

Article 2E.

Transportation Corridor Official Map Act.

**§ 136-44.50. (See editor's note for act rescinding maps under this Article and moratorium on new maps) Transportation corridor official map act.**

(a) A transportation corridor official map may be adopted or amended by any of the following:

- (1) The governing board of any local government for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.
- (2) The Board of Transportation, or the governing board of any county, for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.
- (3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any portion of the existing or proposed State highway system, or for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.
- (4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.
- (5) The Wilmington Urban Area Metropolitan Planning Organization for Department projects R-3300 and U-4751.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

(a1) No property may be regulated under this Article until:

- (1) The governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, the Department of Transportation, or any other entity listed in subsection (a) of this section has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:
  - a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.
  - b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.
  - c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

- d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.
- (1a) The transportation corridor official map has been adopted or amended by the governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, the Department, or any other entity listed in subsection (a) of this section.
- (2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.
- (3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.
- (b) Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:
  - (1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.
  - (2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.
  - (3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars (\$5.00) for each map sheet or page recorded.
  - (4) The names submitted as required under subdivision (a1)(3) of this section shall be indexed in the "grantor" index by the Register of Deeds.
- (c) Repealed by Session Laws 1989, c. 595, s. 1.
- (d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A local government may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a transportation corridor official map or amendments to a transportation corridor official map. When a city or county prepares a transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the one-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term "amendment" for purposes of this section includes any change to a transportation corridor official map, including:

- (1) Failure of the Department of Transportation, the North Carolina Turnpike Authority, a city, a county, a regional transportation authority, or any other entity listed in subsection (a) of this section to begin work on an environmental impact statement or preliminary engineering as required by this section; or
- (2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, the North Carolina Turnpike Authority, or deletion of the corridor from the long-range transportation plan of a city, county, or regional transportation authority by action of the city, county, or regional transportation authority governing Board.

(f) The term "transportation corridor" as used in this Article does not include bikeways or greenways.

(g) The Department of Transportation shall defend, indemnify, and hold harmless both of the following:

- (1) The City of Wilmington against any claims, civil actions, and proceedings related to or arising out of the City of Wilmington's adoption, filing, or amendment of a transportation corridor official map pursuant to this Article.
- (2) The Wilmington Urban Area Metropolitan Planning Organization and its members against any claims, civil actions, and proceedings related to or arising out of the Wilmington Urban Area Metropolitan Planning Organization's adoption, filing, or amendment of a transportation corridor official map pursuant to this Article.

(h) No new transportation corridor official map may be adopted pursuant to this section from July 1, 2016, to July 1, 2018. (1987, c. 747, s. 19; 1989, c. 595, s. 1; 1998-184, s. 1; 2005-275, s. 1; 2005-418, s. 9; 2006-237, s. 1; 2008-180, s. 3; 2009-332, ss. 1, 2; 2009-570, s. 44; 2013-183, s. 4.4; 2015-151, s. 1; 2016-90, s. 16; 2017-57, ss. 34.17A, 34.18.)

#### **§ 136-44.51. Effect of transportation corridor official map.**

(a) After a transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the transportation corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the transportation corridor. The Secretary of Transportation or his designee, the director of the Wilmington Urban Area Metropolitan Planning Organization, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, shall be notified within 10 days of all submittals for corridor map determination, as provided in subsections (b) and (c) of this section.

(b) In any event, no application for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map shall be delayed by the provisions of this section for more than three years from the date of its original submittal to the appropriate local jurisdiction. A submittal to the local jurisdiction for corridor map determination shall require only the name of the property owner, the street address of the property parcel, the parcel number or tax identification number, a vicinity map showing the location of the parcel with respect to nearby roads and other landmarks, a sketch of the parcel showing all existing and

proposed structures or other uses of the property, and a description of the proposed improvements. If the impact of an adopted corridor on a property submittal for corridor map determination is still being reviewed after the three-year period established pursuant to this subsection, the entity that adopted the transportation corridor official map affecting the issuance of building permits or subdivision plat approval shall issue approval for an otherwise eligible request or initiate acquisition proceedings on the affected properties. If the entity that adopted the transportation corridor official map has not initiated acquisition proceedings or issued approval within the time limit established pursuant to this subsection, an applicant within the corridor may treat the real property as unencumbered and free of any restriction on sale, transfer, or use established by this Article.

(c) No submittal to a local jurisdiction for corridor map determination shall be construed to be an application for building permit issuance or subdivision plat approval. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the transportation corridor, provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed. (1987, c. 747, s. 19; 1998-184, s. 1; 2011-242, s. 1; 2015-151, s. 2.)

**§ 136-44.52. Variance from transportation corridor official map.**

(a) The Department of Transportation, the regional public transportation authority, the regional transportation authority, the local government, or other entity listed in subsection (a) of G.S. 136-44.50 that initiated the transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Local governments may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(c1) The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (a) of this section shall provide for a hearing de novo by the Department of Transportation for any petition for variance which is denied by the regional public transportation authority or the regional transportation authority. All hearings held by the Department of Transportation under this subsection shall be conducted in accordance with procedures established by the Department of Transportation pursuant to subsection (a) of this section.

(d) A variance may be granted upon a showing that:

- (1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and
- (2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships. (1987, c. 747, s. 19; 1998-184, s. 1; 2008-180, s. 4; 2015-151, s. 3.)

**§ 136-44.53. Advance acquisition of right-of-way within the transportation corridor.**

(a) After a transportation corridor official map is filed with the register of deeds, a property owner has the right of petition to the filer of the map for acquisition of the property due to an imposed hardship. The Department of Transportation, the regional public transportation authority, the regional transportation authority, the Wilmington Urban Area Metropolitan Planning Organization, or the local government that initiated the transportation corridor official map may make advanced acquisition of specific parcels of property when that acquisition is determined by the respective governing board to be 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. The procedure established by a regional public transportation authority, a regional transportation authority, or the Wilmington Urban Area Metropolitan Planning Organization pursuant to subsection (b) of this section shall provide for a hearing de novo by the Department of Transportation for any request for advance acquisition due to hardship that is denied by an authority. All hearings held by the Department under this subsection shall be conducted in accordance with procedures established by the Department pursuant to subsection (b) of this section. Any decision of the Department pursuant to this subsection shall be final and binding. Any property determined eligible for hardship acquisition shall be acquired within three years of the finding or the restrictions of the map shall be removed from the property.

(b) Prior to making any advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective governing board which initiated the transportation corridor official map shall develop and adopt appropriate policies and procedures to govern the advanced acquisition of right-of-way and to assure that the advanced acquisition is in the best overall public interest.

(c) When a local government makes an advanced right-of-way acquisition of property within a transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the local government for the cost of any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The local government shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a local government is authorized to expend its funds for the protection of rights-of-way shown on a duly adopted transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits. (1987, c. 747, s. 19; 1998-184, s. 1; 2008-180, s. 5; 2008-187, s. 47.7; 2015-151, s. 4.)

#### **§ 136-44.54. Standard for appraisal of right-of-way within corridor.**

The Department shall utilize the criteria contained in 49 C.F.R. § 24.103 (1997) when appraising right-of-way in a transportation corridor designated under this Article. (1998-184, s. 1.)