the process for review/approval consideration is at the Board level; if thresholds are not met, the process for review/approval consideration is at the management level. All stakeholders desired a couple options of thresholds be included in draft ILA documentation prior to any final codification.

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**Topics Resulting in both a Majority & Minority Perspective**

Membership to the Orange County SWG & Associated Voting Structures (both workshops)

**Confirmed Alternative**  
**From March 1<sup>st</sup> Workshop**



**Voting Members:**

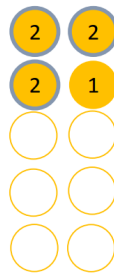
- Orange County
  - Administration & Planning
- DCHC-MPO
- GoTriangle
- Town of Chapel Hill
  - Administration & CHT
- Town of Carrboro
- Town of Hillsborough
- City of Mebane

PAS = 2 Votes each  
 Non-PAS = 1 vote each

**Non-Voting Members:**

- TJCOG
- UNC Chapel Hill

**GoTriangle Preferred Alternative**



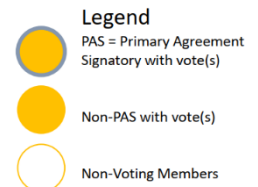
**Voting Members:**

- Orange County
  - Administration & OPT
- DCHC-MPO
- GoTriangle
- Chapel Hill Transit

PAS = 2 Votes each  
 Non-PAS = 1 vote each

**Non-Voting Members:**

- TJCOG
- UNC-Chapel Hill
- Town of Chapel Hill
- Town of Carrboro
- Town of Hillsborough
- City of Mebane



- Confirmed alternative from March 1<sup>st</sup> Workshop was confirmed by Orange County & DCHC-MPO.
  - Justification aligned with the Joint Elected Officials Workshop to allow for greater coordination with municipalities in the county.
- GoTriangle's alternative still invites municipalities to the table, but with no formal voting representation.
  - GoTriangle expressed that transit operators (outside of the three Primary Agreement Signatories) should be only entities to have a formal vote on plan implementation efforts.

Voting on Annual Work Program & Budget Approval Process

Proposed language to include in a new ILA:

Upon receipt of the documents of the County Transit Work Program from the SWG's recommendation, the Board of Commissioners should have first review, hold a public hearing and vote. The BOCC would have the opportunity to:

1. Approve the County Transit Work Program
2. Deny and Develop a list of Significant Concerns and/or technical issues with the work program and seek revision from staff, allowing for a subsequent review/approval process with the BOCC.

Upon approval by the County BOCC, GoTriangle should continue in practice to approve each County Transit Work Program, which includes annual budgets administered by GoTriangle on behalf of each County. GoTriangle should not be able to make changes once received from the County BOCC approval but can choose to approve or deny and develop list of Significant Concerns.

This language was confirmed by both Orange and Durham Counties, as well as DCHC-MPO to be incorporated in draft governance frameworks. This would allow the County BOCC first opportunity to review and have more direct involvement in annual work program development.

GoTriangle raised concerns over schedule related to how annual work program and budget should reach the GoTriangle BOT with the BOCC now being recommended to review first.