



Wake Transit Concurrence Process

Adopted Feb. 2019

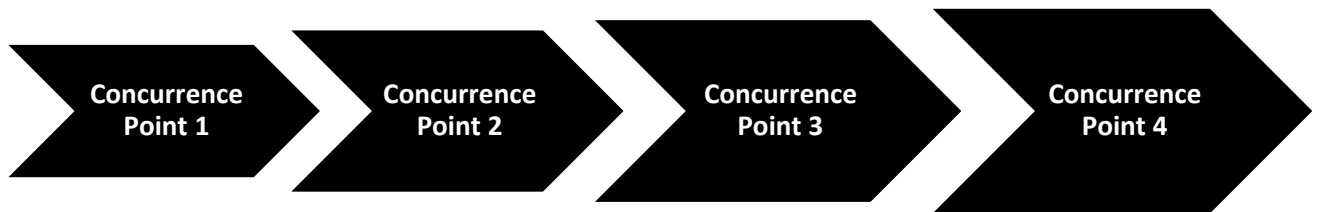
GO FORWARD
A COMMUNITY INVESTMENT IN TRANSIT

Background and Introduction

Concurrence is a process in which Sponsors of major Wake Transit *Capital Projects*¹ may, with respect to such Projects, verify compliance with: **Laws, regulations, and policies enacted and/or enforced by agencies having regulatory authority over a resource or interest² that may be substantially impacted by the project.** The Concurrence Process arises at key project milestones throughout: (1) Project development³ and permitting and, if applicable to the project, (2) Final design, right-of-way/land acquisition, construction, or other subsequent phases. These milestones, or points, are known as Concurrence Points.

Concurrence Points are distinct to the nature and magnitude of impacts anticipated for each project. Specific sequential Concurrence Points are identified in a project-specific Concurrence Plan. Concurrence Points cumulatively build over the course of project development and subsequent phases such that Concurrence at prior milestones informs the trajectory of project implementation that leads to future milestones. It is anticipated that Project Sponsor actions, and project trajectories, will be informed and improved by the Concurrence Process.

Figure 1: Sequential/Cumulative Nature of Concurrence Process



Concurrence signifies that an agency does not object to a Project Sponsor-proposed action or project implementation approach at a Concurrence Point. More particularly, it signifies that the agency does not object to the proposed action in light of impacts to resources or interests over which the agency has regulatory authority. Concurrence further signifies that the agencies will abide by their Concurrence unless there is a profound changed condition upon which the proposed action was based. Non-Concurrence signifies an objection based upon an agency’s finding: (1) That the proposed action or approach to project implementation is in conflict with the laws, regulations, or policies under its jurisdiction; (2) That the proposed action or approach to project implementation has substantial negative impacts on a resource or interest over which the

¹ The Concurrence Process arises under provisions of the Transit Governance Interlocal Agreement (“ILA”) of May 18, 2016. Terms used and defined in the ILA appear in italics.

² Applicable resources or other potentially impacted interests may include, but are not necessarily limited to, jurisdiction over land use and supporting infrastructure, natural and human environmental resources, cultural resources, or impacted facility maintenance responsibility.

³ Project Development (PD) is the general term used to describe the advanced planning, preliminary architectural/engineering design, and applicable environmental compliance necessary to implement *Capital Projects*. Concurrence Points will coincide with key project milestones referenced in federal environmental compliance documents (i.e., National Environmental Protection Act [NEPA] process).

agency has regulatory authority; or (3) That information provided is not adequate for Concurrence.

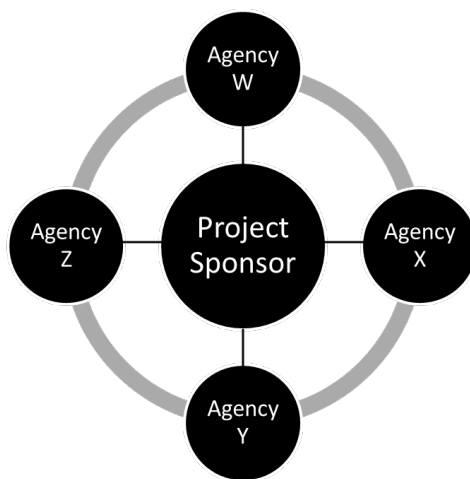
The Concurrence Process **does not** establish a project-level steering committee or working group. It **does not** provide a platform for expression of opinions or positions. It **does not** authorize a project or an *Implementation Element* of a project. It **does not** authorize financing for a project. The Concurrence Process is an inter-agency verification of compliance process, involving only the agencies having regulatory responsibility as previously noted. Further, the Concurrence Process is not legally binding upon the agencies which are involved. For example, an environmental permitting agency may concur on a given matter, but that Concurrence does not bind the agency to ultimately issue a permit.

VALUE OF THE CONCURRENCE PROCESS

The Concurrence Process is a mechanism that streamlines and expedites the process of securing verification that proposed actions at key project milestones are consistent with the laws, policies and regulations of other agencies. Without the Concurrence Process, the Project Sponsor would be forced to coordinate with other agencies on an individual basis. It would accordingly be difficult to balance the various agencies' mandates, policies, laws, or regulations.

A major goal of the Concurrence Process is to bring order to what can easily be an unwieldy and excessively time-consuming process. Agencies having regulatory jurisdiction over an impacted resource or interest are much better positioned to provide guidance to a Project Sponsor if they have knowledge of and understand the nature of other agencies' interests in the project. Accordingly, the involved agencies may collaboratively react to proposed actions or approaches to project implementation at key project milestones so that compromise-based choices can be made (Figure 2).

Figure 2: Project Sponsor Verifying Compliance with Agencies as a Team



The Concurrence Process is substantially similar to the North Carolina Department of Transportation's (NCDOT's) Merger Process. The NCDOT Merger Process streamlines verification

of compliance associated with environmental permitting and project development, which is required for major transportation projects. The Merger Process has allowed projects to move more quickly through these required processes. A similar framework for major Wake Transit *Capital Projects* is likely to have similar benefits.

RELATIONSHIP TO WAKE TRANSIT WORK PLAN

Under the Wake Transit Governance Interlocal Agreement (*Governance ILA*), investments which will be made with Wake Transit Tax Revenues are determined through the adoption of the annual *Wake Transit Work Plan*. The annual *Wake Transit Work Plan* prescribes funding, general scope details, designation of each Project Sponsor, and year of implementation for a range of project *Implementation Elements*.

The annual *Wake Transit Work Plan* does not address all project-level details for each *Implementation Element*, nor does the *Wake Transit Work Plan* govern or inform all decisions to be made throughout the execution of each *Implementation Element*. The Concurrence Process informs decision making that is internal to an individual project or *Implementation Element* that has been authorized and funded in a *Wake Transit Work Plan* and for which an operating or capital funding agreement has been executed. The Concurrence Process should facilitate completion of *Implementation Elements*, so that the *Wake Transit Work Plan* may authorize subsequent phases or elements of major *Capital Projects*. This Concurrence Process is developed pursuant to Section 3.03 of the *Governance ILA* as a detailed strategy for major *Capital Projects*.

Concurrence Roles and Responsibilities

The group of agencies involved in the Concurrence Process for each applicable project is known as the Concurrence Team. The Concurrence Team is composed of a Project Sponsor, Cooperating Agencies, and Participating Agencies. The composition of agencies on each Concurrence Team will vary, depending on the project's geographic location and scope. The determination of the composition of a Concurrence Team and its progression through the Concurrence Process is facilitated and staffed by a Concurrence Administrator, in support of and in cooperation with the Project Sponsor. The Capital Area Metropolitan Planning Organization (CAMPO) will serve as the Concurrence Administrator for the Concurrence Process.

Each role on the Concurrence Team has a defined set of responsibilities in moving the Concurrence Process forward, and in satisfying National Environmental Protection Act (NEPA) compliance requirements:

Concurrence Team Role	Responsibilities
Project Sponsor	Role assigned through adoption of <i>Wake Transit Work Plan</i>
	Initiates project and takes responsibility for its implementation
	Identifies Cooperating Agencies and Participating Agencies with Concurrence Administrator
	Identifies necessary project Concurrence Points with Concurrence Administrator and Cooperating Agencies

	Leads project through Concurrence Points and proposes project-level actions or implementation approaches at corresponding key milestones
Cooperating Agency	Federal, state, or local agency with legal jurisdiction over aspects of project implementation or with respect to resources the project can reasonably be anticipated to impact
	Develops information and/or prepares analyses related to verification of proposed actions' compliance or noncompliance with regulations, policies, or laws under its jurisdiction
	Has capability of voting on Concurrence or Non-Concurrence in response to proposed actions at key project milestones
Participating Agency	Is invited to Concurrence Meetings and may provide input throughout the Concurrence Process
	Does not have legal jurisdiction over aspects of project implementation or with respect to resources the project can reasonably be anticipated to impact
	Does not have capability of voting on Concurrence or Non-Concurrence in response to proposed actions at key project milestones

COMMUTER RAIL CONCURRENCE TEAM

In addition to the regularly-appointed members of a Concurrence Team, commuter rail projects subject to the Concurrence Process should also have the following agencies as Cooperating Agency members: (1) The North Carolina Railroad Company; (2) Impacted freight rail operators; (3) The North Carolina Department of Transportation; (4) Any metropolitan planning organizations (MPOs) or rural transportation planning organizations (RPOs) with impacted jurisdiction; and (5) Any county governments with impacted jurisdiction.

EXECUTIVE TRANSIT TEAM

An Executive Transit Team will be formed to resolve disputes in the event of Non-Concurrence by a Cooperating Agency, or in the event the Project Sponsor and the Concurrence Administrator are unable to agree on the composition of the Concurrence Team. In contrast with Concurrence Team composition, the Executive Transit Team should be composed of officials, principals or executives, as applicable, from the Cooperating Agencies and the Wake Transit Governance ILA parties. More information on the Executive Transit Team's role is provided in **Section 5: Dispute Resolution Process** of the **Concurrence Practitioner Guide**.

CONCURRENCE PLANS AND MEETINGS

After the initial composition of the Concurrence Team is identified, the Project Sponsor will coordinate with the Concurrence Administrator and Cooperating Agencies to develop a project-specific Concurrence Plan that identifies Concurrence Points, a tentative schedule, Concurrence Team and Executive Transit Team (as described in **Section 5** of the **Concurrence Practitioner Guide**), and the responsibilities of each member. The Project Sponsor will serve as the Chair of the project Concurrence Team and will lead Concurrence Meetings. Further and more specific

information related to Concurrence Team roles and responsibilities is provided in **Appendix B** of the **Concurrence Practitioner Guide**.

Projects Subject to the Concurrence Process

At a minimum, the following *Capital Project* types utilizing Wake Transit funds are subject to the Concurrence Process.

1. Fixed guideway projects (e.g. bus rapid transit [BRT], commuter rail transit [CRT], or light rail transit [LRT])
2. Shared park-and-ride facilities (P&R)
3. Shared bus transit centers
4. Shared maintenance facilities
5. Infill and additional fixed guideway stations

In addition to the project types identified above, the Project Sponsor and the Concurrence Administrator will use the following screening criteria to identify any additional major *Capital Projects* that will follow the Concurrence Process:

- Facilities exceeding \$1,000,000 in total cost that are proposed to be shared by other organizations or transit agencies that are not the Project Sponsor;
- Facilities exceeding \$1,000,000 in total cost that will traverse or impact other jurisdictions beyond that of the Project Sponsor; or
- Facilities that have the potential to present significant impacts to the legal, regulatory, or policy interests of other public agencies.

Only major *Capital Projects* utilizing Wake Transit funds are subject to the Concurrence Process. Smaller capital, operations, and systems infrastructure projects **will not be** subject to the Concurrence Process. A listing of project types that are not subject to the process is provided in **Section 3** of the **Concurrence Practitioner Guide**.

Concurrence Points

Concurrence Points are defining points in the Concurrence Process at which Project Sponsors propose, and the Concurrence Team considers, actions or project implementation approaches at key project milestones. Concurrence implies that each Cooperating Agency concurs with proposed actions at these defining points in the project, and in so doing, pledges to abide by the Concurrence, unless there is a profound change in conditions. When appropriate, multiple Concurrence Points may be addressed at a single Concurrence Meeting, or a Concurrence Point that is common to two or more projects may be addressed at a single Concurrence Meeting of both/all applicable Concurrence Teams.

COMMON CONCURRENCE POINTS

The following are typical Concurrence Points for major *Capital Projects*. Some Concurrence Points identified here may not apply to a particular project, or additional Concurrence Points may be identified as determined by the Project Sponsor, Concurrence Administrator, and Cooperating

Agencies. As previously mentioned, Concurrence is sequential and must be considered in proper order. Further information on the meaning of these common Concurrence Points is provided in **Section 4** of the **Concurrence Practitioner Guide**.

Concurrence Point 1: Purpose and Need

Concurrence Point 2: Identify Study Alternatives Carried Forward

Concurrence Point 3: Alternatives Screening Process

Concurrence Point 4: Avoidance and Environmental Minimization

Concurrence Point 5: Locally Preferred Alternative (LPA) Recommendation

Concurrence Point 6: National Environmental Protection Act (NEPA) Assessment

Concurrence Point 7: LEDPA Recommendation

Concurrence Point 8: Additional Federal Process-Related decisions

Concurrence Point 9: Agreement with Jurisdictions for Additional Decision Points

Further Concurrence Points: As Needed

Additional Concurrence Points may be necessary as each project works through the project development process or subsequent phases, but these have not been identified here. It is the responsibility of the Project Sponsor and Cooperating Agencies to identify other necessary Concurrence Points after the selection of a least environmentally damaging preferred alternative.

The completion of the Concurrence Process for applicable *Capital Projects* will be a requirement of project-level agreements. All Concurrence Points must achieve full Concurrence before a subsequent project phase may be funded in the *Wake Transit Work Plan*.

CONCURRENCE DOCUMENTATION

After discussion and an opportunity for the Project Sponsor to provide any requested information, each Cooperating Agency member will vote to: Concur or Non-Concur. The Cooperating Agency Concurrence Team representative, as well as the respective Executive Transit Team members, are authorized to execute Concurrence Forms for major capital transit projects. Concurrence from all Cooperating Agencies shall be obtained before a Project Sponsor may proceed to a subsequent Concurrence Point. **Accordingly, Concurrence must be unanimous among Cooperating Agencies on a Concurrence Team.**

If an agency decides to Non-Concur, the agency should provide written justification for its decision to all Cooperating Agency members. The Project Sponsor and Cooperating Agencies are encouraged to attempt to resolve issues that cause Non-Concurrence as much as possible before

or when Non-Concurrence is rendered. A vote of Non-Concurrence should not be entered based on a lack of information without affording the Project Sponsor a reasonable opportunity to provide the requested information.

RE-EVALUATION OF CONCURRENCE POINTS

Having concurred at a particular Concurrence Point, a Concurrence Team member will not request to revisit previous Concurrence Points unless there is new substantial information that warrants a reevaluation. Examples of such instances warranting reevaluation might include, but are not limited to:

- A change in the assumptions on which the project purpose or need was based;
- Significant changes to project elements (these would need to be defined by Project Sponsor and agreed to by Cooperating Agencies);
- A change in regulatory authority that extends regulatory jurisdiction to include an area or resource that was not previously regulated;
- Discovery of an impact, resource, or additional information that was not previously identified or did not previously exist; or
- Discovery of engineering limitations.

CONCURRENCE LIMITATIONS

The Concurrence Process is not a mechanism for making substantial changes to *Implementation Elements* or deviating from the approved *Wake Transit Plan* or *Wake Transit Work Plan*. If alternative *Implementation Elements* (or details of such *Elements*) deviate from the scope or budget set forth for the *Implementation Element* in an annual *Wake Transit Work Plan* as a result of the Concurrence Process, or which are otherwise inconsistent with the *Wake Transit Plan* or *Wake Transit Work Plan*, then such matters will be subject to the adopted policies and processes for amending the *Wake Transit Plan* and *Wake Transit Work Plan*. Further, nothing herein abrogates any rights or remedies of Wake County, GoTriangle or CAMPO under the Wake Transit Governance ILA.

Dispute Resolution Process

It is recognized that there may be instances at which the Concurrence Team cannot reach Concurrence due to conflicting policies, regulations, or laws. If Concurrence Team members of one or more agencies cannot concur, the general following guidance for dispute resolution applies.

DISPUTE RESOLUTION PROCEDURE

The Executive Transit Team will be convened in the event of Non-Concurrence by a Cooperating Agency, or in the event the Project Sponsor and the Concurrence Administrator are unable to agree on the composition of the Concurrence Team. Executive Transit Team members must be formally notified of a Non-Concurrence event and provided with a written explanation for the Non-Concurrence by the non-concurring party. Any Cooperating Agency or Executive Transit Team Member may initiate the dispute resolution process by providing a written request to the Project Sponsor responsible for the project, with a copy to the Concurrence Administrator. The

written request should state the specific reasons for the request to initiate the dispute resolution process.

CAMPO is responsible for administering the dispute resolution process. CAMPO will coordinate a tentative Executive Transit Team meeting to be held within 30 days from the date of Non-Concurrence or the request to initiate the dispute resolution process or as soon as possible otherwise. This date will be coordinated with all parties. Executive-level management and Concurrence Team members from the non-concurring agency or agency requesting to initiate the dispute resolution process will be invited to present information for the Executive Transit Team to consider. All Concurrence Team members may attend. It is expected that the Executive Transit Team will be able to reach a decision on Concurrence at the meeting or shortly thereafter. If the Executive Transit Team determines that additional information is needed, a decision on Concurrence will be delayed until the information is obtained.

After the Executive Transit Team makes a decision on Concurrence, authorized agency representatives will sign the Concurrence Form that implements that Concurrence decision. Final decisions shall not result in a violation of applicable laws, rules, or regulations. Should the Executive Transit Team not resolve the dispute, CAMPO, GoTriangle or Wake County may list a *Significant Concern* if it qualifies under the definition of ‘*Significant Concern*’ in Section 2.33 of the Wake Transit Governance ILA. In this case, the administration of that process will be deferred to Wake County, and the procedures of Article X of the Governance ILA will be followed.

The dispute resolution process is depicted in **Figure 3**. Further information on the dispute resolution process is provided in **Section 5** of the **Concurrence Practitioner Guide**.

Figure 3: Concurrence Dispute Resolution Process

