

# Transportation Corridor Protection Maps—Has Your Land Been Taken?

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When a corridor protection map was filed in 2005 for the extension of Military Cutoff Road in New Hanover County in accordance with the Transportation Corridor Official Map Act ("Map Act"), a client who owned property in the protected corridor sought our advice. The client complained that he was unable to develop his property because of the restrictions in the Map Act prohibiting improvements or other development within the protected corridor. We advised the client that he had a legitimate argument that the recording of the corridor protection map constituted a taking (or condemnation) of his property which would entitle him to "just compensation." However, we cautioned that this was a "gray" area of the law and would be expensive and time-consuming to resolve. After a cost-benefit analysis, the client chose to not seek a solution through legal channels.

The rights of the property owners affected by the Map Act are now much less gray due to a February 17, 2015 decision by the North Carolina Court of Appeals in [Kirby v. North Carolina Department of Transportation](#). In a lengthy and scholarly decision, the Chief Judge of the North Carolina Court of Appeals, Linda McGee, unanimously joined by two other seasoned judges, Wanda Bryant and Donna Stroud, determined that when the North Carolina Department of Transportation ("NCDOT") records a corridor protection map that invokes the Map Act's restrictions on property, NCDOT has effectively taken property rights, entitling the property owner to just compensation.

The [Kirby](#) case involved the proposed 30.4-mile proposed highway project called "the Northern Beltway Project" around Winston-Salem in Forsyth County. In 1997, and later in 2008, NCDOT recorded corridor protection maps for the Northern Beltway Project. Despite having recorded the first corridor protection map in 1997, construction of the Northern Beltway Project has not started. The Court of Appeals determined that because of the restrictions placed on the property by the Map Act which prevent any improvements or development within the protected corridor, the recording of the corridor protection map constituted a taking of private property rights. This decision is a huge win for property owners.

The remedy for a property owner affected by a corridor protection map is to bring an inverse condemnation lawsuit against NCDOT and/or any other participating condemning authority. The property owner will be entitled to a jury trial on the issue of just compensation which will vary widely from property to property based on the property's fair market value. The law also allows interest to run at 8% per annum on the amount awarded from the time of the taking (that is, the recording of the corridor protection map) and, in addition, allows the property owner to recover the owner's reasonable attorneys' fees. For example, property owners within the Military Cutoff Extension Corridor could be entitled to interest at 8% per annum from 2005 until the award is paid. (A \$100,000.00 award made this year would include an additional \$80,000.00 in interest).

It should also be noted that the [Kirby](#) Court held that the statute of limitations for an inverse condemnation action does not begin to run until the highway project is complete. In that case, the fact that the map had been recorded as early as 1997 did not bar the property owners' lawsuits brought in 2011.

NCDOT will most assuredly seek to appeal the Court of Appeals' decision in the [Kirby](#) case to the North Carolina Supreme Court. However, it is not guaranteed that the North Carolina Supreme Court will review the case. In addition, the decision of the North Carolina Court of Appeals is a lengthy one, evidencing the great deal of thought the judges gave this most

important matter. Even if the Supreme Court decides to review the case, it may not be inclined to overrule what appears to be a reasoned decision of three well-respected jurists based on settled principles of constitutional law.

If you have property that is subject to a corridor protection map, it is in your best interest to confer with an attorney who is knowledgeable in the area of law known as eminent domain or land condemnation. Ward and Smith, P.A. attorneys who handle eminent domain matters include, Derek J. Allen, Eric J. Remington, Stan M. Sams, Jason T. Strickland, Jeremy M. Wilson, and Ryal W. Tayloe.

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