



PAT McCrory
Governor

NICHOLAS J. TENNYSON
Secretary

October 1, 2016

To: North Carolina General Assembly
Joint Legislative Transportation Oversight Committee

Subject: Update on Protection Proposal for Transportation Corridors Study

Pursuant to Session Law 2016-90, Section 19, the North Carolina Department of Transportation (NCDOT) submits the following quarterly update on studying the process for protecting proposed transportation corridors in North Carolina.

BACKGROUND

Session Law 2016-90, Section 19 directs NCDOT to “study the development of a process that equitably balances the interest of the State in protecting proposed transportation corridors from development, the property rights of affected landowners, and the taxpayers of the State.” The final report is due to the General Assembly and the Joint Legislative Transportation Oversight Committee by July 1, 2017, and starting on October 1, 2016, quarterly reports are to be made on the progress the Department is making toward the final report. The final report shall include the Department’s findings and recommendations, including any legislative proposals.

WORK ACCOMPLISHED

In August and September of 2016, the Department complied with Session Law 2016-90, Section 17 (b) by posting a notification on the Department’s website regarding the General Assembly’s action to rescind all corridor maps previously filed and by sending 185 notification letters to the following entities in the geographical areas covered by the maps:

- (1) City Clerk’s offices,
- (2) The county tax supervisor and city tax collector,
- (3) The register of deeds, and
- (4) The city and county planning agency of each jurisdiction affected by the action of the General Assembly.

Also, in August of 2016, the Department established a committee to direct the development of the report and to determine how to best balance individual property rights with the desire to minimize disruption caused by developing transportation projects and the resulting increased cost to the taxpayers. This committee consists of representatives of the Planning and Programming Division, the Right of Way Branch, the Roadway Design Unit, the Attorney General’s Office, the Secretary’s Office, the Wilmington Metropolitan Planning Organization, and legislative staff.

The Committee recently reviewed the Supreme Court ruling and came to the conclusion that specific issues needed to be taken into consideration before creating any legislative

proposals. The Supreme Court ruled that filing maps under the current law “restricted plaintiffs’ fundamental rights to improve, develop, and subdivide their property for an unlimited period of time;” that the imposition of the maps is not “a valid, regulatory exercise of police power” and instead constitutes a form of taking under the power of eminent domain; and that the provisions in the current law that provide landowners relief “are inadequate to safeguard their constitutionally protected property rights.”

WORK UNDERWAY

In order to provide a benchmark, the Department initiated a survey of all 50 states to discover if there were other laws of which we were not aware. NCDOT seeks to determine what, if any, legal challenges have been made to other states’ laws, and whether the laws were upheld. To date, there have been 11 responses to the survey. To ensure the information received is accurate and to gain additional responses, NCDOT is contacting individual state DOTs by phone. (A summary of survey responses is included in the appendix.) NCDOT is also reviewing existing research on this topic. The next status report will contain any new information obtained on other states’ corridor protection laws.

In planning the study approach, NCDOT has identified the following key milestones:

- January 2017 Status Report:
 - The basic alternatives under consideration, with pros and cons, and any preliminary recommendations.
 - Compilation of research of other states’ laws
- April 2017 Status Report:
 - Recommended alternative direction the Department believes the State should take regarding corridor protection
 - Proposed legislative language
- July 2017 Status Report:
 - The final study report, which will include responses and any subsequent actions of the NCGA and the Department

SUMMARY OF RESEARCH

In addition to the survey, other sources consulted thus far include a 2014 John Locke Foundation analysis (which reports that 13 states have a comparable map act statute), and results from a 2008 survey conducted by the State of Texas. While research of other states’ corridor protection laws is ongoing, and will be more thoroughly compiled in the January 1, 2017 status report, highlights of what has been discovered thus far is provided below.

- Several states (Florida, Illinois, and Nevada) have, in statute, laws that requires notification of the state DOT when building permits or subdivision approvals are applied for within a protected corridor. The notification kicks off a window during which the DOT can opt to purchase the land or to allow the petitioned improvement. If the DOT does not purchase, no restrictions on the property owner remain.
- Indiana and Wisconsin have similar laws, but take it one critical step further and they do not compensate the property owner for any improvements built in violation of the statute.

- In several states, the cities and counties are empowered to do some sort of protection through building permits and zoning approvals, while the state DOT has no authority to protect corridors.

STATUS OF LITIGATION

There are currently 391 inverse condemnation cases pending in nine counties across the state. This number continues to increase following the North Carolina Supreme Court's opinion in Kirby issued in June of this year.

The majority of the inverse condemnation cases associated with the Map Act have been designated as "exceptional" cases under Rule 2.1 of the North Carolina Rules of General Practice, such that one judge in each county is assigned to preside over all hearings and trials of the litigation in his or her jurisdiction.

Following remand of the Kirby cases, the various trial courts have begun to schedule and hear preliminary motions.

APPENDIX

Summary of Survey Responses



PAT McCRORY
Governor

NICHOLAS J. TENNYSON
Secretary

Recently the North Carolina Supreme Court ruled that the land development restrictions included in the 1987 NC Corridor Protection Law (NC G.S. 136-44.50) constituted a form of “taking”. We have been charged by the State Legislature to recommend ways to better balance individual property rights with the desire to protect land for future transportation corridors. As part of our study the NCDOT would like to ask about other state’s experiences with corridor protection maps.

Your State Name:

Does your state DOT have any form of transportation corridor protection legislation?

Yes **No**

If so, what year was it enacted?

Please provide the legislative statute citation.

Has this law been subject to legal tests? **Yes** **No**

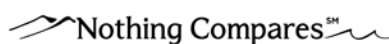
If so, did it withstand the tests in the original form? **Yes** **No**

If not, how was the law amended to meet the legal requirements?

Who would be a good person to contact if there are further questions about your state’s experience?

A response by Friday September 2, 2016, would be appreciated.

Thank you for your assistance,
Ms. Missy Pair, P.E.
Planning & Programming Division
NC Department of Transportation
(919) 707- 4636
mpair@ncdot.gov



Summary of Responses to Survey

In August, NCDOT sent a survey to 50 state DOTs asking if they had any form of transportation corridor protection legislation, and, if so, when it was enacted, if it has been challenged in the courts, and how it has been amended to meet legal requirements. Eleven states responded, and of those, three states (Illinois, Utah, and Wisconsin) indicated they have some sort of corridor protection law in place. Below is a summary of the results.

ILLINOIS. 605 ILCS 5/4-510. May file maps in the office of the County recorder. Requires a public hearing & notice to property owners involved. No construction within mapped area without 60 days' notice to the DOT. The DOT then has 45 days to respond whether to allow construction or purchase. If the purchase option is taken the DOT has 120 days to acquire or condemn property. There is no compensation for structures built in violation of the statute. Every 10 years the DOT holds a public hearing and re-assesses viability and feasibility of the protected corridor. In cases where the roadway construction is determined to be no longer feasible, the protected corridors are abolished. Not yet known if it has been subjected to legal challenges.

UTAH. Utah Code Section 72-5-401 through 405. May file maps that allow the DOT to voluntarily acquire fee simple rights and other rights less than fee simple in proposed high priority transportation corridors up to 30 years in advance of project. Property owners from whom less than fee simple rights have been obtained, may petition to have the entire fee interest acquired. Never been legally challenged.

WISCONSIN. Wisconsin Statute 84.295 (10). May file maps for future highway as a Freeway or Expressway. Requires public hearing. Property involved is noted at register of deeds. No building allowed without property owner notifying DOT by registered mail with 60 days' notice. DOT can buy or allow. Any construction done in violation of this act is not eligible for compensation when property is acquired.

Maine, Montana, Nevada, North Dakota, South Dakota, South Carolina, and Wyoming responded that they do not have a corridor protection statute.

Ohio also responded that they did not have one. However, we are following up to verify because previous reports have indicated that one exists or existed.