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# Is This North Carolina or Zimbabwe?

## *How Property Rights in North Carolina Deteriorated to the Level of a Third-World Country*

————— ◆ —————  
CRAIG J. RICHARDSON

Numerous studies have shown a clear positive link between strong property rights and economic development (North and Thomas 1973; Rosenberg and Birdzell 1987; Torstensson 2007). Countries with weak property rights also have low foreign investment, more political coups, and higher economic volatility (Goldsmith 1995). Moreover, as I have shown elsewhere (Richardson 2004), Zimbabwe's sudden abandonment of property rights in the early 2000s led to its rapid economic collapse and hyperinflation; Nicaragua went through a similar journey during the 1980s.

The impact of a sudden change in property rights is certainly easier to measure than a slow one. Nevertheless, small changes over time can lead to large consequences. As one can see in table 1, the United States has been on a general downward trend over the past decade, as shown by the drop in its score in the Heritage Foundation Property Rights Index from 90 to 80 (Heritage Foundation 2015).

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**Table 1**  
**Change in Heritage Foundation Property Rights Index Scores over Time**  
**(Score Range: 0–100)**

	Year					Net Change, 1995–2015
	1995	2000	2005	2010	2015	
United States	90	90	90	85	80	–10
World Average	56	52	47	44	52	–4
Zimbabwe	50	30	10	5	10	–40

*Source:* Heritage Foundation 2015.

For the world as a whole, property-rights protection is also falling, and the net change in its score is a negative four points over the same time period. Zimbabwe’s drop in score from 50 to 10 in the Property Rights Index makes it among the worst in the world in terms of property-rights protection, along with Cuba, Haiti, and Sierra Leone.

It might seem a far stretch to compare the United States to countries with such low property-rights protection. However, it is useful to examine how the Heritage Foundation arrives at its index ratings, as shown in table 2. A country’s rating reflects an average score, and, as noted, the United States currently scores an 80. This means that in general in the United States property is “highly unlikely” to be expropriated; there is “minimal” corruption in government; and there generally are efficiencies “but with delays” in court enforcement of contracts (table 2). This assessment is arrived at in comparison to a hypothetical country with a score of 100, which has no likelihood of expropriation, no corruption, and no delays in processing. However, there is substantial variation in property-rights protection across the United States due to variation in state laws (Ruger and Sorens 2013).

In general, a nation-based property-rights index may miss subtler trends that lead to weaker protection of property rights, although it is very useful in identifying an overall direction for a given country. An average rating will tend to mask the best and worst cases in a large country such as the United States, and thus the general populace may be unaware of more extreme cases that can serve as precedents for future legislation and court cases.

As a prime example, in the United States a form of legislation has moved across the country that is substantially weakening property rights, but only for some groups of people. It happens when the states plan for future roads by designating what are known as “transportation corridors.” In many cases, the proposed roads go through rural and urban areas, making it difficult for the state to budget when there is a volatile real estate market. As a result, thirteen states have passed regulations known as “Map Acts.” The goal of a Map Act is to control the costs of property acquisition

Table 2  
Heritage Foundation Property Rights Index

Scale (1-100)	Private property guarantee?	Court system enforcement of contracts	Possibility of expropriation?	Corruption in government?
100	Yes	Efficient and quick	No	No
90	Yes	Efficient, not quick	Highly unlikely	Almost never
80	Yes	Efficient, but with delays	Highly unlikely	Minimal
70	Yes	Slow and lax in enforcement of contracts	Unlikely	Justice system may be influenced by other branches.
60	Lax enforcement	Subject to delays	Unlikely	Justice system may be influenced by other branches.
50	Lax enforcement	Inefficient, subject to delays	Possible	Justice system may be influenced by other branches.
40	Lax enforcement	Highly inefficient, delays deter use of court system	Possible	Corruption present
30	Weakly protected	Highly inefficient, delays deter use of court system	Possible	Extensive corruption
20	Weakly protected	So inefficient that courts are avoided and arbitration is the norm	Possible	Extensive corruption
10	Weakly protected	So inefficient that courts are avoided and arbitration is the norm	Common	Extensive corruption
0	Outlawed	No contracts with no property	Common	Endemic

Source: Heritage Foundation 2015.

for the state by forbidding new construction or land development during road development in the designated corridors.

Map Acts enable this control by limiting building and subdivision permits, and the result is weakened property rights for those individuals within these designated corridors. During the period when homes fall under a Map Act, owners will have a difficult time either renovating or selling their homes. In effect, their ownership rights devolve to something closer to renting a property, but with the added burdens that the property is nearly impossible to sell and owners still have to pay at least a portion of their property taxes. There is generally a time limit that the state can delay owners' petitioning for a building permit, and after this period the state must act or release the property from the corridor, as seen in table 3. If the state does not act in time, property owners are allowed to go ahead and continue with their plans. Table 3 shows that of the thirteen Map Act states, eleven limit the delays in obtaining building permits to 365 days or less. (Although Utah does not have a time limit on permit delays, the owners have the right to petition for acquisition by the governing body, which then must acquire or release the property from the restrictions placed by the state's Map Act [Younts 2014, 5]).

Until recently, North Carolina stood far apart from the other states. Its state government could delay acting upon a building permit request by up to 1,095 days,

**Table 3**  
**Maximum Number of Days That Building Permits May Be Delayed**  
**under State Map Acts**

State	Number of Days
Tennessee	80
Illinois	120
Missouri	120
Ohio	120
South Carolina	130
Minnesota	180
New Jersey	180
Nebraska	240
New Hampshire	240
Indiana	285
Pennsylvania	365
North Carolina	1,095*

\*North Carolina governor Pat McCrory signed a bill revoking the Map Act highway-designated corridors on July 12, 2016.

*Source:* Data compiled from Younts 2014, n. 18.

or *three years*, which was far longer than any other state. In addition, each subsequent building permit could be delayed for another three years. In practice, under this legislation there was no deadline for the North Carolina Department of Transportation (NCDOT) either to build the road or to cancel the project or to buy out the property owners (Younts 2014, 5). A key point is that unlike with eminent domain, property owners who fell under Map Act–designated corridors lost a portion of their property rights without compensation because they were typically forbidden to upgrade or develop their property, which made their property virtually unsaleable.

However, in June 2016 the North Carolina Supreme Court ruled that map designations and building restrictions were a taking of property. It ordered the NCDOT to compensate affected landowners. In July, Governor Pat McCrory signed legislation revoking the Map Act entirely (Young 2016b). Now the state begins the long process of figuring out what the appropriate losses are for the landowners, many whom have been in property limbo for decades.

The long-term damages and perverse incentives caused by the North Carolina Map Act deserve study as a warning to other states considering using similar legislation to save taxpayers money. As this article shows, the unintended outcome in North Carolina was a quagmire of frozen real estate markets, lawsuits, and sliding property values. The payouts and appropriate compensation continue to be in dispute, and the consequences are not easily reversed.

Hernando De Soto (2000) aptly uses the term *dead capital* to refer to the wealth in property that is inaccessible due to a lack of property rights. He argues that without the ability to use property as collateral or to transfer it to another individual who will put the resource to better use, the end result is that individuals are locked out of economic growth and development. Indeed, like the commercial farmers in Zimbabwe who lost the titles to their land but were still allowed to farm, North Carolina homeowners in these protected corridors found that their wealth was suddenly transformed from live to (nearly) dead capital.

Prior to mid-2016, twenty-four North Carolina Map Act projects spanned eighteen counties. They affected thousands of property owners in Wake, Johnston, Forsyth, Cumberland, and other counties (“NC Map Act Is Unfair” 2014). This article focuses in particular on the longest-delayed project in the state: the Northern Beltway project around Winston-Salem, which at the time had 236,000 residents. More than two thousand homes lay within the Winston-Salem NCDOT “protected road corridor.” The uncertainty created by the repercussions of the North Carolina Map Act has essentially shut down all interest from prospective buyers and real estate agents, freezing sixteen square miles of real estate over several decades. As this article demonstrates, if this area of Forsyth County, North Carolina, were representative of the United States as a whole, the United States would probably merit a score between 10 and 30 on the Heritage Foundation’s Property Rights Index, whose scoring system is shown in table 2. Property rights were “weakly protected” and “highly inefficient” (due to a virtual shutdown of the real estate market), and most property

owners avoided the court system to settle their grievances. Expropriation was certainly “possible,” with the state government offering far below market value, although corruption is difficult to measure. This article therefore argues that the Winston-Salem highway project represents one of the true lower bounds for property-rights protection within the United States.

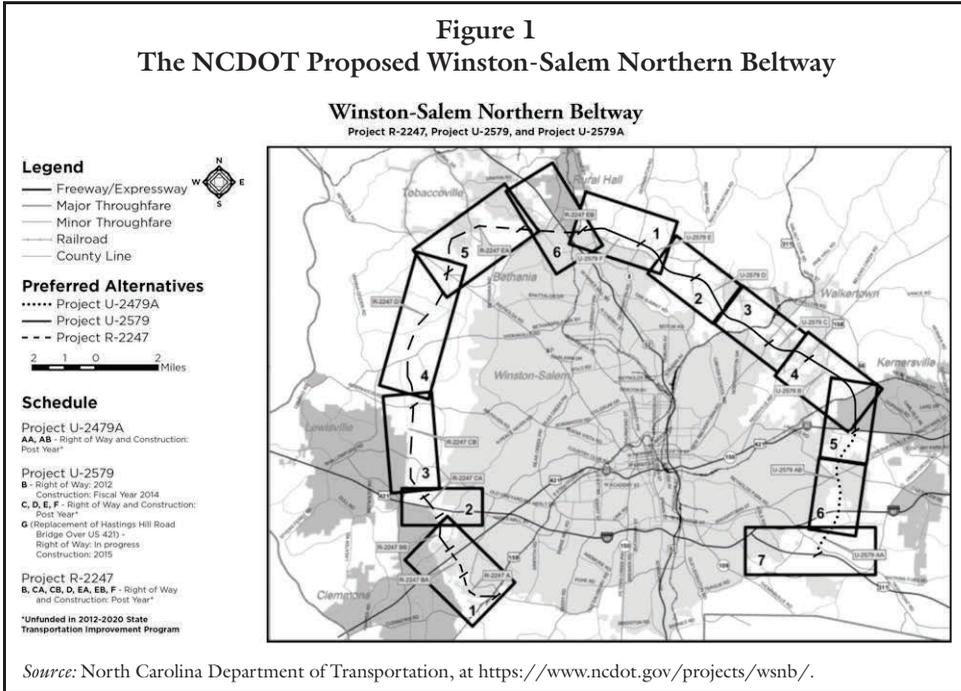
A case involving a relatively small group of U.S. citizens in one state might seem inconsequential for understanding the relative strength of property rights in the United States as a whole. However, it can be argued that a country’s protection of property rights can be better understood not by its median level but by the most extreme cases that have been allowed to stand legally. The latter cases, after all, may set precedents for future legislation across the country regarding individual protection of property rights and foretell a future path. Studying how the North Carolina government arrived at this point may prove helpful for state policy makers around the country who are thinking of making short-term trade-offs between weakening property rights and lowering state budgets. The hidden costs of Map Acts are far more substantial than is commonly understood.

The first section gives more background on the history of the Northern Beltway as well as on the legal cases that have made their way through the North Carolina court system. In the second section, I show how the Map Act weakened property rights and detail five perverse economic incentives that arose as a result of the act. These incentives served to counter economic development and reward road-building delays. Three case studies are provided. The final section sums up the substantial (and often invisible) costs of the Map Act in the Winston-Salem area, which before now have never been comprehensively measured. Although the region I focus on is small, the lessons are relevant to policy makers around the world, who may be looking to the short-term budgetary benefits from legislation that weakens property rights rather than taking stock of the long-term negative effects of that legislation on private citizens.

## **The Winston-Salem Northern Beltway: A Short History**

In 1987, the NCDOT adopted the Winston-Salem Forsyth County Thoroughfare Plan, or the Northern Beltway, to enhance connectivity to the region, state, and country. The roads that served the area, in particular U.S. 421 and U.S. 52, bore far more traffic than they were originally designed to handle, leading to frequent traffic jams. As seen in figure 1, the planned beltway stretched in a rough semicircle 34.2 miles long around the north of the city of Winston-Salem through Forsyth County, with a western junction at U.S. 158 and an eastern junction at U.S. 311.

The next step toward building the beltway was for the NCDOT to create designated road corridors. Designated road corridors are designated spaces where the state plans to build a future road when it comes up with the money or initiative.



The corridor map is defined as “a map, drawing or written description of a planned roadway alignment, with approximations of future right of way boundaries, which is adopted by the Board of Transportation for right of way protection purposes” (NCDOT 1993). By 1997, the western side of the beltway was a designated highway corridor under the Map Act, effectively freezing any future development plans for several thousand property owners. The eastern side, still part of the Thoroughfare Plan of 1987, was officially designated a highway corridor in 2008.

The initial problem began when construction was slated to begin in 1999. A series of environmental lawsuits that claimed the road would add to global warming tied up the construction of the road for five years. By the time the lawsuits were dismissed, state funds had been reallocated, and the road was no longer funded; the NCDOT announced that due to budget shortfalls the project would be pushed until 2012 at the earliest (Winston-Salem Chamber of Commerce 2015). New environmental lawsuits in 2008 led to further delays, and an estimated doubling of the project’s cost led to its being put in last place among all urban-loop projects in the state (Winston-Salem Chamber of Commerce 2015).

In March 2011, state officials tried a different strategy, breaking the beltway into sections (as seen in figure 1), with the idea that the eastern section might be moved higher on the list of state road projects to be completed (Hinton 2011). Nevertheless, the NCDOT ranked the Northern Beltway project 1,389th out of 1,700 road projects according to its needs-based scoring system (Hinton 2011).

Meanwhile, in late 2010, seven landowners filed a lawsuit that called on the NCDOT to buy hundreds of properties along the Northern Beltway. The lawsuit claimed that the state had harmed the landowners by designating their properties as being in the beltway corridor but never buying the land. The claims made by the plaintiffs included (1) that the landowners could not improve their properties; (2) that it was unfair that some owners could sell through a “hardship program,” whereas others could not; and (3) that the corridor caused neighborhood “blight.” The plaintiffs also argued that the NCDOT bought houses and rented them at less than market value. They claimed that as a result of all these things their properties were both “unmarketable and undevelopable and rents and property values are depressed because of the state’s action” (Young 2010). In 2011, the North Carolina Supreme Court ordered a review of the case as a class-action lawsuit. The Forsyth County Superior Court ruled that the owners could not sue jointly as a class-action lawsuit and that they would have to sue on an individual basis because their properties varied in their uses. The landowners appealed this decision, and in early 2015 the North Carolina Court of Appeals ruled unanimously that the state should compensate the eleven landowners whose property was tied up in the transportation corridor. The case was sent back to the Forsyth County Superior Court for a determination of the amount of money due to each landowner.

The NCDOT appealed the decision to the North Carolina Supreme Court. The lead attorney for the NCDOT argued that the restrictions from the Map Act were like “zoning” or other “police powers” that put restrictions on property use without taking it (Young 2016a).

Finally, as noted earlier, in June 2016 the North Carolina Supreme Court agreed with the plaintiffs, and in July Governor McCrory signed legislation that overturned the Map Act. The ruling by the North Carolina Supreme Court could end up costing the state tens of millions of dollars in compensation to affected landowners.

To date, after nearly two decades in development, only a small section of the eastern part of the beltway has been completed, indicated by boxes 6 and 7 on the right side of figure 1. Sections 1–5 on the eastern side have now been funded, but sections 1–6 on the western side still remain unfunded, with no discussion of future funding. The uncertainty over the decades due to the Map Act meant that fewer than ten affected beltway properties have been part of a true market transaction since 1997, whereas 16,162 sales have occurred within one mile of the beltway, outside of the corridor.

## **How Designated Road Corridors Weakened Property Rights**

Once the NCDOT established an official map of a future road, property owners received a letter from the NCDOT that let them know their property lay within a

designated corridor. As a result, it became very difficult for them to sell the property. With the highly uncertain expectation of future compensation, many owners sharply curtailed their use of their land. As one local government tax official put it, “It’s a bit like comparing two identical vehicles on a used-car lot—one with an oil leak and one without. You naturally pick the one without the future headache.”<sup>1</sup>

In an information sheet on highway corridors published in 2003, the NCDOT noted that “the adoption of such a map places temporary restrictions on private property rights by prohibiting for up to three years the issuance of a building permit or the approval of a subdivision on property within an adopted alignment” (NCDOT 2003). The land was protected from “certain activities,” which meant that people were not allowed to use their property in ways they once did. Homeowners could not build new structures, such as a garage, or obtain a building permit for any reason unless approved by the state, which had up to three years to make a decision. The brochure noted that people were allowed to make repairs and light renovations that did not require building permits, such as painting or putting in a new sink, and they could sell their property. Of course, there were few, if any, willing buyers for homes whose use was sharply limited and that could be demolished with only ninety days advance warning from the NCDOT. Note that the state allowed for the property owners to petition for a variance, but “the burden of proof lies with the property owner” (NCDOT 2003). This burden transferred the cost of protecting property rights away from the state. If homeowners wished to move, they could apply for permission to the state, which evaluated cases based on perceived “hardship” to the owner. In the case of medical or economic reasons, the state could agree to acquire the property even if the road was not yet built.

If the state so decided, the homeowner who was interested in a building permit might in some cases be allowed to make “limited improvements” that might otherwise be prohibited. There were a set of appeal options, but they could take years to decide. Tyler Younts notes that “[c]oncerns 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” (2014, 5).

In order to understand why the North Carolina Map Act led to such delays, it is useful to look more deeply into the incentive structure that was built into it. The incentives were perverse in an economic sense in that they led to high inefficiencies in both the public sphere and the private sphere. In the public sphere, the Map Act encouraged lengthy building delays, and in the private sphere it led to a collapsing real estate market and, with it, collapsing wealth and income in the area covered by the road corridor. Because the Map Act saved the state of North Carolina money and the state bore none of the costs of the large destruction of wealth, the state could largely ignore that destruction.

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1. John Burgiss, Forsyth County tax assessor, telephone interview, October 7, 2015.

Five perverse incentives of the Map Act served to turn the “live capital” in a functioning property market into “dead capital” within the road corridor. Although not the only reason the road was not built, these perverse incentives oriented the state government in the wrong direction, if completing the road was the goal. As shall be shown, from the state’s perspective the Map Act sharply lowered the cost of delaying decisions while tangibly rewarding the state with a stream of rental income. Perhaps more seriously, the Map Act promoted a continued and ongoing loss of property rights for a designated group of individuals that substantially narrowed their range of life choices relative to other U.S. citizens.

## **Five Perverse Incentives in the Map Act**

### *A Free Price Hedge to the State*

The State of North Carolina could create designated corridors without cost to itself because there was no requirement that the roads be funded first through state budget allocations. This ability created an incentive for the NCDOT to plan as many roads as possible throughout the state in order to freeze economic development and property values—all for some possible future road. Thus, the Map Act gave the state a free price hedge. The state elected to exercise its options, as happens in most cases where goods are free, even if the road had a low probability of ever being built. As a result, the properties that lay within the designated corridors remained in limbo for decades. In a panel hearing with homeowners held on March 18, 2014, Jay Bennett, the state’s roadway design engineer, took questions from many homeowners and admitted that until the road was funded by the state government, no homeowners could be bought out, nor could they refinance their homes. In response to a question from homeowner Elaine Smith Pegram, who said she had waited twenty years for a decision from the NCDOT, Bennett replied that, “according the funding schedule, this section is not yet funded.”<sup>2</sup> He gave no indication of when or if it ever would be funded.

With no deadlines facing the state and no issues regarding the state budget, decisions regarding roads could be repeatedly passed over. At the same time, the Map Act worked even better than a price hedge because the state could also lower its offers for real estate when prices begin to fall, citing new “market conditions.” In some areas, such as near Lewisville, rapidly declining maintenance of homes lowered the overall property value of the neighborhood. In other words, the state got all the benefits of a falling real estate market and had a free hedge against the costs of a rising market.

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2. For a complete transcript of the hearing with multiple affected homeowners, see “Memo to Post Hearing Meeting Attendees,” April 16 2014, at <http://www.ncdot.gov/projects/wsnb/download/R2247PostHearingMeetingMinutes31814.pdf>.

### *Lost Property Tax Revenue*

Prior to road construction, the NCDOT typically bought the property in the path of the future road. With the long delays in road building, by 2013 the NCDOT had acquired hundreds of properties. By law, the NCDOT is not required to pay property taxes. When the cost of holding an asset falls, one would expect the asset to be held longer or in larger quantities or both. According to information provided by the Forsyth County Tax Administration upon request, most of the properties owned by the NCDOT were near future freeway exits or were high-valued properties. With the state facing no tax burden for owning formerly private (and potentially high-value) properties, county taxpayers had to pay a subsidy for Forsyth County–provided benefits, such as fire and police protection, garbage collection, and snow removal. These benefits were free to the state and thus provided extra reason to delay plans to build roads.

As noted, when the NCDOT acquires homes, it is not required to pay property taxes to the local county. In order to measure the loss of property taxes over time to Forsyth County, I put each of the NCDOT home addresses into Zillow.com, a real estate database that includes information on property taxes and the last year that property taxes were collected for each property. For example, if a property paid \$1,200 in property taxes in 2008 but in 2009 was acquired by the NCDOT, then a series of zeros are given in that field from 2009 on. The period of total lost county taxes in this case is five years, from 2009 to 2013. By multiplying five years times \$1,200, we can determine that there was a total of \$6,000 in forgone property taxes to Forsyth County in this period as a result of the NCDOT acquiring this sample house. I went through this same process for 356 of the 463 (77 percent) NCDOT-owned properties within the Winston-Salem Northern Beltway in this period (only these 356 properties had full street addresses).

The original data for all the beltway properties came from the Forsyth County's taxpayer geographic information system database for 2013, and I included in my analysis properties located within the path of the Northern Beltway corridor. There were 1,807 private properties and 463 NCDOT-owned properties in the corridor as of 2013, although some properties have been razed or acquired since then. The NCDOT-owned properties made up 20.3 percent of all the properties in the beltway. Based on this data, the total assessed value of all properties in the beltway's path is calculated at \$462.3 million, using official Forsyth County tax-assessed values. Importantly, note that the County Assessor's Office does not take into account the damaging impact of being within a designated corridor on one's property value; only the exterior value and comparative properties are utilized in the analysis.<sup>3</sup>

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3. Burgiss telephone interview.

**Table 4**  
**Properties Acquired by the NCDOT in Forsyth County, North Carolina, and the Impact on County Tax Revenues, 2004–2013**

NCDOT Acquisition of Private Properties in the Designated Beltway Corridor over Time										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of additional properties, per year	7	1	148	141	6	0	34	9	11	0
Running total	7	8	156	297	303	303	337	346	357	357
Percentage of total properties (2,270)	0.3	0.4	6.9	13.1	13.3	13.3	14.8	15.2	15.7	15.7
Impact of NCDOT Acquisitions on Forsyth County Tax Revenue										
Additional loss after property acquisitions that year	\$5,184	\$1,352	\$163,476	\$161,755	\$9,224	\$0	\$50,767	\$6,582	\$8,463	\$0
Total lost revenue after property acquisitions that year	\$5,184	\$6,536	\$170,012	\$331,767	\$340,991	\$340,991	\$391,758	\$398,340	\$406,803	\$406,803
Cumulative loss between 2004 and 2013	\$2,799,185									

*Note:* The data given here represent 77 percent of a total of 463 homes owned by the NCDOT.

*Sources:* Data compiled from information provided in the Forsyth County geographical information system and Zillow.com.

Table 4 shows the pace of NCDOT acquisition of beltway properties between 2004 and 2013 for the 356 properties and the resulting loss of property tax revenue to Forsyth County. In 2006, there was the first large NCDOT purchase of 148 properties, which at that point led to a loss of \$163,476 in property tax revenue to Forsyth County that year. Another large acquisition occurred in 2007, 141 homes, and an additional loss of annual county revenue of \$161,755. The pace of acquisition substantially slowed after that, but the ongoing annual loss of county revenues from the 357 properties is now at \$406,803. This figure ignores any reevaluations that may have occurred through rising real estate prices or owner improvements had the road corridor never been designated. The cumulative loss to the county between 2004 and 2013 was thus at least \$2.8 million.

These measurements are thus conservative because we don't have a full data set. If we assume the rate on property taxes is approximately the same on the remaining 107 properties without full street addresses, and the uncounted properties are on average the same size as the counted ones, then we can extrapolate the full loss in property taxes in 2013 to be  $\$406,803/0.77$ , or \$528,316 in yearly foregone taxes after 2013. Thus, the true losses to the county were about 30 percent higher in 2013, if the assumptions hold.

### *NCDOT: Landlord of Government-Titled Properties*

The Map Act created another perverse incentive for road-building delays: the NCDOT had the power to evict homeowners and then rent the homes instead of bulldozing them to build the road. With indefinite time lines and road budgets, the Map Act allowed the state to create a new stream of income for the state of North Carolina. Within Forsyth County, all the homes for rent by the NCDOT are within the Northern Beltway or very close beside it, as indicated by the tax records I requested from Forsyth County. According to the Forsyth County Tax Administration, this practice of renting homes is highly atypical because the usual scenario for small road projects is to raze the homes immediately.<sup>4</sup>

To analyze the cash flow of rental income to the NCDOT for the Northern Beltway, I requested this information from the NCDOT office. It replied to the inquiry within a month and provided an Excel spreadsheet with detailed house-specific data on rental income in Forsyth County. The data were on a month-to-month basis from 2007 to 2015, and all homes in the data set lay within or beside the Northern Beltway corridor. For this analysis, I added the NCDOT data across all twelve months to reach a total for each year. Most but not all properties were income-producing properties that provided a positive cash flow for the state. Some monthly

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4. Pamela Hurst, geographical information system specialist, Forsyth County Tax Administration, interviewed by the author, February 11, 2016, Winston-Salem, North Carolina.

**Table 5**  
**Net Rental Income for NCDOT Properties within the Planned Northern Beltway, Forsyth County, North Carolina**

	Year										Average
	2007	2008	2009	2010	2011	2012	2013	2014	2015		
NCDOT rental income, net of expenses	\$337,813	\$625,490	\$734,964	\$712,772	\$800,146	\$885,067	\$951,305	\$1,010,147	\$937,400	\$777,234	
Number of income-producing properties*	43	95	119	124	120	132	148	147	148	120	
Average monthly rent per incoming-producing property	\$654.68	\$548.68	\$514.68	\$479.01	\$555.66	\$558.75	\$535.64	\$572.65	\$527.82	\$541.75	

\*Income-producing properties are those properties that are rented and show a positive cash flow, net of expenses, at year's end.  
*Source:* Data from the North Carolina Department of Transportation.

rentals had negative values, which is assumed to be net cash flow from the state on expenditures for upkeep on that property.

Table 5 shows that the number of income-producing properties in the Northern Beltway designated corridor has increased steadily over time since 2007. Net income to the state increased as well, from \$337,813 in 2007 to \$937,400 in 2015. (There may have been a slight dip in 2015 because the data were sent in mid-December 2015.) The NCDOT's collection of income-producing homes is also on the rise, from 43 in 2007 to 148 in 2013, although the number has levelled off since then. (Note that the number of homes is always less than the number of properties, as seen in table 4, because many of the properties are open land.)

The managing of these properties, including maintenance, marketing, and distribution, has now become a function of the NCDOT rather than being handled in the private sector. As a result, income to the state, although small in relative terms, still has a positive impact on the state's budget and provides a disincentive to demolish structures for road-building purposes. This disincentive is of course even larger due to the lack of clear deadlines in building the road. The longer it takes to build the road, the larger the revenue stream to the state. Between 2007 and 2015, the net rental income from NCDOT-owned homes rose by 178 percent, as reflected in table 5. (Recall that the Northern Beltway was just one of several dozen road-building projects around the state that fall under the Map Act, so the total rental income to the state may be sizeable.)

### *Foregone Home Maintenance: The Estimated Surrounding Economic Impact*

Property owners who live in a designated corridor know that on any given day, they might receive a letter declaring that they must vacate their home within ninety days. This knowledge naturally changes their time frame for routine maintenance and leads to putting off large fixes. Thus, area businesses that formerly received income from maintenance to these thousands of homes no longer receive that income. To do a rough calculation of the lost revenues to neighboring maintenance-based businesses, such as carpenters, roofers, plumbers, and the like, one can estimate that a typical property requires approximately 1–4 percent of its value per year in annual maintenance (Beals 2012). If a conservative 2 percent is used, then the lost revenue to county businesses for these types of expenses within the beltway corridor can be figured from the following formula: \$462 million worth of property value  $\times$  0.02 = \$9.24 million. Now, that is not to say the money “disappears”; money not spent on maintenance may be saved or used for other things in the county, such as more leisure activities, or used for purchases of items from out of state. But the shift in expenses from home goods to leisure/retail goods means a fraction of it is not spent in Forsyth County or not spent at all. The estimate of the lost fraction is beyond the scope of

this paper, but, in any event, the direct losses to the home-maintenance market are substantial.

Thus, the fourth perverse incentive of Map Acts is to accelerate the depreciation of property and devalue local real estate as well. Property owners have incentives to act more like renters as a result of weakened property rights.

### *Increases in Monopsony Power by the State*

The North Carolina Map Act of 1987 gave the State of North Carolina large discretion to interpret who should or should not get a variance, how much people would get in compensation for their property, and whether a building permit was “necessary” or not. In other words, there was a transfer of part of the bundle of property rights away from homeowners and toward the State of North Carolina without clear or direct compensation. As a result, the increased leverage gave the state a perverse incentive to act as a single buyer, or monopsonist, which allowed it to negotiate prices down and set terms with far more advantage to itself than would be the case in a competitive market. Although taxpayers outside the beltway may have initially found this practice to be an advantage, there are some troubling consequences of the use of monopsony power.

First, monopsony power is generally frowned upon by the U.S. Department of Justice and the Federal Trade Commission, and potential mergers have been blocked on these grounds (Carlton, Coleman, and Israel 2015, 532). Monopsony is inherently inefficient and welfare reducing (Carlton, Dennis, and Perloff 2005, 108). In general, when a firm with monopsony power pays less than competitive prices, resources leave the area, especially in the long run. This exit results in deadweight losses for what might have been produced. In the North Carolina case, if the state government is known for paying poorly for acquiring property, then this practice represents a risk for any future investors, who may see their capital frozen within a designated corridor at some future date. The foregone investment is thus another source of inefficiency caused by the rise of monopsony power.

When the state is in charge of a property owner’s future decisions about his or her property, the options are sharply limited: owners can either stay in their homes with little or no opportunity to get building permits for upgrades, become landlords in order to move elsewhere, or appeal to the state for what is known as advanced acquisition. In the Northern Beltway case under discussion here, the state was given tremendous power and leeway to decide what was in the state’s best interest rather than in the homeowner’s. For example, to effect advanced acquisition the homeowner had to show that the acquisition was 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.” Numerous lawsuits against the North Carolina contended that these hardship acquisitions were made in a nonsystematic and selective manner (McCloskey 2012). Three specific cases demonstrate the use of state monopsony power.

In 2000, Michael Hendrix and his family were ready to sell a third of their twenty-four-acre property in Forsyth County to a prospective buyer for \$1.2 million. That deal suddenly fell apart when the would-be buyer learned that the property stood in the path of the proposed beltway. Seven years later, in 2007, the NCDOT approached the Hendrix family with a far lower offer: \$530,700. The family rejected that offer as too low and reapplied for an NCDOT buyout in 2012, but Michael Hendrix died in November 2013, still waiting for the NCDOT's response. The uncertainty continues to affect the rest of the Hendrix family (Mobley 2014).

In the late 1990s, John and Hazel Weisner, profiled in a WFDD radio news story in 2013, were retired and hoped to develop some of their land for single-family homes as their retirement nest egg. According to the couple, the NCDOT told them in 1998 that, "within the year, they would be out to buy us out." After selling their livestock, they bought a mobile home to live in during the transition and started looking for a new farm. With still no beltway in sight fifteen years later, in 2013, the couple were forbidden to sell part of their farm to developers, so they lost out on potential income that could help them as they got older and worked only part-time (Mobley 2013).

Walter Beroth had property being used as a used-car lot, but his company, Beroth Oil, Inc., wanted to put a convenience store on the property. The NCDOT would not approve the building because it would raise the expense of building the beltway, nor would the NCDOT buy out the Beroths. Because the Beroths were potentially losing income through the state's inaction, they filed a class-action lawsuit in 2010 stating that their property rights were being violated. After many appeals, as noted earlier, the North Carolina Supreme Court ruled in 2014 that the Beroths and other citizens would have to bring their suits to court on a case-by-case basis. However, on February 20, 2015, the North Carolina Court of Appeals sided with the plaintiffs, ruling that the state will have to pay just compensation for the properties plus interest for the years in which the properties were tied up. It will also have to reimburse the plaintiffs for their lawyers' fees. The state has said it will appeal the decision (Hennessey 2015).

## Conclusion

The unintended consequence of the North Carolina Map Act is that it gave the state a cost-free pricing hedge that enabled it to freeze property values in order to potentially save money for itself down the road. As this article has shown, the actual cost of that so-called free hedge was borne by the citizens of the state. According to empirical data from the county and state government, in just one project alone in Forsyth County the Map Act

- Froze \$462 million worth of property, which resulted in virtually no land sales, maintenance, or renovation from 1997 on.

- Gave the state no budgetary constraints on designating road corridors across the state because the corridors could be created without prior funding for the roads. This practice left owners in a state of near permanent limbo regarding their property.
- Caused Forsyth County to lose more than \$3 million in property tax revenue over the past ten years.
- Allowed the state government of North Carolina to continue to buy more homes within the Northern Beltway and to rent them out. The rent it collected increased by 178 percent over the past five years, which created a disincentive for razing homes and proceeding with road construction.
- Likely affected the local economy and area property values because of far lower maintenance of homes with respect to plumbing, painting, lawn care, and the like.
- Created inefficiencies and deadweight losses through the suppression of individual initiatives to build new businesses, renovate property, and sell to buyers who would put more value on the resources.

As a result, the Map Act created many perverse incentives that gave the state even less reason to go forward with building a road. Whatever the reason for the endless delays, it is clear that having an indefinite time horizon led to suboptimal market conditions for property owners and county finances alike while at the same time creating a positive income stream for the state. It has taken expensive lawsuits and decades of protest for the state to finally change its position, which it did in the summer of 2016, but only after it lost a lawsuit that had been appealed all the way up to the North Carolina Supreme Court.

The ills of the North Carolina Map Act may serve as a cautionary tale for state governments that seek to save money for highway construction. The end result of such an approach may instead be stymied economic growth and development, lawsuits, and unhappy state citizens—the opposite of what is intended.

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