

# spotlight

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## WRONG WAY

*How the Map Act threatens NC property owners*

### EXECUTIVE SUMMARY

- **The North Carolina Map Act virtually freezes property development within proposed road corridors by blocking building permit and subdivision applications for up to three years. An official corridor map can encumber and devalue property indefinitely.**
- **North Carolina is one of 13 states that have map act statutes. A majority of states, 37, manage their highway corridor preservation programs without restricting private property through use of official corridor maps.**
- **The case *Berth Oil v. NCDOT* involves a 17 plus year ordeal endured by several Forsyth County property owners who are suing the NC Department of Transportation (NCDOT) to force it to finally acquire their properties.**
- **Official maps have been or are being used on at least two-dozen projects statewide.**
- **All other states with comparable map act statutes either allow property owners to demand acquisition or release from an official map, or put reasonable limits on the length of time an official corridor map can block building and subdivision applications, ranging from 80 to 365 days.**
- **North Carolina should protect the constitutional property rights of its citizens. In order to accomplish this goal, the State should:**
  - **Repeal the Map Act; or**
  - **Set a reasonable time limit on building permit delays between 80 and 120 days;**
  - **Establish a reasonable limit, perhaps between 1 and 3 years, on the length of time an official map can encumber a property; and**
  - **Reform the advance acquisition hardship program to establish clear criteria and reduce the level of discretion left in the hands of officials administering the program.**

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Imagine that a road is going to be built that will run straight through the land and house you have called home for many years. It may be a saddening thought, especially if you have put considerable labor, time, and money into your property. But, you might at least console yourself with the knowledge that, even though the government can take your property through the power of eminent domain, you at least have a constitutional right to be paid just compensation in return.<sup>1</sup>

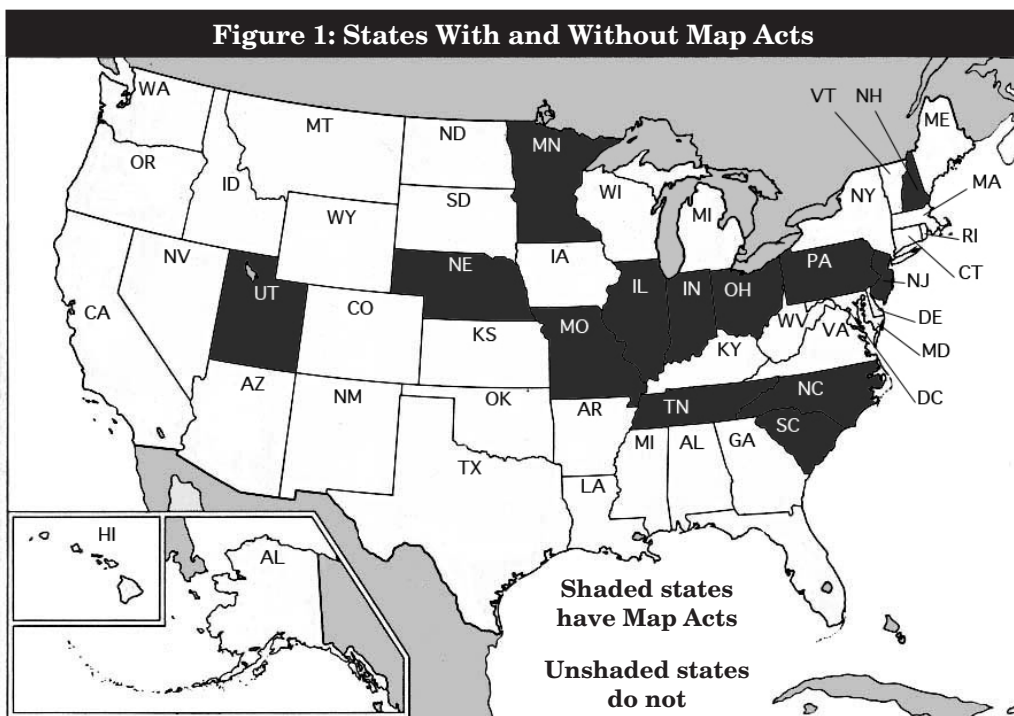
But, for North Carolinians, it could take years or decades before property is finally taken and just compensation is paid. State and local government officials have authority under a law known as the Map Act<sup>2</sup> to designate future road corridors and put an indefinite moratorium on development of properties inside the future right-of-way. In theory, the Map Act is supposed to prevent any improvements that would increase the amount of “just compensation” the government will owe a property owner when it eventually takes the property. But in practice property owners are left with properties they cannot improve and cannot sell at reasonable returns, but that the government refuses to acquire for years, even decades. The Map Act poses a serious threat to citizens’ property rights and should be repealed or significantly amended to provide time limits and a fair Hardship Program for advance acquisitions.

### The Map Act Explained

The Map Act empowers the NC Department of Transportation (NCDOT), local governments, or other governing bodies to adopt and file an official transportation corridor map with the local register of deeds that lists all the properties located within the planned road corridor.<sup>3</sup> As long as work on a required environmental impact statement has begun within one year,<sup>4</sup> there is no statutory time limit on an official map. Once the map is established, it has the effect of blocking building permit and subdivision applications for up to three years.<sup>5</sup> After three years, an application must be acted on or the government must acquire or release the property,<sup>6</sup> but each subsequent permit can be delayed for an additional 3-year period, which, aside from severely limiting owners’ abilities to use, enjoy, and improve their properties, can render properties unmarketable to prospective buyers. As shown in Figure 1, North Carolina is in the minority of states that have comparable map act statutes. Only 13 states have map acts, while 37 other states do not.

When road construction is hampered by lack of funding or legal challenges, affected property owners can find themselves stuck in properties that cannot be sold on the open market and that the state will not acquire. Even property owners who might as a last resort move out and lease their homes are effectively foreclosed from that option by NCDOT’s practice of leasing at below market rates the properties that it actually has acquired, thus depressing rental rates for the remaining property owners.<sup>7</sup>

Property owners can apply to the NCDOT for advanced acquisition, but only qualify when they are able to show that acquisition is “in the best public



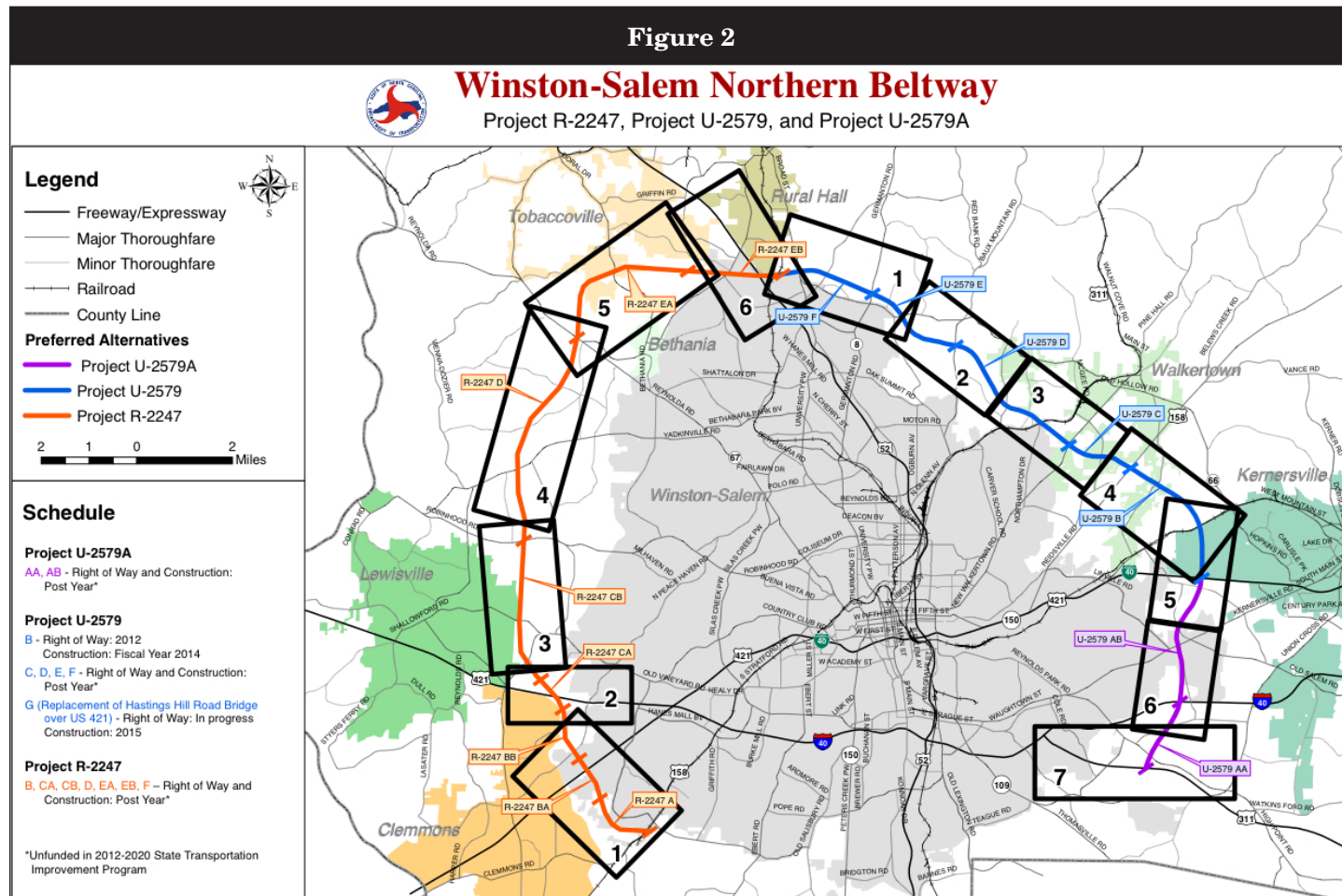
interest to protect the transportation corridor from development or when the transportation corridor official map creates an undue hardship on the affected property owner.<sup>78</sup> The first prong, dealing with corridor protection, appears practically meaningless since the official map itself halts development indefinitely. The second prong, dealing with hardship, is the basis of much controversy. NCDOT grants hardship acquisitions when two conditions are met to NCDOT's satisfaction—an owner has a financial or medical hardship and the owner is unable to sell the property at fair market value.<sup>9</sup> Many property owners, such as those affected by the Northern Beltway in Forsyth County, complain that hardship acquisitions are made by NCDOT in a selective, even discriminatory, arbitrary, or irrational manner.<sup>10</sup>

### The Winston-Salem Northern Beltway

A transportation corridor map was established for the Winston-Salem Northern Beltway project in 1997, and the properties of hundreds of Forsyth County residents have been restricted and devalued ever since. The multi-lane highway, traversing 34-miles around the north side of Winston-Salem, is depicted in Figure 2.<sup>11</sup> After being delayed for years by environmental lawsuits and a lack of funding for construction, eight property owners brought suit to demand that the NCDOT acquire their properties. The plaintiffs in the case are currently appealing an adverse lower court decision that had denied them class action certification, which would have allowed them to represent the interests of approximately 800 other affected property owners.<sup>12</sup>

The Northern Beltway plaintiffs complain that their properties are devalued and are practically impossible to sell at reasonable returns with the corridor map clouding their chain of title. They also contend that the hardship acquisition program has been applied unfairly. NCDOT, according to the plaintiffs, inexplicably granted hardship applications

Figure 2



**Figure 3: Current DOT Map Summary**

<b>TIP PROJECT NO.</b>	<b>COUNTY</b>	<b>DESCRIPTION</b>	<b>DATE OF ADOPTION BY DOT</b>	<b>RECORD REGISTER OF DEEDS</b>
<b>CURRENT TRANSPORTATION CORRIDOR OFFICIAL MAP SUMMARY</b>				
R-2576 *	CURRITUCK	MID CURRITUCK BRIDGE (SOUTH OF COROLLA ON NC 12)	7/8/1992	7/15/1992
R-2721 *	WAKE	SOUTHERN WAKE EXPRESSWAY (NC 55 SOUTH TO US 401 SOUTH)	8/2/1996	8/6/1996
R-2828 *	JOHNSTON WAKE	SOUTHERN WAKE EXPRESSWAY (US 401 SOUTH TO I-40)	3/7/1997	3/10/1997
R-2247 *	FORSYTH	WINSTON-SALEM WESTERN LOOP (US 158 TO US 52)	10/3/1997	10/6/1997
R-2250 *	PITT	GREENVILLE SOUTHWEST BYPASS (SR 1125 FORLINES ROAD TO US 264)	5/7/2009	4/16/2009
U-2579 *	FORSYTH	WINSTON-SALEM NORTHERN BELTWAY EASTERN SECTION (US 52 TO US 311)	1/8/2009	11/26/2008
<b>RIGHT-OF-WAY ACQUISITION IN PROGRESS OR COMPLETE FOR THE FOLLOWING PROJECTS</b>				
R-211E *	MECKLENBURG	CHARLOTTE SOUTHERN OUTER LOOP (NC 16 TO US 74) AMENDED	7/7/1989 7/12/1991	8/18/1989 8/9/1991
R-2248 * Complete	MECKLENBURG	CHARLOTTE WESTERN OUTER LOOP (I-77 TO NC 49)	7/7/1989	8/18/1989
R-2123 *	MECKLENBURG	CHARLOTTE EASTERN OUTER LOOP (US 74 TO I-85)	4/6/1990	4/25/1990
R-2641 Complete	WAKE	EAST WAKE EXPRESSWAY (US 64 TO SR 1007) AMENDED	1/4/1991 4/2/1993	1/11/1991 4/23/1993
R-2547 Complete	WAKE	US 64 KNIGHTDALE BYPASS (I-440 TO US 64 EAST) AMENDED AMENDED	1/4/1991 4/2/1993 7/12/1996	1/11/1991 4/23/1993 8/1/1996
R-2000 * Complete	WAKE DURHAM	NORTHERN WAKE EXPRESSWAY (WEST OF NC 55 TO US 64) AMENDED	7/12/1991 9/2/1993	7/19/1991 9/10/1993
R-512 * Complete	RICHMOND	US 74 ROCKINGHAM HAMLET BYPASS (US 74 E. OF PEE DEE RIVER TO US 74 WEST OF SCOTLAND COUNTY LINE)	11/5/1993	11/15/1993
R-2554	LENOIR WAYNE	US 70 GOLDSBORO BYPASS (WEST OF NC 581 TO WEST OF SR 1714)	7/11/2002	7/17/2002
R-2707 *	CLEVELAND	SHELBY BYPASS (WEST OF SR 1162 PEACH TREE ROAD TO WEST OF SR 1001 STONEY POINT ROAD)	2/4/2010	5/25/2010
R-2248 *	MECKLENBURG	CHARLOTTE WESTERN OUTER LOOP (NC 49 TO NC 27) (NC 27 TO I-85)	3/4/1994 5/6/1994	3/9/1994 7/14/1994
R-609 I Complete	GUILFORD RANDOLPH	US 311 HIGH POINT EAST BELT (SR 1154 TO EXISTING US 311 E. OF ARCHDALE)	12/6/1990	12/20/1990
R-2635 *	WAKE	WESTERN WAKE EXPRESSWAY (WEST OF NC 55 TO NC 55 SOUTH)	8/6/1993	8/13/1993
U-2307	CATAWBA	HICKORY EASTSIDE THOROUGHFARE (STARTOWN ROAD TO SPRINGS ROAD)	7/2/1993	9/10/1993
U-2519 *	CUMBERLAND ROBESON	FAYETTEVILLE OUTER LOOP (SOUTH OF CUMBERLAND COUNTY LINE TO NORTH OF SR 1400) AMENDED AMENDED	10/2/1992 9/6/2001 6/1/2006	10/21/1992 9/11/2001 6/6/2006
U-2524 *	GUILFORD	GREENSBORO WESTERN LOOP (I-85 TO LAWNSDALE DRIVE)	8/2/1996	8/8/1996
U-2525 *	GUILFORD	GREENSBORO EASTERN AND NORTHERN LOOP (LAWNSDALE DRIVE TO NORTH OF I-40/85)	10/4/1996	10/7/1996
R-2413 *	GUILFORD ROCKINGHAM	US 220-NC 68 CONNECTOR (SR 2133 TO THE HAW RIVER)	6/6/1997	6/10/1997
R-2417 ROW Complete	LEE	US 421/NC 87 SANFORD BYPASS (WEST OF SR 1400 TO NC 87)	2/5/1999	2/9/1999

to select property owners such as a large church and a junkyard, neither of which provided any documentation of financial difficulty. Yet the plaintiffs' hardship applications have been denied.<sup>13</sup>

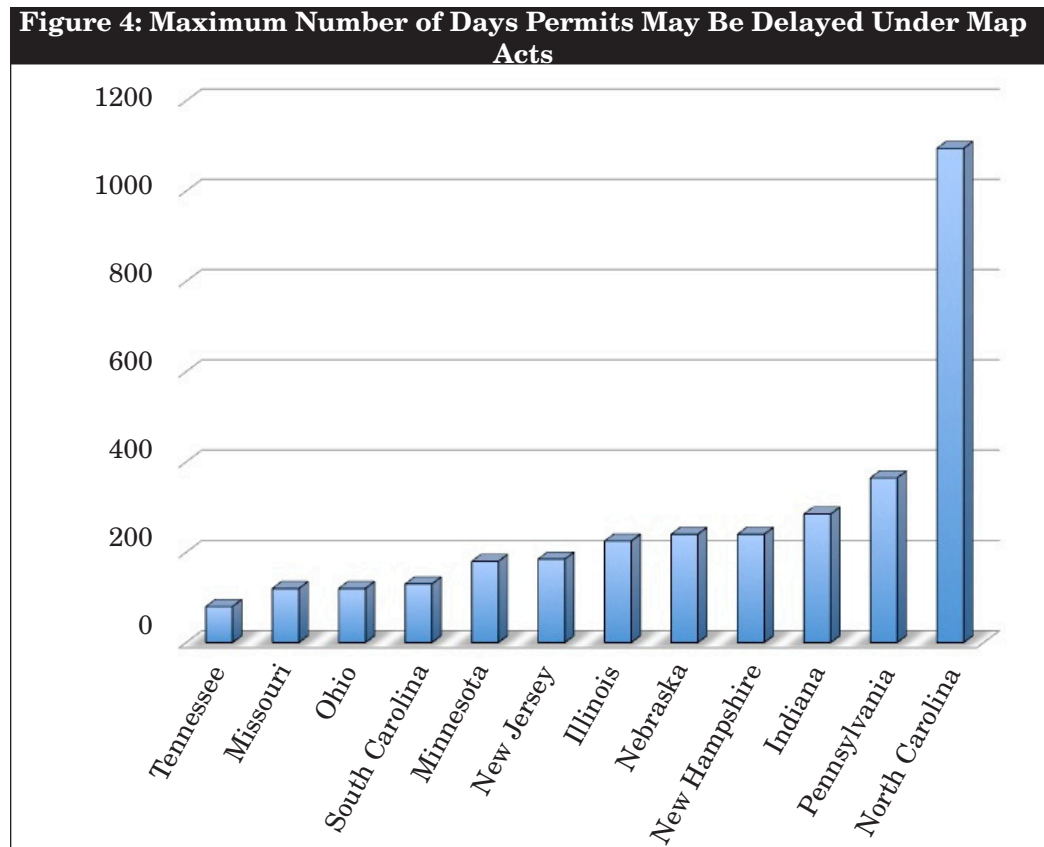
### Property Rights Concerns

The Map Act raises serious concerns over constitutional property rights. When the interference with properties rights is substantial enough, even though there is no actual taking, a state statute allows a property owner to sue for inverse condemnation to force the government to acquire the affected property.<sup>14</sup> In court filings, NCDOT argues that the Map Act's effects do not constitute inverse condemnation, but merely land-use regulation, for which no compensation is required under the constitution until the actual taking occurs.<sup>15</sup> The problem is that an official map can continue to restrict property rights indefinitely. There is no statutory time limit on official corridor maps, and the government is under no obligation to act either to acquire or release properties under the map. Concerns over the indefinite nature of the Map Act were raised by multiple justices during oral argument in late 2013 at the North Carolina Supreme Court.<sup>16</sup>

The implications are much larger than a single court case, however. The issue affects hundreds, if not thousands, of other property owners across the state who are affected by official corridor map projects.<sup>17</sup> Figure 3 shows that there are currently 24 map act projects spanning 18 counties.

### How Other Jurisdictions Address Lengthy Delays

Without exception, every other map act state offers more protection to property owners than North Carolina does. Although North Carolina limits the length of time that building or subdivision permits can be delayed, the state's 3-year (1,095 day) time limit is much longer than any other state. Figure 4 shows that of the other 12 map act states,



11 have statutes that limit permit delays to 365 days or less.<sup>18</sup> The limit in Tennessee is the shortest at 80 days. Utah is the only map act state that does not put a time limit on permit delays. However, Utah property owners under map restrictions enjoy the right to petition for acquisition, after which the governing body must either acquire or release the property from map restrictions.<sup>19</sup>

In addition, courts in several jurisdictions have addressed the question raised by the Northern Beltway plaintiffs at the North Carolina Supreme Court: How long can property restrictions and interference arising from proposed future condemnation continue before

there is a constitutional violation? Figure 5 lists several jurisdictions in which courts addressing the issue have found constitutional violations after delays and property restrictions as short as 2.5 years and up to 14 years.<sup>20</sup> Although these cases are not limited to map act challenges, they are nonetheless instructive as to when the courts will generally step in to establish constitutional bounds. By any objective measure, 17 plus years under a map, as is the case with the Northern Beltway plaintiffs, is clearly out of bounds.

Interestingly, two original backers of the 1987 bill that created the Map Act apparently agree that it was never intended to be a perpetual burden on property

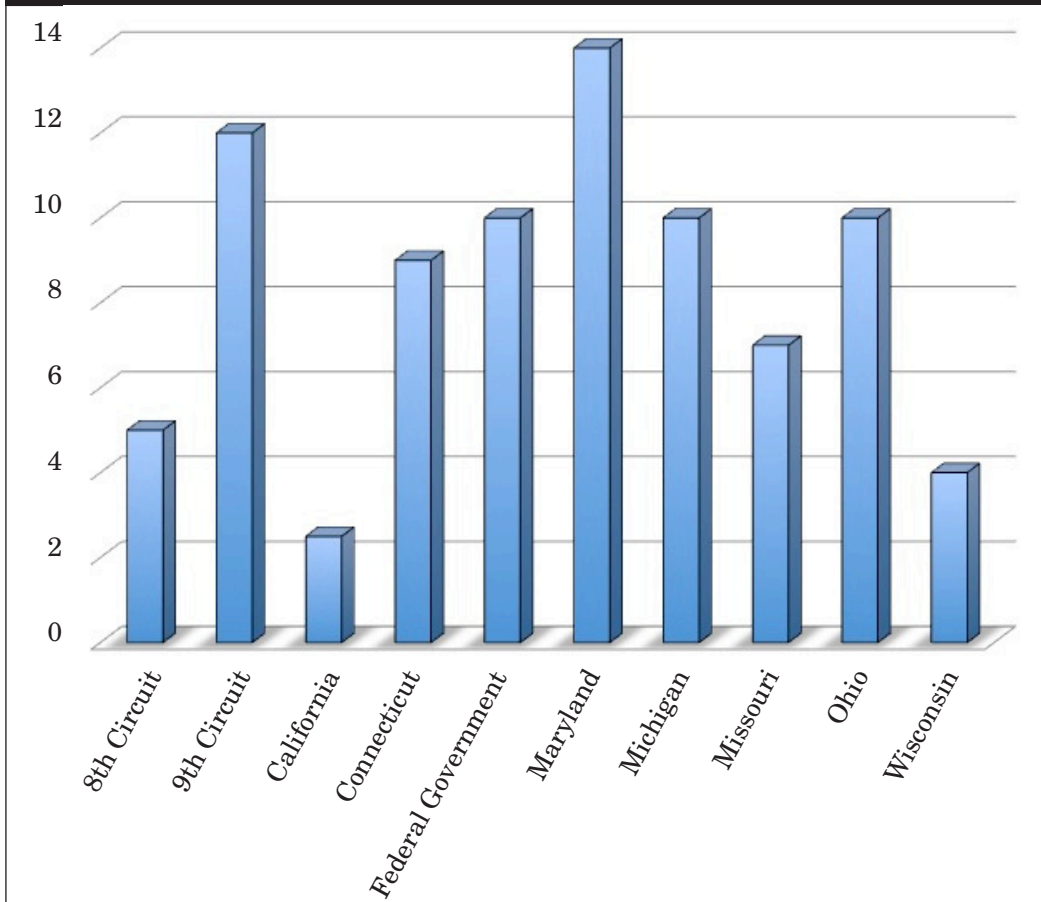
owners. In a 2012 newspaper interview, Sen. Martin Nesbitt criticized lengthy 10 and 15-year delays, saying, “That shouldn’t happen. The intention was to allow for a short period of time, so nothing, nobody got caught moving into a zone like that.”<sup>21</sup> Nesbitt’s colleague and co-sponsor of the bill, Rep. Jim Crawford was also quoted as saying, “There should be a time period involved. We shouldn’t be able to preserve something in perpetuity.” Crawford added, “Maybe we need to amend the statute again.”

### Recommendations

North Carolina should protect the constitutional property rights of its citizens. In order to accomplish this goal, the State should:

- Repeal the Map Act; or
- Set a reasonable time limit on building permit delays between 80 and 120 days;
- Establish a reasonable limit, perhaps between 1 and 3 years, on the length of time an official map can encumber a property; and
- Reform the advance acquisition hardship program to establish clear criteria and reduce the level of discretion left in the hands of officials administering the program.

**Figure 5: Judicially Imposed Limits (Years)**



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## End Notes

1. U.S. Const. amend. V (“...nor shall private property be taken for public use without just compensation.”). “The right to just compensation is not expressly mentioned in the North Carolina Constitution, but this Court has inferred such a provision as a fundamental right integral to the ‘law of the land’ clause [of Art. I, Sec. 19].” *DOT v. Rowe*, 353 N.C. 671, 676 (2001) (internal citation omitted).
2. N.C. Gen. Stat. § 136, Article 2E. For an official list of Map Act projects around the state see Current Transportation Corridor Official Map Summary, [connect.ncdot.gov/projects/planning/Planning%20Document%20Library/Current%20Transportation%20Corridor%20Official%20Map%20Summary.pdf](http://connect.ncdot.gov/projects/planning/Planning%20Document%20Library/Current%20Transportation%20Corridor%20Official%20Map%20Summary.pdf).
3. N.C. Gen. Stat. § 136-44.50(a). The authorized government entities that can establish a map under the Map Act are local governments (i.e., cities and counties), the state Board of Transportation, regional public transportation authorities, the NC Turnpike Authority, and the Wilmington Urban Area Metropolitan Planning Organization for Department projects R-3300 and U-4751.
4. N.C. Gen. Stat. § 136-44.50(b) and (d).
5. N.C. Gen. Stat. § 136-44.51(a).
6. N.C. Gen. Stat. § 136-44.51(b).
7. *Berth Oil Co. v. N.C. DOT*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 725 S.E.2d 651, 655 (2012).
8. N.C. Gen. Stat. § 136-44.53(a).
9. Appellant’s Br. p 7, *Berth Oil*, et al. v. N.C. Dep’t. of Transp., No. 390PA11-2 (N.C. Supreme Ct.).
10. It should also be noted that owners can request variances from operation of the Map Act, but are not entitled to variances as a matter of law. Variances may be granted only if “no reasonable return may be earned from the land,” and the operation of the Act “result[s] in practical difficulties or unnecessary hardships.” N.C. Gen. Stat. § 136-44.52. As one might imagine, property owners and the government do not always agree on what is a reasonable return.
11. NC Department of Transportation, Winston-Salem Northern Beltway, [ncdot.gov/projects/wsnb](http://ncdot.gov/projects/wsnb) (last visited Feb. 6, 2014).
12. *Berth Oil*, et al. v. N.C. Dep’t. of Transp., No. 390PA11-2 (N.C. Supreme Ct.).
13. Appellant’s Br. p 7, *Berth Oil v. NC DOT*, No. 11-1012. While the Forsyth County plaintiffs were told by the NCDOT in 2010 that there would be no funds to purchase their properties for another ten years, three weeks later the NCDOT paid \$1.6 million to purchase a large church property under the program. See also Phillip Bantz, Beltway property owners seek relief, NC Lawyers Weekly, February 24, 2014.
14. N.C. Gen. Stat. § 136-111.
15. *Berth Oil*, Defendant-Appellee’s Br., 22-25, No. 390PA11-2 (N.C. Supreme Ct.).
16. Phillip Bantz, Beltway property owners seek relief, NC Lawyers Weekly, February 24, 2014.
17. NCDOT, Current Transportation Corridor Official Map Summary (last accessed Feb. 26, 2014), available at [connect.ncdot.gov/projects/planning/Planning%20Document%20Library/Current%20Transportation%20Corridor%20Official%20Map%20Summary.pdf](http://connect.ncdot.gov/projects/planning/Planning%20Document%20Library/Current%20Transportation%20Corridor%20Official%20Map%20Summary.pdf).
18. Tenn. Code Ann. 54-18-215 & 216 (80 days); Mo. Rev. Stat. § 226.967 (120 days); Ohio Rev. Code Ann. § 5511.01 (120 days); S.C. Code Ann. § 6-7-1270 (130 days); Minn. Stat. § 394.361 (180 days); N.J. Stat. Ann. § 27:7-67 (180-185 days); 605 Ill. Comp. Stat. 5/4-510 (120 days); Neb. Rev. Stat. § 39-1311.03 (240 days); N.H. Rev. Stat. Ann. § 230-A:9-10. (240 days); Ind. Code 8-23-5-9 (285 days); 53 P.S. § 10406 (365 days); N.C. Gen. Stat. § 136-44.51(b) (1,095 days).
19. Utah Code Ann. § 72-5-403(2) & 405(3)(b).
20. *Althaus v. United States*, 7 Cl. Ct. 688 (1985) (10 years); *Levine v. City of New Haven*, 294 A.2d 644 (Conn. Super. Ct. 1972) (9 years); *Richmond Elks Hall Assoc. v. Richmond Redevelopment Agency*, 561 F.2d 1327 (9th Cir. 1977) (12 years); *People ex rel. Dept. of Transp. v. Diversified Properties Co. III*, 17 Cal Rptr. 2d 676 (1993) (2 ½ years); *Garland v. City of St. Louis*, 596 F.2d 784 (8th Cir. 1979) (5 years); *Reichs Ford Road Joint Venture v. State Roads Commission of the State Highway Administration*, 880 A.2d 307 (Md. 2005) (14 years); *Lumber v. Milwaukee County*, 177 N.W.2d 380 (Wis. 1970) (4 years); *Foster v. City of Detroit*, 254 F. Supp. 655 (E.D. Mich. 1966) (10 years); *Roth v. State Highway Comm’n of Missouri*, 688 S.W.2d 775 (Mo. Ct. App. 1984) (7 years); *Sayre v. U.S.*, 282 F. Supp. 175 (D.C. Ohio 1967) (10 years). In New Hampshire, official maps expire automatically after 10 years, however, they can be renewed. N.H. Rev. Stat. Ann. § 230-A:11. Thus, New Hampshire is not included in Figure 3 since it has no real enforceable limit.
21. Sharon McCloskey, The good news for DOT: It won court ruling, NC Lawyers Weekly, May 21, 2012, available at [ncicl.org/article/743](http://ncicl.org/article/743).