

**Item Title:** Public Hearing on a Request to the North Carolina Board of Transportation to Close and Abandon the Right-of-Way for Old Kit Creek Road in the Research Triangle Park Area (Petition ROW-A-01-16)

**Specific Action Requested:**

**That the Board of Commissioners holds a public hearing and approves a request to the North Carolina Board of Transportation to close and abandon the right-of-way for Old Kit Creek Road (SR 1639) in the Research Triangle Park area.**

**Item Summary:**

**Background**

Rights-of-way are the strips of publicly dedicated land that are intended for the construction of roads, which are generally centered within the rights-of-way. In North Carolina, public rights-of-way/roads are either state-maintained (i.e.—North Carolina Department of Transportation, NCDOT) or they are municipally-maintained. There are no county-maintained roads.

The subject right-of-way, and the adjoining properties, are located in the Research Triangle Park area and are bordered by Davis Drive to the west, Kit Creek Road to the north, and an access ramp to the Triangle Parkway/NC 540 to the east and south. The Old Kit Creek Road right-of-way bisects land that is known as Site 20 by The Research Triangle Foundation and consists of Tract “A”, which is 9.699 acres, the subject Old Kit Creek Road right-of-way, and Tract “B”, which is 15.196 acres. The subject right-of-way is 0.19 miles long and constitutes an area of 1.692 acres. The requested abandonment includes the formal Old Kit Creek Road right-of-way and two triangular sections on either side of the Old Kit Creek Road intersection with Davis Drive (see attached survey). The subject right-of-way is 60 feet wide and contains an existing gravel roadway that is 20 feet wide.

This petition for closure and abandonment of the right-of-way of Old Kit Creek Road (SR 1639) was submitted originally by Tyler Ware of WSP Legacy Corp. on behalf of The Research Triangle Foundation (see attached letter). Site 20 was recently cut out of a much larger, 642-acre +/- parcel that is owned by The Research Triangle Foundation to allow for the sale of the subject site to Integrated DNA Technologies (IDT), who acquired the property on December 22, 2016. IDT then became the successor to the petition to abandon the Old Kit Creek Road right-of-way (see letter from Larry McBennett of Everett Gaskins Hancock, LLP dated December 23, 2016).

**History of Old Kit Creek Road and Purpose of Right-of-Way Abandonment**

This right-of-way is being closed and abandoned because the public road is no longer needed as segments of Old Kit Creek Road were replaced by Kit Creek Road in a more northerly alignment in the 1990s and early 2000s thereby rendering Old Kit Creek Road obsolete. The county approved requests for right-of-way abandonments for other segments of Old Kit Creek Road, west of Davis Drive, in 1994 and 2001, but NCDOT had requested at that time that this segment, east of Davis Drive, be kept open because it provided access to a residential area, and, subsequently, to some construction trailers

that were used by contractors during the construction of the Triangle Parkway/NC 540. That access is no longer needed because the relevant homes were acquired as part of the highway's right-of-way, and the construction trailers were removed upon completion of the work on the highway.

The abandonment of this segment of Old Kit Creek Road will allow for that right-of-way area to be recombined with Tract "A" and Tract "B" as shown on the attached survey thus allowing the creation of a new lot, Site 20, that is more functionally usable as a unified development site. The construction of IDT's facilities on Site 20 will result in economic development, increase the tax base, and create jobs—all of which are in the public interest.

### **Right-of-Way Closure and Abandonment Process**

The North Carolina General Statutes (NCGS) section 153A-241 effectively limits county authority to only closing "paper streets"—roads that are shown as rights-of-way on recorded plats, but were never constructed or opened to traffic. In this case Old Kit Creek Road was constructed many years ago and it was accepted and maintained by NCDOT up until January 21, 2014 when NCDOT deleted it from its active maintenance system. However, the right-of-way remains open until formally closed by the State Board of Transportation upon request by the Wake County Board of Commissioners. Based upon NCGS 153A-241, Wake County cannot directly close and abandon this right-of-way.

However, NCGS 136-63 (a) provides that "The board of county commissioners of any county may, on its own motion or on petition of a group of citizens, request the [state] Board of Transportation to change or abandon any road in the secondary system when the best interest of the people of the county will be served thereby." A 1979 court case upheld that when a road within a county is, or has been, maintained by NCDOT, that NCGS 153A-241 (and its notification standards) did not apply, and NCGS 136-63 controls the process for a county board of commissioners to take action to close and abandon the right-of-way. However, neither NCGS 136-63 nor the court case provided any details about the closure process or the notification requirements. It merely notes that the county board of commissioners can make a request and that the "Board of Transportation shall thereupon make inquiry into the proposed change or abandonment, and if in its opinion the public interest demands it, shall make such change or abandonment".

In consultation with the County Attorney's office it was determined that the best (i.e.—most open and transparent) way to reconcile the deficiencies of 153A-241 and 136-63, and to fill in the gaps between those statutes, was for the Board of Commissioners to hold a public hearing, receive public comment and, if approved, to package our staff report, the Commissioners' meeting minutes, and the adopted resolution and forward it to the NCDOT District Engineer with a request for the Board of Transportation to formally close and abandon the right-of-way.

This process will cover/address some of the gray parts of the state law. In particular, it will:

- (1) Provide a clean, formal request from the Wake County Board of Commissioners to the state Board of Transportation;
- (2) Establish a record that the Board of Transportation can use to "make inquiry into the proposed change or abandonment";
- (3) Establish the basis for their "public interest" determination; and
- (4) Provide public notice that would otherwise not occur since NCGS 136-55.1 gives the state an exception to their standard 60-day notice for "roads abandoned on request of the county commissioners".

In preparation for the public hearing the Wake County planning staff took the following measures:

- Published legal advertisements once per week for two consecutive weeks in the News and Observer newspaper.
- Mailed letters to all property owners adjoining the subject right-of-way
- Posted signs in two locations along the subject right-of-way

An exempt plat will be filed upon the abandonment, if approved, to recombine Tract "A" (north of Old Kit Creek Road), Tract "B" (south of Old Kit Creek Road), and the Old Kit Creek Road right-of-way into one 26.587-acre lot. As per § 153A-241 "the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility".

Coincidental replacement easements have been agreed to between IDT and Frontier Communications of the Carolinas, LLC and Duke Energy Carolinas, LLC to create a 15-foot wide easement for each utility company centered upon the existing gravel road that lies within the Old Kit Creek Road right-of-way. All parties have further agreed that these easements are subject to being reconfigured and moved to another location within Site 20 to allow for a fuller development potential of the site.

If the Board of Commissioners and the state Board of Transportation approve the request to close and abandon this right-of-way, then the abandoned right-of-way area will be recombined, via plat recordation, with the adjoining properties (i.e.—Tract "A" and Tract "B"). In this case all of the adjoining land is owned by Integrated DNA Technologies, Inc., who is now the petitioner of record.

### **Staff Findings**

1. The closure and abandonment of the Old Kit Creek Road right-of-way will not deny access to any property owner.
2. Old Kit Creek Road was deleted from NCDOT's road maintenance program in January 2014.
3. Old Kit Creek Road is not listed in the Wake County Thoroughfare Plan and the road closure and right-of-way abandonment will not be detrimental to the public interest.
4. The adjoining property owners (IDT), The Research Triangle Foundation, and NCDOT are in support of the request to close and abandon the Old Kit Creek right-of-way.

5. The abandoned right-of-way area, if approved, will be recombined with the adjoining properties, which are both owned by IDT.

**Staff Recommendation**

That the Board of Commissioners requests, via the attached resolution, that the North Carolina Board of Transportation close and abandon the right-of-way for Old Kit Creek Road.

**Attachments:**

1. Presentation
2. Maps
3. Survey of the Subject Right-of-Way and Adjacent Parcels
4. Original Petitioner's (WSP for RTF) Letter of Request
5. Letter of Assumption of Role of Petitioner for IDT
6. NCDOT Maintenance System Deletion
7. Resolution