

Review of Map Act, *Kirby* Decision, and Potential Fiscal Impact

Prepared and Presented By:

Giles Perry, Legislative Analysis Division

Luke Gillenwater, Bill Drafting Division

Amna Cameron, Fiscal Research Division

House Select Committee on Strategic
Transportation Planning and Long Term Funding
Solutions

July 25, 2016

Topics Covered

- Map Act: Background, Authorization, and Effects
- *Kirby v. North Carolina Department of Transportation*: Summary, Measurement of Damages, and Applicability
- Potential Fiscal Impacts to DOT Resulting from the *Kirby* Decision
- Initial Legislative Response to the *Kirby* Decision
- Remaining Questions for the Legislature's Consideration
- Other States' Approaches to Transportation Corridor Preservation

Map Act: Background, Authorization, and Effects

Background

- The Map Act is officially known as the Transportation Corridor Official Map Act.
- The law was enacted in 1987.
- The law is located in Article 2E of Chapter 136 of the General Statutes, G.S. 136-44.50 through G.S. 136-44.54.

Authorization

- The Map Act authorizes the following entities to adopt Transportation Corridor Official Maps, for projects in their respective transportation plan or program:
 - Board of Transportation
 - Regional Public Transportation Authorities
 - North Carolina Turnpike Authority
 - Local Governments
 - Wilmington Metropolitan Planning Organization
 - ❑ Wilmington MPO given authority for only 2 projects – Hampstead Bypass and the Military Cutoff Road Extension. The Hampstead Bypass map was filed by the MPO, but the Military Cutoff Road Extension was filed by the City of Wilmington.
- Once adopted, the maps are filed with the Register of Deeds in the affected counties.

Effects

- Once filed, a Transportation Corridor Official Map has the following effects on properties covered by the map:
 - No building permits or subdivision approvals.
 - Reduced property taxes for affected properties.
 - ❑ G.S. 105-277.9 and G.S. 105-277.9A reduce the property taxes on parcels subject to the Map Act to 20% of the appraised value if undeveloped, and to 50% of the appraised value if developed.
 - Property owner can apply for a building permit or subdivision approval.
 - ❑ After no more than three years, the permit or approval is to be issued, or the entity that adopted the map must initiate acquisition.

Effects (Cont'd)

- Property owner can apply for a variance from the restrictions on building permits or subdivision approval.
 - ❑ The variance may be granted if the property owner shows no reasonable return can be earned on the property, even with the tax reduction; and the map restrictions result in practical difficulties or unnecessary hardship.
- Property owner can apply for advance acquisition of the property.
 - ❑ Advance acquisition may be granted if entity that filed the map finds that the property owner has demonstrated undue hardship.

*Kirby v. North Carolina Department of
Transportation:*
Summary, Measurement of Damages,
and Applicability

Summary

- The case was brought by landowners affected by roadway corridor official maps filed, pursuant to the Map Act, in 1997 and 2008 for the Winston-Salem Beltway.
- On June 10, 2016, the North Carolina Supreme Court found that indefinite restrictions imposed by maps filed pursuant to the Map Act substantially interfered with the elemental property rights of the landowners, and thus constituted an inverse condemnation, for which just compensation is owed.

Measurement of Damages

- The North Carolina Supreme Court directed the Superior Court, where the case was originally tried, to determine the damages owed to each property owner on a case-by-case basis, ruling that the measure of damages for each property owner is as follows:
 - The difference between the value of the land before the map recordation, and the value after, taking into account all pertinent factors.
 - A factor that takes into account the reduction in property taxes on parcels subject to the Map Act.
 - ❑ As mentioned earlier, G.S. 105-277.9 and G.S. 105-277.9A reduce the property taxes on parcels subject to the Map Act to 20% of the appraised value if undeveloped, and to 50% of the appraised value if developed.
 - Although not directly mentioned in the *Kirby* decision, prior case law requires the addition of interest from the time of the taking to the time of judgment awarding compensation.
 - ❑ For causes of action filed prior to July 11, 2016, the rate of interest is 8%. Per Section 18 of H959, the rate of interest for all other causes of action is the prime lending rate at the time of the taking, with a cap of 8%.

Applicability

- The *Kirby* decision applies to the effect of the Winston-Salem Beltway corridor maps on the landowners who brought the case.
- Trial judges in all other Map Act cases will be bound to follow this ruling in all other Map Act cases in State court.
- There are 8,486 total parcels affected by Map Act corridor maps around the State, and several hundred pending cases.
 - 2,994 parcels for completed projects, 4,402 parcels for projects in progress, and 1,090 parcels for proposed projects.

Potential Fiscal Impacts to DOT Resulting from the *Kirby* Decision

Corridor Maps

- 28 Maps: 24 by DOT; 3 by City of Wilmington, 1 by Wilmington MPO
- S.L. 2015-151 requires DOT to pay for maps filed by Wilmington MPO, not city

	Number of Maps	Number of Parcels
Completed Projects	13	2,994
ROW in Progress	10	4,402
Maps on Proposed Projects	5	1,090
Total	28	8,486

Fiscal Impact

- Fiscal Impact Cannot be Reasonably Estimated Until:
 - Methodology for *Kirby* Case settlements determined
 - Courts define scope of taking
 - Number of impacted parcels is determined

Kirby Formula: By Parcel



Value of land before Corridor Map and
Value of land after Corridor Map



All pertinent factors, including the
restriction on each plaintiff's fundamental
rights



Interest



Effect of reduced ad valorem taxes

Other Fiscal Impacts

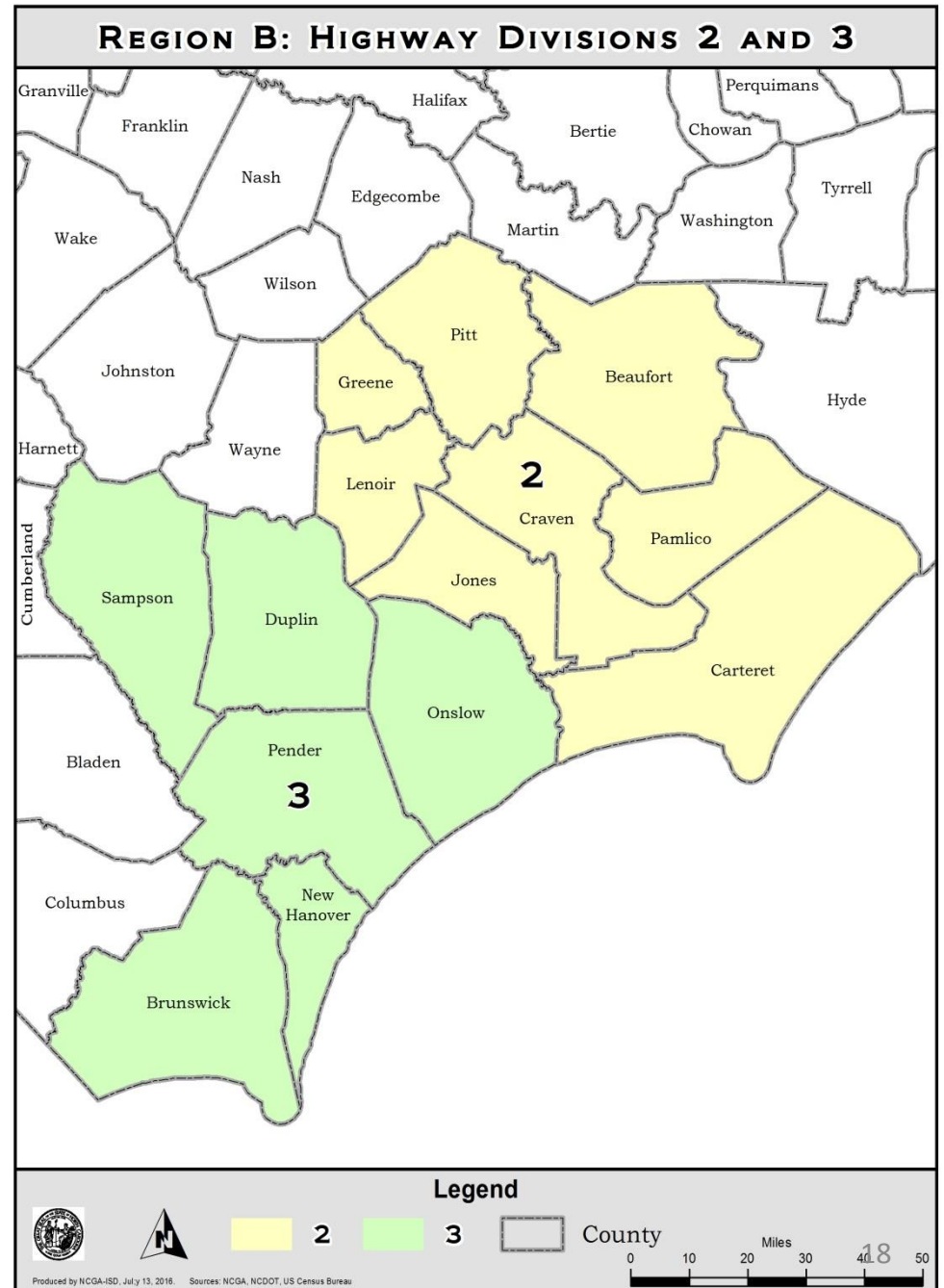
- Under Inverse Condemnation, DOT pays legal fees of parcel owners
- Increased costs for right-of-way (ROW) appraisals and for additional staff
- Increased DOT legal costs and increased court costs
- Right-of-way costs will increase for future projects if land becomes developed in areas where map is either rescinded or cannot be filed.

Proposed Projects with Corridor Maps and No ROW Acquisitions

- 4 projects
 - Mid Currituck Bridge (Currituck)
2 parcels
ROW Programmed in FY 2017
 - Southern Wake Expressway (Wake/Johnson)
312 parcels (2 maps)
 - Winston-Salem Western Loop (Forsyth)
576 parcels
 - US 17 Hampstead Bypass (New Hanover/Pender)
200 parcels

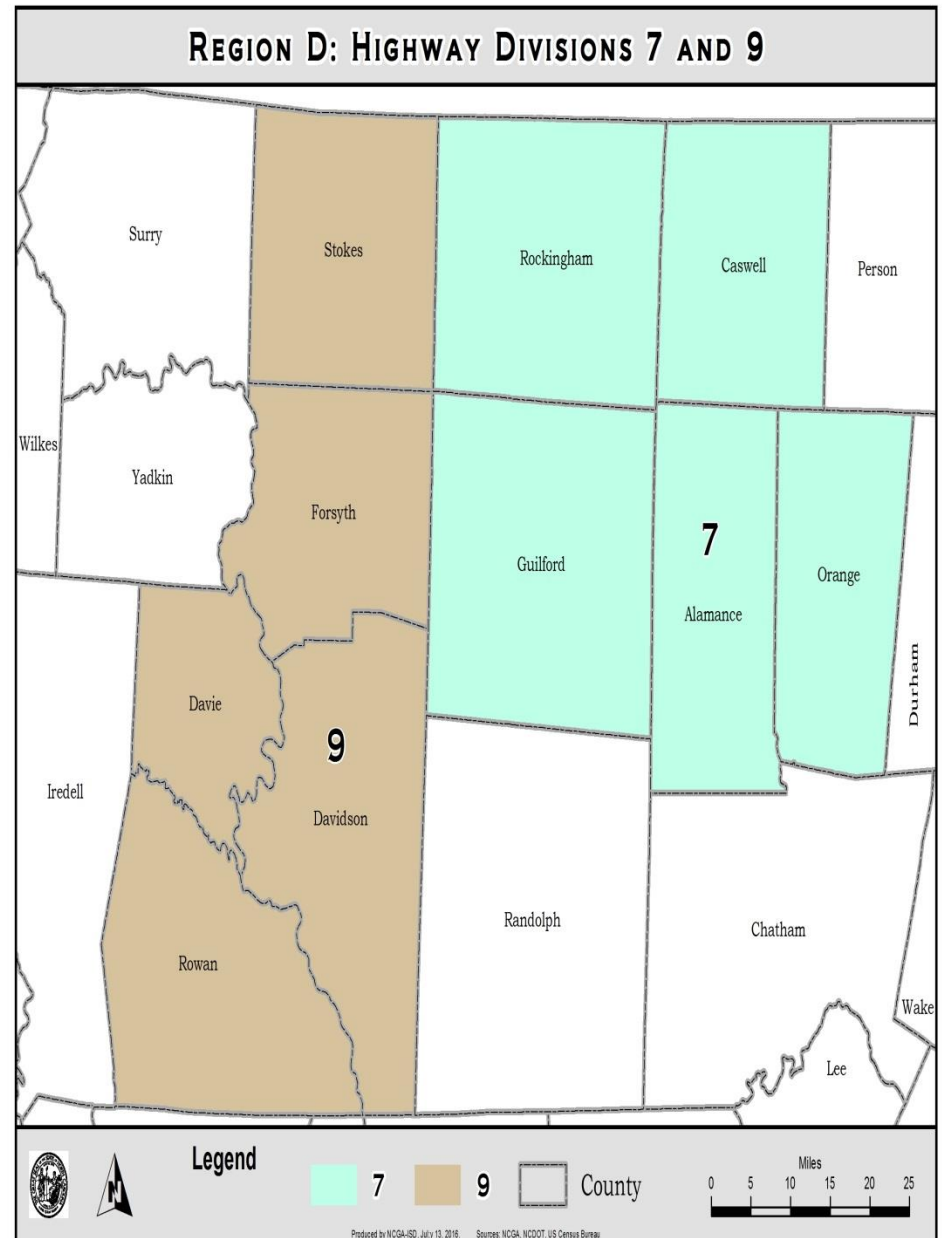
Region B

- Hampstead Bypass –
Expect funding in
Regional Tier
- ROW = est. \$62.3 M
- 5 year funding in
Regional Tier: \$314 M
- 2 other DOT filed maps
include Goldsboro
Bypass and Greenville
SW Bypass



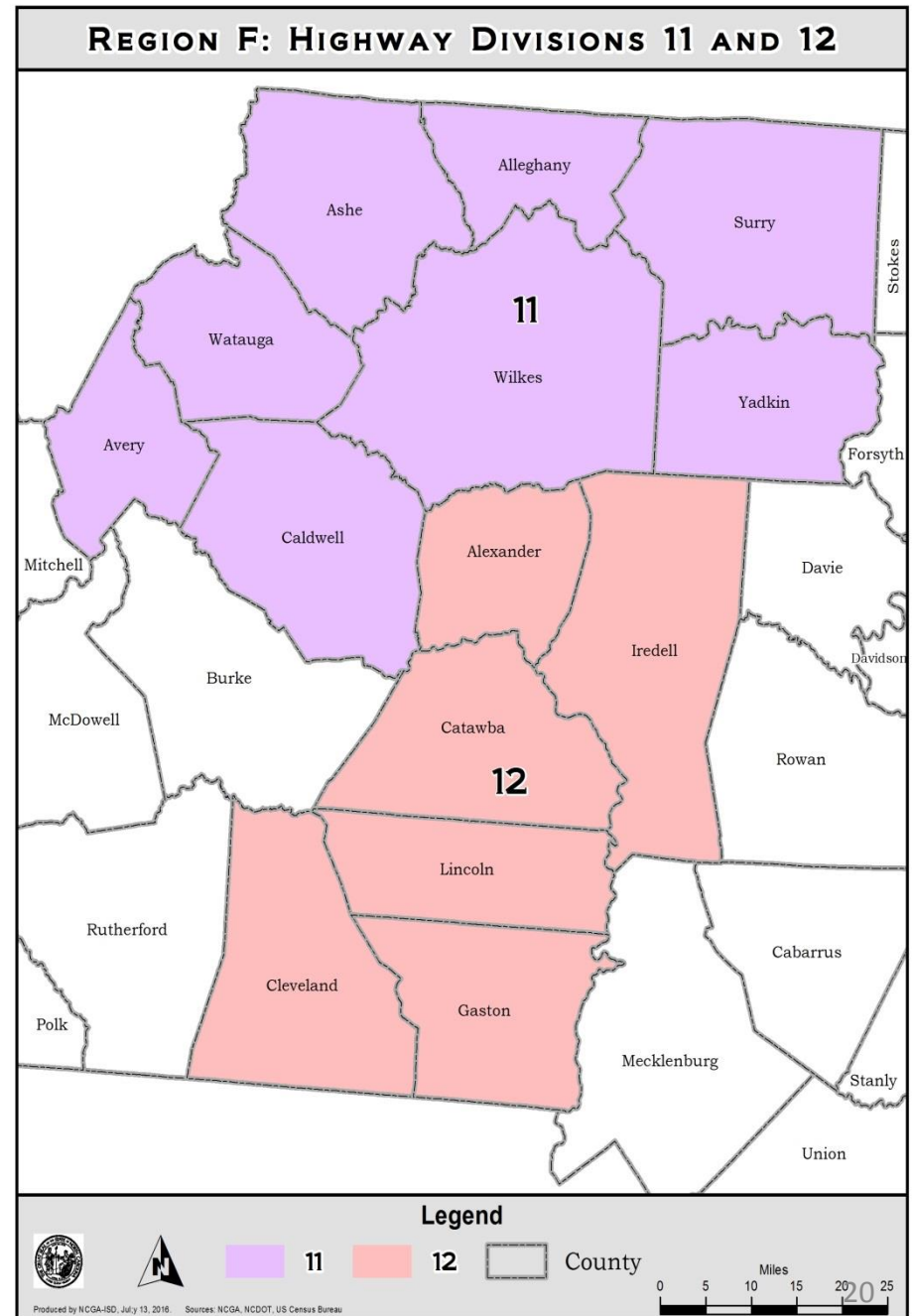
Region D

- Winston-Salem Western Loop – Expect funding in Regional Tier
- ROW = est. \$125 M
- 5 year funding in Regional Tier: \$437 M
- Other DOT filed maps include W-S Northern Beltway, Greensboro Northern/Eastern/Western Loops, US 220-NC 68 Connector, **US 311 High Point East Belt**



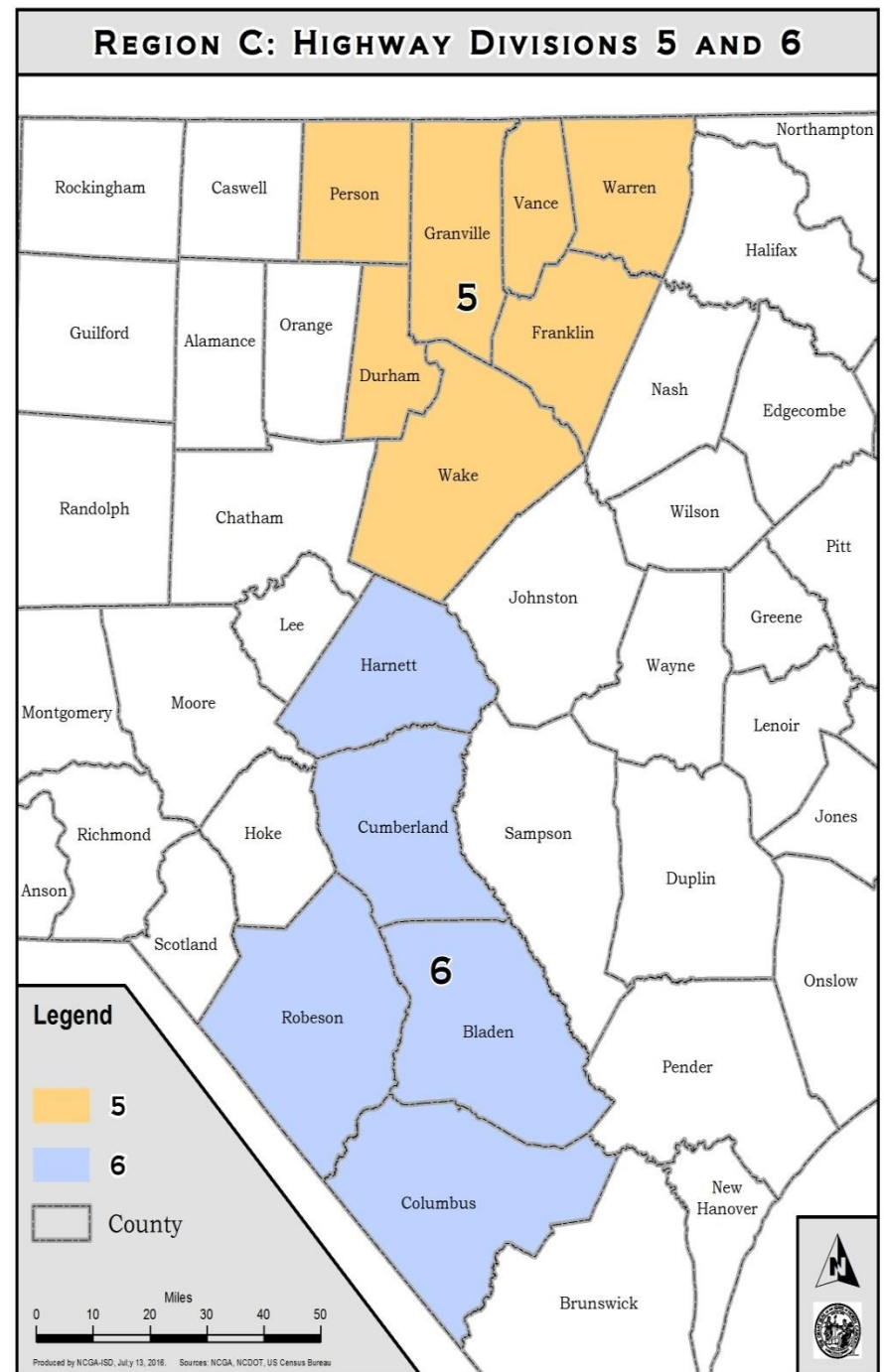
Region F

- Shelby Bypass – Expect funding in Regional Tier
- ROW = est. \$15 M
- 5 year funding in Regional Tier: \$292 M
- Map filed on **Hickory Eastside Thoroughfare**



Region C

- All projects are programmed
- 5 year funding in Regional Tier: \$569 M
- Maps filed for
East/Northern/Western Wake Expressway, US 64 Bypass, Fayetteville Outer Loop, Southern Wake Expressway



Initial Legislative Response to the *Kirby* Decision

Sections 15-19 in House Bill 959 (S.L. 2016-90)

- Funding of Map Act Claims – Section 15 clarifies how Map Act-related litigation damages and costs will be funded. This section provides that damages and costs will be funded as follows:
 - For projects covered by a map that are funded, or programmed to be funded, under STI, the funds will come from the tier under STI in which the project is funded.
 - For projects covered by a map that were not funded, or are not programmed to be funded under STI, the funds will come from the regional allocation of funds under STI for the region of the project covered by the map.
- One-Year Moratorium on New Maps – Section 16 places a one-year moratorium on the filing of any new transportation corridor official maps, from July 1, 2016 to July 1, 2017.
- All Corridor Maps Rescinded – Section 17 rescinds all transportation corridor official maps, and all restrictions of those maps no longer apply to properties or portions of properties within the affected transportation corridors. This section also requires DOT to post notice of the recession of the maps with specified city and county offices in affected jurisdictions, and on DOT's website.

Sections 15-19 in House Bill 959 (S.L. 2016-90)

(Cont'd)

- Modification of DOT Condemnation Interest Rate - Section 18 changes the rate of interest that DOT must pay on condemnation related judgments, from the current 8%, to the prime lending rate at the time of the talking, not to exceed 8%. This section is effective for causes of action filed on or after July 11, 2016.
- DOT Study of Process for Protecting Transportation Corridors - Section 19 directs DOT 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 Department is directed to report to the General Assembly quarterly, with a final report by July 1, 2017.

Remaining Questions for the Legislature's Consideration

Remaining Questions

- The following are a non-exhaustive list of questions remaining for the Legislature's consideration following the *Kirby* decision:
 - What to do with the Map Act – modify or repeal?
 - What is the best approach to take for preserving transportation corridors for future growth?
 - Should there be a modification to the final deadline for when Map Act claims must be filed?
 - Should there be further tweaks to the funding sources for damages and costs incurred from Map Act-related litigation?
- With ambiguity concerning the extent of the takings and the measurement of damages, questions will continue to arise as further litigation clarifies these ambiguities.

Other States' Approaches to Transportation Corridor Preservation

Map Act States

- According to a report published by the John Locke Foundation, only 13 states have legislation similar to North Carolina's Transportation Corridor Official Map Act.
 - NH, NJ, PA, OH, IN, IL, MO, MN, NE, UT, TN, NC, SC
- According to the same report, the amount of time in which permits and other development decisions within a corridor map filed in states other than North Carolina may be delayed ranges from 80 days to 365 days.
 - North Carolina – as mentioned earlier, permits may be delayed up to 3 years.
- Examples:
 - Tennessee – counties and municipalities may file official highway maps; granting of a building permit may be delayed for up to 80 days.
 - South Carolina – counties and municipalities may file official maps; granting of a building permit may be delayed for up to 130 days.

Other Corridor Preservation Methods

- According to a report prepared for the NCDOT, the following are other methods that may be employed by states to preserve corridors:
 - Local Preservation Ordinances
 - Zoning Powers
 - Exactions
 - Advanced Property Acquisition
 - Access Management
 - Development Easements
 - Option to Purchase
 - Transfer of Development Rights
 - Public/Private Partnerships
- Examples:
 - Virginia – corridor preservation is generally handled on the local level through zoning and other land use controls; purchases of land appear to be made on an as-needed basis.
 - West Virginia – appears to be no formal process in place for corridor preservation; purchases of land appear to be on an as-needed basis and only when actual construction is taking place.
 - Kentucky – legislation allows local governments to acquire property in advance if the local government provides the funding; the state reimburses the local government if the project is ultimately approved.

Resources

- Tyler Younts, John Locke Foundation, Spotlight No. 451, *Wrong Way: How the Map Act Threatens NC Property Owners*, (2014), available at <http://www.johnlocke.org/app/uploads/2016/06/Spotlight451MapAct.pdf>
- LandDesign, Inc., *Corridor Preservation Methods*, (2004), available at https://www.ncdot.gov/projects/us64phase1/download/US64-NC49_Corridor_Preservation_Report.pdf.
- U.S. Department of Transportation, Federal Highway Administration, *Transportation Corridor Preservation: A Survey of State Government Current Practices*, (2000), available at https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/case_studies/cp_state.cfm.