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Property law:

Everything you need to know about the Map Act — for now

Was your property or business listed on an official North Carolina Department of Transportation Protected Corridor Map? If so, you probably have many questions. What does it mean to be subject to a Protected Corridor Map? What is going to happen to your property? And most importantly, do you need to do anything?

This article will give you the vital information that you need to know about the Map Act. The answers may surprise you, but here is the bottom line: If your property has been designated on a Protected Corridor Map, then you will

designated areas while environmental and design studies were completed. The state's goal was to significantly reduce the acquisition costs for the state when it came time to purchase the designated properties for road construction. During that time, the designated property owners could not develop their land, add buildings or subdivide their property without pursuing a costly and time-consuming process to obtain a variance from the state. As a result, these restrictions severely reduced the value of many of the properties caught in the snare of a Protected Corridor Map.

Corridor Map designation was a taking of their property. An inverse condemnation case is one where a property owner asserts that the government has taken property or property rights without following the proper legal procedure and without paying just compensation as required by the Fifth Amendment of the U.S. Constitution — “nor shall private property be taken for public use, without just compensation.”

Last year, in a historic decision, the N.C. Supreme Court ruled in favor of the property owners in *Kirby v. NCDOT*, 368 N.C. 847 (2016). The court held that designating a property on a Protected Corridor Map was a “taking” by NCDOT that required the State to pay the property owners for the “fundamental property rights” that were taken. The Court provided a formula to be used in calculating the loss of these rights on a case-by-case basis: the value of the property before the map was recorded compared to the value of the property after the map was recorded, “taking into account all pertinent factors, including the restriction on each plaintiff’s fundamental rights.”

Subsequently, the legislature amended the Map Act to rescind all of the existing Protected Corridor Maps and put a one-year moratorium on the recording of any new maps. The legislature also attempted to reduce the interest rate the state would have to pay to property owners from 8% to the prime lending rate — about 4% — with a cap

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need to be proactive in order to protect the value of your property. In fact, the clock may already be ticking on your legal rights.

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Several of the Protected Corridor Maps remained of record for many years while their related highway projects languished in the development process, and property owners became frustrated at the loss of their valuable property rights. Some property owners filed inverse condemnation lawsuits against NCDOT, arguing that the Protected

of 8%. This change in the interest rate is controversial because it was implemented without notice to property owners, and it is being challenged by many property owners as unconstitutional. Ironically, this change in the interest rate only applies to those owners who had not already filed suit, thus encouraging more property owners to file claims for fear that the state might adopt more drastic measures that would adversely impact their property or businesses.

Lawyers across the state and countless government officials have been trying to sort out the repercussions of the recent case law and last year's amendment of the Map Act. Although the court outlined a formula for determining the value of the taking, implementing that formula has proven cumbersome and problematic for the state. The types of properties that have been impacted include: family farmland, older and newer homes, large subdivisions, churches and commercial properties such as shopping centers, restaurants, convenience stores and office buildings. Each property has to be evaluated separately based on "all pertinent factors." Our firm has been working with our clients and expert appraisers to develop a comprehensive plan for addressing the various types of damages caused by the Map Act and the Protected Corridor filings.

Pursuant to the Map Act, NCDOT and related agencies recorded 28 Protected Corridor Maps in several counties, including Catawba, Cleveland, Cumberland, Currituck, Durham, Forsyth, Guilford, Johnston, Lee, Lenoir, Mecklenburg, New Hanover, Pender, Pitt, Randolph, Richmond, Robeson, Rockingham, Wake and Wayne. More than 8,000 property owners in North Carolina have lost "fundamental property rights" as a result of these takings.

If your property is listed on one of these maps, then you would be wise to consult with a lawyer about what you

should be doing to protect your property's value. Hundreds of property owners have already filed suit to recoup their losses. If you are not sure whether your property has been impacted, then I would encourage you to consult with a lawyer without delay. Our firm, like most law firms that handle such claims, will do so on a contingent fee basis, meaning that you only pay a legal fee based on a percentage of what you recover for your property's

current value may wind up being undercompensated unless they have taken into account the diminished value of their property as a result of the Protected Corridor Map and the damages and interest that they may be due as a result of the Map Act taking. Likewise, there are four projects where maps were recorded — one as long ago as 1997 — but the projects have been waylaid for various reasons, and

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loss in value. Also, under state law, the State must pay interest and reimburse attorneys' fees when a property owner is successful in pursuing an inverse condemnation claim.

Currently, there are at least 10 NCDOT projects with more than 4,000 affected property owners where the maps have been rescinded but the highway project is moving forward, and the state is acquiring new rights of way and easements to facilitate construction. Property owners who are settling with the state now based on their property's

acquisitions still have not occurred. These projects include the Winston-Salem Western Loop in Forsyth County and the Southern Wake Expressway in Wake and Johnston counties, which together impact nearly 900 people and businesses.

Even though the maps have been rescinded, the Map Act has not been repealed. We can expect that the state will continue to look at methods for preserving transportation corridors in the future. Stay tuned for further developments.

JOAN DAVIS has nearly 30 years of experience in handling eminent domain cases. She represents landowners, retailers and lenders in real-property disputes, eminent domain cases and condemnation litigation. She is regional condemnation counsel for McDonald's, Rite Aid and Eckerd. She also represents Harris Teeter, Walgreens, BB&T, First Citizens Bank and numerous other property owners and developers in real property disputes and eminent domain cases. She is a principal in the law firm Howard, Stallings, From, Atkins, Angell and Davis, P.A. For more information, please call 919-821-7700 or email jdavis@hsfh.com.