

February 10, 2009

**H 116. RAILROAD CORRIDOR MANAGEMENT.** Filed 2/10/09. *CONCERNING MANAGEMENT AND PROTECTION OF RAILROAD CORRIDORS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON A COMPREHENSIVE RAIL SERVICE PLAN FOR NORTH CAROLINA.*

Amends GS 1-44 to clarify that no railroad right-of-way or other real property interest can be presumed to have been conveyed by acts constituting estoppel or waiver.

Amends GS 1-44.1 to provide that on or after January 1, 2010, a railroad (RR) may not be presumed to have abandoned a right-of-way that the RR holds by easement unless the RR first records a certificate of abandonment in the register of deeds office for the county where the right-of-way is located. Directs that this proposed provision is not to be construed to revive or affect a previously abandoned right-of-way or corridor. Provides that a RR is not to be found to have abandoned a right-of-way that is held in fee. Provides that current law regarding presumption of abandonment of a RR right-of-way remains in effect prior to January 1, 2010.

Amends GS 1-51 to provide that no suit, action, or proceeding may be brought against a RR for damages or compensation for use or occupancy of lands by a RR, or for damages caused by railroad construction, unless the suit, action, or proceeding is brought within two years (was, five years).

Amends GS 40A-51(a) to clarify that a property owner may seek compensation for a taking by the RR under GS 40A-3(a)(1) (the exercise of eminent domain) where the RR has not filed a declaration of taking.

Amends GS 136-192 to clarify that a railroad's responsibility to avoid constructing its work in a manner that impedes the passage or transportation of persons or property along roads applies to lawfully established public roads (was, roads).

Repeals GS 136-194 (requiring RRs to maintain crossings and cattle guards on enclosed lands).

Enacts new GS 136-199 authorizing RRs to file railroad corridor maps with the Department of Transportation Rail Division. Requires that any RR corridor maps that are filed must be conspicuously stamped or marked, "For Informational Purposes Only, Pursuant to GS 136-199." Also requires a RR company that files corridor maps to file a notice of the filing of the corridor maps with the Register of deeds in the county where the RR property is located. Requires the RR to send a copy of the filed railroad corridor maps to the North Carolina Society of Surveyors.

Amends GS 153A-1 and 160A-1 to provide a definition for *railroad corridor*.

Amends GS 153A-331 (Contents and requirements of subdivision control ordinances) to provide that when a RR company has filed corridor maps, county subdivision control ordinances may not permit the dedication or reservation of recreation areas or open spaces within any rail corridor unless the applicant seeking dedication or reservation of the areas first obtains written consent from the RR company. Provides that the RR has 60 days from the receipt of the request to either (1) approve it, (2) deny it with an explanation, or (3) respond with any requirements that the RR company has regarding the request. Provides that failure by the RR company to make a written response within 60 days will be deemed to be approval of the request for written consent unless the RR owns the corridor in fee simple. Directs the applicant to provide the written consent obtained from the RR directly to the county authority. Provides that the county is to be held harmless for reliance upon information submitted by the applicant. Also provides that nothing in these provisions is to be construed as altering or affecting the property rights of the RR or adjacent or underlying landowners. Effective October 1, 2010.

Makes the same substantive changes as those in GS 153A-331 to the following provisions of GS Chapter 153A (applying to counties) and 160A (applying to cities) regarding county and city zoning and ordinance powers, and requiring written consent from applicants seeking use or development of RR corridors for which a RR company has filed corridor maps pursuant to proposed new GS 136-199. Applies to actions taken by city or county entities on or after October 1, 2010.

- (1) Enacts new GS 153A-336 (access to development within a RR corridor).
- (2) Amends GS 153A-340 (grant of power to counties regarding zoning and development regulation ordinances).

- (3) Amends GS 153A-357 (permits required under the State Building Code and any other state or local law, ordinance or regulation relevant to the work). Provides an exception that the provisions do not apply to permits issued solely for the repairs of existing buildings and other existing systems and equipment. Additionally clarifies that no permit is to be issued under GS 153A-357(a) for any land-disturbing activity as defined in GS 113A-52(6) unless there has been an approved erosion and sedimentation plan by the Sedimentation Pollution Control Commission or a local government.
- (4) Amends 160A-296 (establishment and control of streets).
- (5) Enacts new GS 160A-368 (access to development within a RR corridor).
- (6) Amends GS 160A-372 (contents and requirements of subdivision control ordinances).
- (7) Amends GS 160A-381 (grant of power to cities regarding zoning and development regulation ordinances).
- (8) Amends GS 160A-417 (permits required under the State Building Code and any other state or local laws relevant to the work). Provides an exception that the provisions do not apply to permits issued solely for the repairs of existing buildings and other existing systems and equipment. Additionally clarifies that no permit is to be issued under GS 160A-417(a) for any land-disturbing activity as defined in GS 113A-52(6) unless there has been an approved erosion and sedimentation plan by the Sedimentation Pollution Control Commission or a local government. Also provides that effective April 1, 2009, no permit is to be issued pursuant to GS 160A-417(a) for any land-disturbing activity that is subject to but does not comply with the requirements of GS 113A-71 (regarding vehicular surface areas).

**Intro. by Rapp, Dickson.**

GS 1, 40A, 136, 153A, 160A

April 15, 2009

**H 116. RAILROAD CORRIDOR MANAGEMENT.** Filed 2/10/09. House committee substitute makes the following changes to 1st edition.

Amends GS 153A-357 and GS 160A-417, (regarding issuance of permits for activity within a railroad corridor), to clarify that when a railroad has filed railroad corridor maps pursuant to GS 136-199, nothing in the permit application and issuance process is to be construed as altering the reach and effect of applicable federal law to the railroad or rail carriers. Amends proposed GS 136-199(b) to provide that for the purposes of indexing within the Register of Deeds, the company shown on the recorded map notices as filing the notice may be deemed to be the "Grantors" and the only parties to the instrument (was, the company shown as filing the notice must be listed under both the "Grantor" and "Grantee"). Makes additional technical changes.

May 6, 2009

**H 116. RAILROAD CORRIDOR MANAGEMENT.** Filed 2/10/09. House committee substitute makes the following changes to 2nd edition.

Revises amendment to GS 1-51 to change statute of limitations for suit against railroad to three years (five years in current law, two years in previous version of bill). Deletes previous version's repeal of GS 136-194, the misdemeanor of failing to maintain cattle guard at rail crossing. Alters amendments to GS 153A-331 and GS 160A-372 to allow a subdivision control ordinance to give open space credit for railroad easement acreage in lieu of obtaining the railroad's consent to public dedication or reservation of open space if the purpose of the credit is to preserve the railroad corridor for future railroad purposes; and alters amendments to GS 153A-340 and GS 160A-381 to make comparable changes with respect to zoning ordinances. Alters amendments to GS 153A-357 and GS 160A-417 concerning issuance of construction permits to provide that the requirement for written consent from the railroad applies only when work is to be within 50 feet of railroad track, bridge, or facility; deletes that the failure of the railroad to respond to the request for agreement constitutes consent. For work greater than 50 feet, a written notice to the railroad, but not an agreement, is required. Makes a conforming change to the effective date.

May 11, 2009

**H 116. RAILROAD CORRIDOR MANAGEMENT.** Filed 2/10/09. House amendments make the following changes to 3rd edition.

Amendment #1 adds to new GS 153A-336 and GS 160A-368 (Access to development within a railroad corridor) provisions that (1) if the sole means of ingress and egress to a property being developed is over an existing public roadway established and maintained by state or municipality and within a railroad corridor and does not require use of additional land within the corridor, an applicant seeking approval of the development plan (from the municipality or county) may use the existing public roadway in its plan without obtaining consent of the railroad. Provides that nothing in the provision alters or affects property rights of the railroad or adjacent or underlying landowners; and the Department of Transportation may not condition approval of a development plan on an applicant's making road improvements, including adding an additional lane, if the improvements would be within the railroad corridor and would require consent of the railroad.

Amendment #2 deletes provisions requiring an applicant to sign under penalty of perjury the certifications specifying that either no consent of a railroad or written agreement with a railroad is required. Requirement is deleted from the following new provisions: GS 153A-331(a2)(2), GS 153A-336(b)(2), GS 153A-340(k)(2), GS 153A-357(c)(4)b., GS 160A-296(d)(2), GS 160A-368(b)(2), GS 160A-372(a2)(2), GS 160A-381(g2)(2), and GS 160A-417(d)(4)b.