

**Best Practice Manual for Digital  
Cadastral Base Mapping  
In North Carolina**

**Land Records Management  
Division  
North Carolina Department of  
The Secretary of State**

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# **Best Practice Manual for digital Cadastral Base Mapping in North Carolina: North Carolina Secretary of State, Land Records Management**

## **Introduction**

Dear Visitor to this Manual,

This **Best Practices Manual for Digital Cadastral Base Mapping in North Carolina** is the brainchild of retired North Carolina Secretary of State Manager of Land Records Thomas W. Morgan. It is an effort to preserve institutional knowledge as employees of various municipal, county and state government agencies retire or leave their official positions for various reasons.

The goal here is to find a way to preserve the good and useful information that is often presented in newsletters, magazine articles, and workshops but then forgotten over time. As we all know, training efforts can have a short-term effect, and in the real world people do forget the information presented or lose the handouts and periodicals given to them.

This online Manual is an attempt to change that dynamic. It is also very much meant as a beginning effort and not a final, “set-in-stone” product. It includes much of what Tom Morgan learned and observed while serving as Land Records Manager for eight years. The hope now is that local mappers and future land records officials will enhance the material included here by adding their own experiences and observations to it.

By putting the information into a Manual that is easily accessible online, searchable, and consistently updated, we hope to make this into a living document that can carry the message beyond those that created it and the material it contains. Please send any comments, corrections or additions to [Landrecords@sosnc.gov](mailto:Landrecords@sosnc.gov) , attention “Best Practice Manual”.

I hope that you find it useful, and that you consider adding to the **Best Practices Manual for Digital Cadastral Base Mapping in North Carolina** when you see something in the material that could be improved with your information and expertise.

Thank you for coming here and consulting with the Manual. Let us all keep working to make sure that North Carolina continues to be a national leader in land records practices!

Sincerely,

Elaine F. Marshall

North Carolina Secretary of State  
July 11, 2016

7-11-2016

# **Best Practice Manual for digital Cadastral Base Mapping in North Carolina: North Carolina Secretary of State, Land Records Management**

Acknowledgments:

This document is intended as a companion document to the Guidebook for North Carolina Property Mappers by William A Campbell, Published by the Institute of Government, University of North Carolina at Chapel Hill.

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# **Best Practice Manual for digital Cadastral Base Mapping in North Carolina: North Carolina Secretary of State, Land Records Management**

## **1 PREFACE**

The "Land Records Management Program" (LRMP) was established in 1977 by the North Carolina Legislature in order to provide technical and financial assistance to local governments for the modernization of their land records systems. The Technical Specifications for Base, Cadastral, and Digital Mapping (Orthophotos) is prepared as an essential element of the LRMP and is applicable to all county or municipal mapping projects. To the maximum extent practicable, these specifications should be utilized by state agencies involved in mapping operations, not only in the preparation of initial Cadastral mapping but in the day to day maintenance of existing mapping. Section 6, "Digital Orthophotos", was adopted on August 18, 2004, by the North Carolina Geographic Information Coordinating Council (GICC). The Orthophoto Standards were removed from this document and adopted as a standalone standard on October 1, 2009.

Invaluable guidance and assistance have been provided by the Standards Committee of the North Carolina Property Mappers Association and by representatives of local governments. Assistance was also provided by the North Carolina Geodetic Survey (NCGS), the Center for Geographic Information and Analysis (CGIA), the North Carolina Department of Transportation, and the North Carolina Department of Revenue.

While recognizing that the cadastral fabric of an area is of immense value, the cadastral map is developed as a tool primarily to aid in the listing, appraisal, assessment and collection of taxes on real property. As such the rules and procedures for creating the cadastral base map are governed by the same rules the county assessor utilizes for taxing real property in conjunction with the "Technical Specifications for Digital Cadastral Base Mapping" by the Land Records Management Program of the North Carolina Secretary of State.

Each county is to assess ad valorem taxes equitably- for all taxable properties within the county. Thereby no one taxpayer is paying more than their appropriate share. The establishment of a properly funded mapping program is necessary to make equitable decisions for taxation. The mapping program must contain not only hardware and software, but well trained personnel.

Each county tax department is charged with the appraisal of property assessment and collection of taxes. The cadastral map is a critical element in performing these tasks. Any use of cadastral mapping beyond that function is at the risk of the user; however it is to everyone's benefit that the County cadastral maps reflect the public record as accurate as reasonably possible.

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## Why does the county assessor need a Cadastral map?

The Cadastral map is to aid in the collection of taxes on real property through the spatial representation of what is “of Record” to place a value and send a bill.

1. The assessor cannot accurately list and appraise property that cannot be located. Cadastral mapping meets most of the requirements in 105-317(a)(1): In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.
2. All taxable real property that is not required to be appraised by the Department of Revenue shall be listed in the county in which it is situated: NC GS § 105-301. Place for listing real property.
3. Taxable real property shall be listed in the name of the owner, and it shall be the owner's duty to list it ... For purposes of this section, the Board of County Commissioners may require that real property be listed in the name of the owner of record as of the day as of which property is to be listed... . NC GS § 105-302. In whose name real property is to be listed.
4. A permanent listing system is required whereby the assessor is responsible for the legal ownership and property description as of the following January 1 NC GS §, 105-303(b)
5. Every person in whose name any property is to be listed under the terms of this Subchapter shall list the property with the assessor within the time allowed by law on an abstract: NC GS § 105-308. Duty to list; This is reaffirmed in NC GS 105-348.
6. The property owner is responsible for listing any and all changes to the property that affect its value by more than \$100.00 : NC GS § 105-309. What the abstract shall contain.
7. There shall be annexed to the abstract on which the taxpayer's property is listed the following affirmation, which shall be signed by an individual qualified under the provisions of G.S. 105-311:

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“Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this listing, including any accompanying statements, inventories, schedules, and other information, is true and complete.”

Any individual who willfully makes and subscribes an abstract listing required by this Subchapter which he does not believe to be true and correct as to every material matter shall be guilty of a Class 2 misdemeanor: NC GS § 105-310. “Affirmation; penalty for false affirmation.”

8. The assessor is required to appraise property at its true value in money: NC GS § 105-283. “Uniform appraisal standards.” Constricted only by the schedule of value, standards, and rules adopted for the most recent general reappraisal which established market value as of January 1 of each year.
9. It shall be the duty of the assessor to see that all property not properly listed during the regular listing period be listed, assessed and taxed: NC GS § 105-312 (b) Duty to Discover and Assess Unlisted Property.
10. Immaterial irregularities (NC GS 105-394) are similar to discovery in that both remedies benefit the county and any other taxing jurisdiction in which property may be located when the county pursues taxation of property omitted from the tax roll. Tax discovery is applied when the tax payer has failed to list, whereas immaterial irregularities are applied when the county or taxing jurisdiction fails to list, appraise, assess, or bill for the property.

The county Land Records Management Program is responsible for creating the inventory of real property and its single greatest tool is the cadastral map. Once the cadastral map is developed, the county can use it as an audit tool in meeting the requirements of NC GS 105-309, “What the abstract shall contain” and NC GS 105-312 “Discovered property; appraisal; penalty.” The cadastral map is not authoritative, it makes no representation for affecting boundary or property rights and there is no assertion of positional accuracy. The county cadastral map is a compilation of the public record. At time the public record may be supplemented with the best available evidence, i.e., unrecorded surveys, orthophotography, soil maps, terrain maps and hydrographic surveys, Conflicting information between the abstract and the cadastral map is reviewed by the assessor’s staff and if it results in a change to the abstract, a notice of change is sent to the listed owners address with information on how to file an appeal. The county Land Records Program is a document driven system. As such the body of property law can be used to interpret the

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documents as they are incorporated into the cadastral map. This results in being able to defend the resulting maps using general statutes and case law. The job of the mapper is to make a reasonable interpretation of the document, hopefully the same decision a well informed judge and jury would make.

## **2.1 County Cadastral Map is a public record:**

The county cadastral map is considered a public record and as such if requested, the distribution is governed by the public records law: NC GS 132. See NC GS § 132-10. “Qualified exception for geographical information systems.” for the local exception. § 132-6.1. Electronic data-processing records: After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; *Note: The results of this requirement are best reported in the metadata file associated with the record.* See <http://www.records.ncdcr.gov/erecords/pubdata/default.htm> for guidelines.

## **2.2 County Tax Department is not a County Office of Registration**

For the purpose of complying with NC GS 47-18 (The Conner Act) the county tax department is not considered a place of registration for records to be valid to pass any property interest. County registrars for real property are the Office of Register of Deeds and the County Clerk of Superior Court.

## **2.3 Notice to the Public:**

The County staff within the Land Records Mapping Department is available to explain the information they have used to map a particular parcel boundary, however there are certain subjects for which they cannot and should not provide assistance, to include:

- Cadastral Staff does not provide information on listing requirement, valuation methodology, tax relief programs or billing and collection statutes. For these types of questions the citizen should be referred to the appropriate department in the tax office.



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- Cadastral staff does not survey property. If you need a surveyor, there are many qualified people listed under "Surveyors" in the yellow pages of the phone book.
- Cadastral staff does not provide legal advice on property rights or any other subject.
- We do not have the ability to settle boundary disputes between property owners. Boundary disputes or an encroachment (for example a fences, sheds or any other use or structure) can only be settled by the parties involved or by a court decision.
- Cadastral staff does not have building plot plans in our office.
- Cadastral staff does not keep records on building setback requirements, refer caller to planning and zoning officials.
- Cadastral staff does not have topographic surveys in this office. If you are required to have a topographic survey or Elevation Certificate for a building permit or Certificate of Occupancy, then you must hire a surveyor for this task. .
- Cadastral staff does not keep the official FEMA Flood Hazard maps in our office, the County Emergency Management Agency or County Planning Department may be more appropriate for this request.
- Cadastral staff does not have information on wells and septic tanks.

### **2.4 County Liability from those using tax map information for other purposes.**

The NC Attorney General's office was asked for a legal opinion concerning the county's liability if a County cadastral map contained an error, and that map was used by someone other than the tax department for an unrelated purpose. The text of the opinion is as follows:

Legal Opinion: North Carolina Department of Justice: Rufus L. Edmisten Attorney General

August 23, 1982

State Departments, Institutions and Agencies; Land Records Management Program; Tax Maps; Liability of Units of Government to Private Parties for Mapping Errors; G.S. 143-345.6. (§ 143-345.6: Recodified as § 147-54.3 by Session Laws 1991, c. 689, s. 181(b).)

Requested By: D. R. Holbrook, Director Ad Valorem Tax Division Department of Revenue

Question: Where a county property-line map made pursuant to the "land records management program" contains an error, and a private party buys such a map and relies upon it in connection with some private activity not associated with the "land records management program," and suffers damages as a consequence of such reliance, is the unit of government responsible for the preparation or sale of the map liable to the party who has suffered a loss?

Conclusion: No; the maps are prepared for specific governmental purposes, and a private party who uses them for some other purpose is not protected thereby. Such maps are not a substitute for an attorney's title certificate, or a surveyor's certificate and plat.

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G.S. 143-345.6(c)92) provides that the Secretary of Administration (Now Secretary of State) "shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county property-line maps under the direction of qualified surveyors pursuant to standards prepared by the Departments of Revenue and Natural Resources and Community Development."

The Director of the Local Government Division of the Department of Revenue has pointed out that, while one of the principal beneficiaries and users of such maps will invariably be the County Tax Supervisor, who uses such maps (often called "tax maps") in connection with the administration of the county's ad valorem tax program, such maps "are being increasingly relied upon by attorneys, real estate brokers, developers and others." He points out that some local officials are concerned about liability where a user has suffered damages because of gross errors in the delineation of property lines. To protect themselves from liability, they have suggested that a disclaimer be printed on the maps. Our opinion has been requested as to the liability of a unit of government or of a governmental official relative to erroneously prepared maps, and of the practical effect of such a disclaimer.

At the outset, it must be noted that the mapping program is part of the "land records management program" which the Legislature has directed the Secretary of Administration to establish "for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices; and (ii) of establishing greater uniformity in local land records systems." G.S. 143-345.6(a). Thus, the program's sole purposes are directed toward needs of units of government. There is not the least intimation that it is, or is intended to be, a substitute for the certificate of title provided by an attorney who has examined the record title to land for a client, or for a surveyor's certificate and plat provided by a professional engineer or registered land surveyor who has located the lines on the ground, examined the land for easements, encroachments, etc. and reported the same to his client.

It is our opinion that by providing a copy of a map, prepared purely and simply for the purposes mandated by the land records management program, to one who purchases it for some other use, no unit of government or local official incurs any liability to the purchaser or user for errors on the map. To obviate the possibility of any misunderstanding along that line, a disclaimer would unquestionably be useful, but by no means is required, in our opinion.

**“We feel that it cannot be reiterated too strongly that when one acquires title to land, only two things reliably establish the nature and extent of the property acquired: examination of title by an attorney and a survey of the property by an engineer or surveyor. With these professionals, the client is by contract entitled to their professional responsibility, and their professional liability for errors. In relying upon a document prepared for other purposes by persons with whom he had no such relationship, the individual receives no such protection.”** (Emphases added)

Rufus L. Edmisten Attorney General

# **Best Practice Manual for digital Cadastral Base Mapping in North Carolina: North Carolina Secretary of State, Land Records Management**

Myron C. Banks Special Deputy Attorney General  
North Carolina Department of Justice

**The title opinion by an attorney and a survey of the property by a surveyor provide the most reliable protection the citizen. The information should be used to evaluate the property before purchasing the property and to protect himself after purchase. If you buy a property with problems you become the owner of the problems.**

## **3 Taxation - Legal Background: (North Carolina Constitution)**

### **3.1 ARTICLE V, FINANCE**

#### **Article V, Sec. 2. State and local taxation. (*Selected Sections*)**

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) Special tax areas. Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

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(5) Purposes of property tax. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

## **4 A County's Authority to Tax:**

### **4.1 NC Constitution: ARTICLE VII, LOCAL GOVERNMENT**

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

### **4.2 § 153A-11. Corporate powers.**

The inhabitants of each county are a body politic and corporate under the name specified in the act creating the county. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property and rights of property, real and personal, that may be devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by the corporation, and from time to time may hold, invest, sell, or dispose of the property and rights of property; may have a common seal and alter and renew it at will; and have and may exercise in conformity with the laws of this State county powers, rights, duties, functions, privileges, and immunities of every name and nature.

### **4.3 § 153A-121. General ordinance-making power**

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

## **5 GENERAL: Taxation Requirements**

The State Constitution authorizes the legislature to form Local Government and the fixing of boundaries of counties, cities and towns, and other governmental subdivision. (Article VII)

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The State Constitutions authorizes the legislature to enact laws governing the taxation of property (Article V)

The legislature has enacted:

## 5.1 **§ 153A-17. Existing boundaries (county).**

The boundaries of each county shall remain as presently established, until changed in accordance with law. (1973, c. 822, s. 1.)

## 5.2 **§ 105-296. Powers and duties of assessor.**

The county assessor shall have general charge of the listing, appraisal, and assessment of all property in the county in accordance with the provisions of law. He shall perform the duties imposed upon him by law, and he shall have and exercise all powers reasonably necessary in the performance of his duties not inconsistent with the Constitution or the laws of this State.

## 5.3 **§ 153A-149. Property taxes; authorized purposes; rate limitation.**

Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

## 5.4 **§ 105-301. Place for listing real property.**

All taxable real property that is not required by this Subchapter to be appraised originally by the Department of Revenue shall be listed in the county in which it is situated. If all or part of the real property is situated within the boundaries of a municipal corporation, this fact shall be specified on the abstract as required by G.S. 105-309. Nothing in this section shall be construed to conflict with the provisions of G.S. 105-326 through 105-328

## 5.5 **§ 105-302. In whose name real property is to be listed.**

Taxable real property shall be listed in the name of the owner. For purposes of this section, the board of county commissioners may require that real property be listed in the name of the owner of record ...

(12) If the person in whose name real property should be listed is unknown, or if title to real property is in dispute, the property shall be listed in the name of the occupant or, if there be no occupant, in the name of "unknown owner."

## 5.6 **§ 105-302.1. Reports on properties listed in name of unknown owner.**

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In order to promote the discovery of "State lands" as defined by G.S. 146-64(6), it shall be the duty of all assessors upon request to furnish the State of North Carolina a report on all properties listed in the name of "unknown owner"

## **5.7 § 153A-149**

This statute confers to each county in this state the power to levy property tax on property having situs within the county.

## **5.8 Conclusions:**

The county assessor is required to discover all taxable property that is situs within the legislated county boundaries and list said property in the name of the owner, occupant or unknown.

## **5.9 Practicality:**

In order for the assessor to meet the above legal requirements, an inventory of all land within the legislated county boundary must be compiled. This inventory must include land exempt from taxation and land assessed by the state in order to discover all lands that are taxable within the county.

## **5.10 Appeals**

Decisions made by the county assessor may be appealed to the County Board of Equalization and Review (See § 105-322) and ultimately to the State Property Tax Commission (PTC) (see § 105-290). Decisions made by the County Board of Equalization and Review are binding upon the county unless the citizen appeals to the State Property Tax Commission whereby any decision of the PTC is appealable to the NC court of appeals and from that to the NC supreme court.

## **6 Public Records**

### **6.1 § 132-1. "Public records" defined.**

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed),

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institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information. (1935, c. 265, s. 1; 1975, c. 787, s. 1; 1995, c. 388, s. 1.)

## 6.2 § 132-3. Destruction of records regulated.

(a) Prohibition. – No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

## 6.3 § 132-6.1. Electronic data-processing records.

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency ...

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option.

## 6.4 § 132-10. Qualified exception for geographical information systems.

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Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes. (1995, c. 388, s. 5; 1997-193, s. 1.)

## **6.5 Records Retention and Disposition Schedule**

Excerpt from Records Retention and Disposition Schedule “County Tax Administration”  
Issued by North Carolina Department of Natural and Cultural Resources.

[http://www.ncdcr.gov/Portals/26/PDF/schedules/schedules\\_revised/County\\_Tax\\_Administration.pdf](http://www.ncdcr.gov/Portals/26/PDF/schedules/schedules_revised/County_Tax_Administration.pdf)

## **6.6 Geospatial Records FAQ for Public Records (from North Carolina Department of Natural and Cultural resources)**

Q. Why should GIS datasets be retained and preserved?

A. Geospatial records are public records and need to be retained and preserved based on their legal, fiscal, evidential and/or historical value according to an established retention schedule. Local agencies involved in GIS operations should work with NC Department of Natural and Cultural Resources (NCDCCR) in order to appraise, inventory, and preserve their geospatial records according to established best practices and standards to insure both their short- and long-term accessibility.

Due to the complexity and transitory nature of these records, geospatial records retention and long-term preservation is a community-wide challenge. GIS files have become essential to the function of many local agencies, and will continue to frequently be utilized in agency decision-making processes in the near and far future. Accessibility of GIS records over time has legal, fiscal, practical, and historical implications. The availability of GIS records can help safeguard the local



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government's legal and fiscal accountability and aid agencies in conducting retrospective and prospective studies. These studies are only possible when essential data from the past are still available.

Q. What GIS datasets should be preserved by local governments?

A. The following types of geospatial records have been designated as having archival value:

- Parcel data
- Street centerline data
- Corporate limits data
- Extraterritorial jurisdiction data
- Zoning data
- Address Points
- Orthophotography (imagery)
- Utilities
- Emergency/E-911 themes

## 6.6.1 Standard-8: Program Operational Records: Land Records

Records Retention and Disposition Schedule County Tax Administration  
[http://www.ncdcr.gov/Portals/26/PDF/schedules/schedules\\_revised/County\\_Tax\\_Administration.pdf](http://www.ncdcr.gov/Portals/26/PDF/schedules/schedules_revised/County_Tax_Administration.pdf)

## 6.6.2 Standard-9: Program Records: Property Tax Collection Records

### TAX SCROLLS AND BOOKS: PRIOR TO 1900

Includes property valuation (real and personal) and amount of taxes due. These records may be prepared separately or combined.

Transfer to the State Archives.

Retention Note: Tax scrolls may be transferred to the State Archives of North Carolina electronically. Contact your local records analyst for more information. G.S. §105-319

### TAX SCROLLS AND BOOKS: FOR YEARS ENDING IN 0 AFTER 1900

Includes property valuation (real and personal) and amount of taxes due. These records may be prepared separately or combined.

Transfer to the State Archives.

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Retention Note: Tax scrolls may be transferred to the State Archives of North Carolina electronically. Contact your local records analyst for more information. G.S. §105-319

Standard-10: Program Records: Land Records Geographic Information System (GIS) Backup File

Destroy in office system backup files when superseded or obsolete.

## 6.6.3 Geographic Information System (GIS) Core Data

Geo-referenced data and metadata to facilitate the management, manipulation, analysis, modeling, representation, and spatial analysis of complex problems regarding planning and management of resources.

Retain in office parcel, boundary, zoning, and orthoimagery layers, with accompanying data sets, permanently. Retention Note: Other datasets should be kept according to standards and procedures set by GICC. Consult the GICC's website (<http://www.ncgicc.com/>) : (Documents) (Standards) (Metadata)  
**Metadata:** [State and Local Government Metadata Profile](#), Adopted by the NC Geographic Information Coordinating Council November 20, 2014. Also see [Preservation and Long Term Access to Geospatial Data](#).

See also GEOSPATIAL RECORDS, page ix.

## 6.6.4 Geographic Information System (GIS) Data Documentation (Metadata)

Records created during development or modification of an automated system, which are necessary to access, retrieve, manipulate, and interpret data in that system; and records that explain the meaning, purpose, structure, local relationships, and origin of the data elements. It may include data element dictionaries, file layout, codebooks and tables, and definition files. (see GICC adopted Metadata Standards referenced in the preceding section.

Destroy in office when the system is discontinued or when system data has been transferred to a new operating environment (platform).

## **7 The North Carolina tax system is a document driven system.**

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The taxation of land is to be governed by the filing of title documents in the office of the Register of Deeds and office of the Clerk of Superior Court in the county where the land lies. The change of an ownership or status of property rights listing is governed by the recorded title record. If the tax record is changed without the appropriate documentation, the decision to make that change will be very hard to substantiate.

## 7.1 Register of Deeds

### 7.1.1 § 161-14. Registration of instruments.

(a) After the register of deeds has determined that all statutory and locally adopted prerequisites for recording have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. The register of deeds shall then proceed to register it on the day that it is presented unless a temporary index has been established

### 7.1.2 Locally Adopted Prerequisites for recording.

§ 161-30. Modernization of land records.

(a) The county commissioners of any county may require that the register of deeds shall not accept for registration any map or instrument affecting real property unless the following requirements are satisfied:

- (1) The name and address of the person to whom the map or instrument is to be returned is affixed on the face thereof.
- (2) The grantee's or owner's permanent mailing address is affixed on the face thereof.

(b) In any county in which parcel identifiers have been assigned to any of the real property situated within the county, the county commissioners may require that the register of deeds shall not accept for registration any map, deed, deed of trust or other instrument affecting real property unless the parcel identifier for all of the property described and affected is affixed and verified by the county on the face of the map or instrument or affixed and verified by the county as a part of the legal description contained in any instrument.

(c) Failure to comply with the provisions of subsections (a) and (b) above shall not affect the validity of any map or other instrument that is duly recorded.

§ 161-31. Tax certification.

(a) Tax Certification. - The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for

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registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. - If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: \_\_\_\_\_, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. - This section applies only to Alamance, Alexander, Anson, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Columbus, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Sampson, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, Yadkin, and Yancey Counties.

## 7.2 Taxation

### 7.2.1 § 105-302. In whose name real property is to be listed.

(a) Taxable real property shall be listed in the name of the owner, and it shall be the owner's duty to list it unless the Board of County Commissioners shall have adopted a permanent listing system as provided in G.S. 105-303(b). For purposes of this section, the board of county commissioners may require that real property be listed in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285. If the property is in the care of someone else, the listing may show this as "in care of" or heirs of".

Note: in case of the death of the owner of record the listing of the property in the "estate of decedent's name" or "heirs of" is a recommended option until the estate is settled See section 19.10 and 19.11.

For the purpose of complying with NC GS 105-302, when the statute includes the term "notice" such as in NC GS 105-302(c)(6) "until they have given the assessor notice of their names and of the division of the estate", the term notice, shall be interpreted to mean a copy of a public record filed in the county where the land lies.

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If the Board of County Commissioners requires that the permanent listing of real property be listed in the name of the owner of record and if that the owner has undergone a name change as provided by law, the best practice is to require a certified copy of the name change proceedings or a certified copy of an affidavit as authorized in NC GS 101-7. The transfer of property title, total or partial is governed by state law , North Carolina is a Pure Race State. NC GS 47-18 requires that a valid property interest as against lien creditors or purchasers for valuable consideration from the donor, bargainer or lessor but from the time of registration thereof in the county where the land lies. NC GS 47-18 carries the same requirements for deeds of trust and mortgages. NC GS 22-2, states that All contracts to sell or convey any land ... exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged. (See sited statutes for a full description of contents.)

### **7.2.2 NC GS § 47-18, also called the Conner Act states:**

“(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration,...”.

And

### **7.2.3 NC GS § 22-2. Contract for sale of land; leases. (Statute of Fraud)**

All contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them, and all leases and contracts for leasing land for the purpose of digging for gold or other minerals, or for mining generally, of whatever duration; and all other leases and contracts for leasing lands exceeding in duration three years from the making thereof, shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized.

It is reasonable to ask: What does this have to do with taxation? The ad valorem property tax is a lien against the real property and therefore the responsibility of the owner of record. No change of rights or ownership should be reflected in the tax record without a document of title that has been recorded in the office of the Register of Deeds or clerk of court in the county where the land lies.

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## 7.2.4 § 47-20. Deeds of trust, mortgages, conditional sales contracts, assignments of leases and rents; effect of registration.

(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article;

## 7.2.5 A Plat is not a Document of Title

§ 47-30(g) states ...

“Reference in any instrument hereafter executed to the record of any plat herein authorized shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.”

A plat is not a document of title and does not change rights, transfer title, or impose conditions on the land by virtue of being signed by the owner and recorded in the Office of the Register of Deeds. When a document of title references a plat recorded under NC GS 47-30 as a description, everything on the plat is part of the description unless there is a statement to the contrary on the plat or in the document of title. The rights to roads, open space, easements, play grounds, common area, etc, are granted by the document of title; the plat is merely a description. The intent of the grantor is drawn from the four corners of the title document which includes the referenced description. Only when document of title is recorded in the office of the Register of Deeds (pursuant to NC GS 47-18) making reference to a map is the map made part of the description by reference.

## 7.2.6 Justification for Tax Mapping:

1. The county is required to levy tax on all taxable real property that has situs within the county.
2. The county has no jurisdiction to levy real property taxes on property located/ situated or having a situs outside of the county.
3. The county is required to inventory all unknown real property and upon request furnish a report of same to the state. (NC GS 105-302(c)(12))
4. The county is required to find and levy taxes on all unlisted property. NC GS105-312

To comply with the above requirements, the county should develop a cadastral parcel map of the area within the county boundary to be used in the inventory, appraisal and assessment of real property. The county cadastral map is developed as an audit tool in response to the above requirements. A cadastral map also shows the tax jurisdiction limits of the county and any municipal subdivisions within the county. NC GS 105-273(11) Municipal corporation or municipality. - A city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district,

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mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, a consolidated city-county as defined by G.S. 160B-2, or another district or unit of local government by or for which ad valorem taxes are levied.

The boundaries and ownership of land parcels are derived from the title records found in the county Register of Deeds office and the Clerk of Courts office. It is essentially a mapping compilation of the public record overlaid onto the best available Base Map. The mapper uses legal documents of title recorded within the office of the Register of Deeds or Clerk of Superior Court to compile and maintain the cadastral map, and restrains from using the statements or assertions of an individual or group of taxpayers. North Carolina is a *Pure Race State*: that is if the transaction or document is not referenced within the public record in the county where the property lies, then the mapper should not use a document or transaction to determine ownership. This is not intended to interfere with the assessor obligation to list personal property interests. Under the Conner Act, leases under 3 years do not require registration but they are subject to taxation and associated remedies. NCGS 47-18 and 20, NCGS 105-285, 355, 356, and 366. The cadastral map is not authoritative, it makes no representation for affecting boundary lines or property rights and there is no assertion of positional accuracy.

Cadastral maps generally also show additional details such as owner information, governmental jurisdictional boundaries, unique identifying numbers for parcels, positions of existing structures, lot numbers and their respective areas, adjoining and adjacent street names, selected boundary dimensions and references to prior maps and other legal records. The cadastral map takes authoritative data from many sources and depicts the data within a geospatial framework to provide a view of the fabric for real property ownership. A Tax Map is a cadastre that may include overlays of other base mapping data, such as orthophotography, hydrography, street centerlines, soils, utilities, etc, to be used for inventory, appraisal, and assessment of real property. The base map serves several purposes:

1. To provide information to the mapper for maintenance of the parcels,
2. To provide a reference framework for the viewer to find the location of a parcel and be able to examine the surrounding parcels and land fabric.
3. To provide a visual inventory of a county's taxable property.

## **8 Secretary of State Involvement:**

In support of the County Cadastral Mapping program the Secretary of State provides the NC Certified Property Mapper Program (§ **147-54.4.-Certification of local government property mappers**). The Secretary of State's Land Records Management Program with the assistances of the North Carolina Property Mappers Association, provides training and technical assistance to the stake holders in land records.

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Thomas Jefferson said “the government is best which is closest to the people”. The local government ad valorem tax system is about as close to the people as it gets, and it should remain so. County employees are held to a higher standard of practice because they are held accountable by the people they serve. The Secretary of State supports this concept and provides a certification program (NC Certified Property Mappers) for local government employees. A combination of education, testing and experience is that require for initial certification and continued education is required to maintain the certification.

## **8.1 General Statute: Land Records Management**

### **8.1.1 § 147-54.3. Land records management program.**

(a) The Secretary of State shall administer a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist of the activities provided for in subsections (b) through (e) of this section, and other related activities essential to the effective conduct of the management program.

(b) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall establish minimum standards and provide advice and technical assistance to local governments in implementing and maintaining minimum standards with regard to the following aspects of land records management:

- (1) Uniform indexing of land records;
- (2) Uniform recording and indexing procedures for maps, plats and condominiums; and
- (3) Security and reproduction of land records.

(b1) The Department of Secretary of State, in cooperation with the North Carolina Association of Registers of Deeds, Inc., and the Real Property Section of the North Carolina Bar Association, shall adopt, pursuant to Chapter 150B of the General Statutes, rules specifying the minimum indexing standards established pursuant to subsection (b) of this section and procedures for complying with those minimum standards in land records management. A copy of the standards adopted shall be posted in the office of the register of deeds in each county of the State.

(c) The Secretary of State shall conduct a program for the preparation of county base maps pursuant to standards prepared by the Secretary.



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(c1) The Secretary of State, shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county cadastral maps pursuant to standards prepared by the Secretary of State.

(d) Upon the joint request of any board of county commissioners and the register of deeds and subject to available resources of personnel and funds, the Secretary shall make a management study of the office of register of deeds, using assistance from the Office of State Personnel. At the conclusion of the study, the Secretary shall make nonbinding recommendations to the board, the register of deeds, and to the General Assembly.

(d1) The Secretary of State shall make comparative salary studies periodically of all registers of deeds offices and at the conclusion of each study the Secretary of State shall present his written findings and shall make recommendations to the board of county commissioners and register of deeds of each county.

(e) The Secretary of State, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall undertake research and provide advice and technical assistance to local governments on the following aspects of land records management:

- (1) Centralized recording systems;
- (2) Filming, filing, and recording techniques and equipment;
- (3) Computerized land records systems; and
- (4) Storage and retrieval of land records.

(f) An advisory committee on land records is created to assist the Secretary in administering the land records management program. The Secretary of State shall appoint 12 members to the committee; one member shall be appointed from each of the organizations listed below from persons nominated by the organization:

- (1) The North Carolina Association of Assessing Officers;
- (2) The North Carolina Section of the American Society of Photogrammetry;
- (3) The North Carolina Chapter of the American Institute of Planners;
- (4) The North Carolina Section of the American Society of Civil Engineers;
- (5) The North Carolina Property Mappers' Association;
- (6) The North Carolina Association of Registers of Deeds;
- (7) The North Carolina Bar Association;
- (8) The North Carolina Society of Land Surveyors; and
- (9) The North Carolina Association of County Commissioners.

In addition, three members from the public at large shall be appointed. The members of the committee shall be appointed for four-year terms, except that the initial terms for members listed in positions (1) through (4) above and for two of the members-at-large shall be two years; thereafter all appointments shall be for four years. The Secretary of State shall appoint the chairman, and the committee shall meet at the call of the chairman. The Secretary of State in making the appointments shall try to achieve geographical and population balance on the advisory committee; one third of

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the appointments shall be persons from the most populous counties in the State containing approximately one third of the State's population, one third from the least populous counties containing approximately one third of the State's population, and one third shall be from the remaining moderately populous counties containing approximately one third of the State's population. Each organization shall nominate one nominee each from the more populous, moderately populous, and less populous counties of the State. The members of the committee shall receive per diem and subsistence and travel allowances as provided in G.S. 138-5. (1977, c. 771, s. 4; c. 932, s. 1; 1985, c. 479, s. 165(d), (e); 1987, c. 738, s. 158(a); 1989, c. 523, s. 8, c. 727, ss. 169, 218(116a), c.751, s. 14; 1991, c. 689, ss. 181(b), 181(c), c. 697, s. 1; 1993, c. 258.)

## 8.2 North Carolina Property Mapper Certification

In support of the County Cadastral Mapping program the NC Secretary of State's Office manages the NC Certified Property Mapper Program (**§ 147-54.4.-Certification of local government property mappers**). The Secretary of State's Land Records Management Program with the assistance of the North Carolina Property Mappers Association, provides training and technical assistance to local government.

### 8.2.1 § 147-54.4. Certification of local government property mappers.

(a) Definitions. – The following definitions apply in this section:

(1) Department. – The Department of the Secretary of State.

(2) Large-scale. – A scale that uses an inch to represent no more than 400 feet.

(3) Local government. – A county as defined in G.S. 153A-10 and a city as defined in G.S. 160A-1.

(4) Property mapper. – A person who is employed by a local government and is responsible for creating and maintaining large-scale cadastral maps.

(b) Certification. – The Department shall establish a certification program for property mappers. The purpose of the program is to protect and enhance the State's investment in local government large-scale cadastral maps. To be certified as a property mapper, an applicant must meet the following minimum requirements and the additional requirements set by the Department:

(1) Be at least 18 years old.

(2) Hold a high school diploma or certificate of equivalency.

(3) Achieve a passing score in courses of instruction approved by the Department covering the following topics:

a. The principles and techniques of property mapping.

b. The laws of North Carolina governing the listing, appraisal, and assessment of real property for taxation.

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The Department shall establish requirements for certification as a property mapper that are in addition to these minimum requirements. The additional requirements shall ensure that an applicant who is certified as a property mapper has the minimum skills necessary to create and maintain large-scale cadastral maps. In establishing these additional requirements, the Department may consult with the advisory committee on land records created by G.S. 147-54.3(f), the North Carolina Property Mappers' Association, and other relevant professional groups. The additional requirements may include mapping experience and a passing score on an examination administered by the Department.

(c) **Renewal.** – A certification as a property mapper must be renewed every two years. Attendance of 24 hours of continuing education approved by the Department is a condition of renewal of a certification. The Department shall publish a list of courses acceptable for meeting this continuing education requirement.

(d) **Application and Fees.** – An applicant for certification as a property mapper or renewal of certification as a property mapper must file an application with the Department. The applicant must submit a fee of twenty dollars (\$20.00) with the application. Fees collected under this section shall be credited to the General Fund.

(e) **Rules.** – The Department may adopt rules to implement this section. Chapter 150B of the General Statutes governs the adoption of rules by the Department. (1993, c. 326, s. 1.)

## **9 Definitions:**

### **9.1 Acreage:**

#### **9.1.1 Deed Acreage:**

Deed acreage is the acreage stated in the recorded deed. Attribute Name (REAREANO)  
- The record or recorded area as a numeric field (from Seamless Parcel Data Dictionary)

#### **9.1.2 Calculated Acreage:**

Calculated acreage is the acreage calculated from the geometry of the parcel as shown on the cadastral map. Deeded Attribute Name (GISACRES) The area of the feature in acres  
- computed from the GIS, this is not the recorded area. (from Seamless Parcel Data Dictionary)

#### **9.1.3 Assessed Acreage:**

Assessed acreage is the acreage that the County Assessor uses for listing and appraising a parcel for tax purposes. It may be deed acreage, calculated acreage or some other amount of acreage base on the best information available to the mapper and to the assessor.

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Attribute Name (TAXACRE) - The area of the parcel that is subject to taxation: Road Right of Ways, Public Trust Land, etc areas are subtracted from GISACRE or RE CAREANO (from Seamless Parcel Data Dictionary).

## 9.2 **Base map:**

A Base map portraying basic reference features such as roads, lakes and streams onto which other thematic spatial information such as property or parcel outlines, easements, rights of way or other special features are placed.

## 9.3 **Cadastral Map:**

A cadastral map is a line-drawn-to scale depiction of the parcel boundaries within a governmental jurisdiction, as covered by the map's image area. It is normally a multi-purpose public record designed to show (1) real property ownership within the jurisdiction, based on the best information available to the tax office; (2) the basis for real property valuation and taxation; and (3) geographical information for use by planners and other governmental officials, as well as the general public. (Note: the cadastral map is an interpretation of property records for taxation purposes and not the authoritative record.)

## 9.4 **Cadastre - Legal:**

The legal cadastre is the parcel-based description of interests or rights in real property; typically supported by titles or deeds, and registry.

Functions of a legal cadastre:

- define property rights (often in conjunction with formal and case law)
- describe the extent (spatial, sometimes temporal) of property rights
- support land transfer
- provide evidence of ownership (e.g., using land as collateral)
- program administration (e.g., enforcement of laws, targeting of incentives)

It is an official register showing details of ownership, boundaries, and value of real property in a district, made for taxation purposes, based on documents filed in the public record (in North Carolina the public record for real estate is the county Register of Deeds and the county Clerk of Superior Court.)

## 9.5 **Geographic Information System (GIS):**

A geographic information system is a computerized data management system used to capture, store, manage, retrieve, analyze, and display spatial information.

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## **9.6 Global Navigation Satellite System (GNSS)**

GNSS includes all satellite navigation systems. Formerly the Global Positioning System (GPS) term was used and only referenced the US Satellite navigation system.

A description included within a recorded instrument of title defining the location of the area of fee either by words or by reference.

## **9.7 LiDAR**

LiDAR (Light Detection and Ranging) is a remote sensing technology that collects 3-dimensional point clouds of the Earth's surface.

## **9.8 Metadata:**

Metadata is a description of the content, quality, condition, and other characteristics of the geospatial data that is compliant with the North Carolina Geographic Information Coordinating Council's endorsed metadata standard. The Council adopted the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata (CSDGM) in 1994 and is in the process of adopting a North Carolina State and Government Profile based on the ISO-19115-1 metadata standard (2014). A valid metadata record may be compliant with either FGDC or ISO standards as adopted by the Council.

## **9.9 Monument:**

A monument is any physical object on the ground which marks the location of a corner or other survey point.

## **9.10 Parcel :**

A parcel is a contiguous area of land described in a single description or legally recorded plat of subdivision that has been or may be legally conveyed to a new owner by deed in its existing configuration.

## **9.11 Parcels - Exempt :**

Exempt parcels are those parcels as defined in general statute that the County Assessor is required to exempt from County property tax such as churches; schools; charitable properties; and state, County, and city properties. See Appendix "E" AV 50 Codes

## **9.12 Parcel Identifier Number (PIN):**

The Parcel Identifier Number (PIN) is a number assigned to each parcel used to uniquely identify the parcel from all other parcels. It is formatted from the North Carolina

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Geodetic Grid coordinate of the visual parcel centroid (See Appendix “B” for the derivation of the PIN).

## 9.13 Public Trust Lands

Land owned by the public as a whole and in trust by the State of North Carolina.

### 9.13.1 Land under Navigable Waters

Are those land covered by Navigable Water, § 146-64. (4) "Navigable waters" means all waters which are navigable in fact. "If body of water in its natural condition could be navigated by watercraft, then it was navigable in fact and in law, and lands lying beneath it were thus subject to public trust doctrine;"

#### **§ 146-3. What lands may be sold.**

Any State lands may be disposed of by the State in the manner prescribed in this Chapter, with the following exceptions:

- (1) No submerged lands may be conveyed in fee, but easements therein may be granted, as provided in this Subchapter.
- (2) No natural lake belonging to the State or to any State agency on January 1, 1959, and having an area of 50 acres or more, may be in any manner disposed of, but all such lakes shall be retained by the State for the use and benefit of all the people of the State and administered as provided for other recreational areas owned by the State.

The State holds ownership of the land covered by navigable water in trust for the public. This includes mud flats, salt marshes, sand bars, est. that are associated with navigable water. The navigable waters limits extend landward to Mean High Water for tidal area or Normal High Water for non-tidal waters.

## 9.14 Real Property- NC GS 105-373 (13)

Real property, real estate, or land. - Any of the following:

- a. The land itself.
- b. Buildings, structures, improvements, or permanent fixtures on land.
- c. All rights and privileges belonging or in any way appertaining to the property.

## 9.15 Record Monument:

A record Monument is a call for a monument within a recorded legal description. Besides physical monuments, a reference to an adjoining boundary is also considered a record monument.

## 9.16 Situs:

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The situs of the property is where the property is treated as being located for legal purposes.

## **9.17 Tax Exclusions:**

Tax exclusions are for real property that is classified of taxation at reduced rates. Most of these exclusions are real property use related, but some are personal circumstance related. These exclusions are defined in general statute. See Appendix “E” AV 50 Codes

## **10 County Fiduciary Duty**

It is important that government activity be open and transparent. This means that the public should have access to the work and products. If we are to maintain creditability, our work must be held to a high standard. Errors will result in the public loss of confidence in the programs as well as taxation errors.

### **10.1 Staff Training and Certification**

It is important that the mapping staff of a county be well versed in land records, mapping, GIS, listing and assessing, because many of the requirements for maintaining a cadastral map are also requirements for managing the listings in the Computer Added Mass Appraisal system (CAMA). The North Carolina Secretary of State Land Records Management Program: <http://www.secretary.state.nc.us/land/ThePage.aspx> , the North Carolina Property Mappers Association: <http://www.ncpropertymappers.org/> and the North Carolina Department of Revenue: <http://www.dornc.com/> provides extensive training programs to the mapping community.

From a county’s prospective the knowledge base of these disciplines that a mapper brings to the tasks is important and enables the employee to meet the demands of his position. Unfortunately, the public cannot simply perceive the knowledge base of the county mapper. For that reason, among many others, a certification program is important. The State Certified Mapper program indicates to the world that an individual has been trained and tested to verify that a minimum level of competency has been achieved. The Certification program requires 24 hours of continued education every 2 years; thereby requiring the mapper to keep current with industry and regulatory changes and advancements. A well trained mapper is critical in the process to maintain the county Cadastral map and serve the public through GIS database development.

### **10.2 Audit trail (documentation on)**

What was changed?  
Who changed it?  
Why was it changed?

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## **10.3 Parcel History through Legal Title**

North Carolina is a “pure race” state, only title documents of record (those records recorded in the Register of Deeds and Clerk of Superior Court of the county in which the property is located) are valid to pass any property interest as against lien creditors or purchasers for a valuable consideration. Property Tax is a lien against the property. Therefore listing decisions are based on legal title documents. The chain of title is the parcel’s history according to those public records.

## **10.4 Parcel Quality (documenting)**

### **Documenting individual parcel quality within a cadastral mapping program.**

#### **Introduction:**

The quality of cadastral parcel mapped position is dependent upon the ability of a mapper to place the record description on the cadastral base map. Since the mapper does not have the option of going into the field and locating evidence to ascertain the intent of the grantor (that’s a surveyor’s responsibility). The mapper must first refer to the documents of title for the owner of record (deed, will, referenced map, etc.(See NC GS 105-303 (b)(1)), adjacent descriptions, and the current cadastral base map. The best description or map requires no additional documentation to define its location. The more documentation that is required outside of the recorded chain of title, then the less reliable parcel mapped position may be on the cadastral map. This does not mean that a deed with a vague or seemingly un-locatable description is to be discounted. Recall that until the invention of calculators and computers, a deed description’s primary use was to find the boundary and corners on the ground. The deed description was not a mathematical formula derived for the benefit of regional mapping. Even today the hierarchy of evidence is weighted for physical position of monuments, with bearings and distances being a helping aid to find the monuments.

The mapper must be able to determine the shape, the location and orientation of the parcel in relation to the geodetic reference system of the cadastral base map. If this can be done mathematically from the recorded title document, then the position may be considered absolute. That is, during the construction of the cadastral parcel fabric, that parcel should be held in a fixed position. Other parcels with lesser defined descriptions may then be reviewed relative to position and configuration of the more reliable information and be adjusted to fill in the parcel map.

It is useful to establish a rating system for individual parcels so the mapper can readily evaluate each parcel’s reliability for position and configuration before starting to map or re-map a parcel. After the rating system has been used for several years, the evaluation of the overall quality of the cadastral map and the ability to identify problem areas become a side benefit. Once a substantial number of parcels have been rated, the system can be used to provide a metric of map improvement from year to year; thereby



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providing the answer to the Board of County Commissioners on-going question “Is the Tax Map improving?”

## 10.4.1 Developing a Rating System.

Relative Positioning and Closure are components of the overall parcel data quality of a cadastral map. For an in depth discussion on overall parcel data quality, see <http://nationalcad.blogspot.com/2010/04/cadastralparcel-mapping-quality.html> . This discussion will be limited to Closure (Polygon Integrity) and Relative Position (Polygon Geo-position). This is not a required component of the county cadastral mapping program.

## 10.4.2 Polygon Integrity

Polygon Integrity is the ability to define the shape of a parcel. Because record monuments control over bearings and distances, in the event of conflict, a call to a photo-identifiable point on a base map may control over a bearing and distance call. If a mapper is forced to use both mathematical calls and points on a base map to derive a parcel’s shape, the polygon integrity is dependent on the Polygon Geo-position as well. This must be considered when assigning the polygon integrity rating. Just because you can see a fence corner on the base map this does not necessarily mean that you have achieved polygon integrity if you still cannot orient the remainder of the description to the base map. For Cadastral Tax Mapping, a mathematical closure unto itself is not necessarily a total indicator of polygon integrity. A small lot may have a 1:1000 closure which could be .3 feet on a 50x100 lot. This is well within the limits for plotting a parcel for cadastral purposes but if you have a 5000 acre parcel, a 1:1000 closure could result in 75 feet or more miss-closure which generally considered as unacceptable. It is important to keep in mind the overall mapping accuracy and scale of the cadastral map when evaluating polygon closure for an individual parcel.

A reliability coding system for Polygon Integrity is proposed that will include an attribute assigned to each parcel containing a numeric value of 0 to 5, thereby rating the quality of the source document to define a polygon. The following examples are provided as explanation:

Code of 0: polygon of unknown quality (for parcels mapped prior to application of parcel quality rating system).

Code of 1: no graphically definable description provided.

Example: A deed that only calls for the boundaries of the parcels surrounding it (adjoiners).

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Code of 2; faulty description - incomplete data, missing calls, bad bearing or distance, etc.

Example: Incomplete data, a call “From said point, thence with John’s line to ABC road, John’s corner.” There is no direction (bearing) given or any particular point within described ABC Road that is defined; therefore, the data is judged as incomplete. This call may be refined using the adjacent deed but that is a different source of information and the parcel being evaluated should be rated accordingly., That is, the parcel being mapped should not be given a higher rating based on its neighbor’s description.

Code of 3: description that appears to be complete but has a poor mathematical closure.

Example: A metes and bounds description including distances in chains and bearings to ¼ of a degree (probably a compass description). Such a description will invariably provide only an approximate closure.

Code of 4: has less than complete mathematical closure, but a complete description can be ascertained using a combination of bearings and distances and calls to features that can be derived from the base map.

Example: “Road, John’s corner.” This provides a physical feature that can readily be located and mapped from the base map. Here we have a direction (a direction?) and a call for a natural monument (a road) to control the distance. If this call is used to control the map line rather than the neighbor’s description, then this parcel might be given a code rating of 4.

Code of 5: description with acceptable mathematical closure.

Example: a description with a minor miss-closure that does not cause a graphic misrepresentation of position or visible gaps or overlaps when mapped at the cadastral base map scale.

## 10.4.3 Polygon Geo-position

The ability to locate a parcel on the face of the earth is critical; a closed polygon without geo-referencing is a lost parcel. When evaluating the geo-position of a parcel, a cadastral mapper has two sources of information; being, recorded descriptions and features on the base map. When mapping a parcel, the goal is to position the polygon accurately onto the base map. Since the base map is tied to a geodetic reference system, that position can result from a mathematical tie, a visual tie or a combination of the two. A mathematical tie is assumed to be more accurate as there is always some error of scale within the base map in conjunction

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with the limitation of the mapper to visually pick an actual starting or rotation point.

To achieve a precise geo-position of a parcel there must be a record monument identifiable on the base map in order to orient the polygon's north reference to the Base map's north reference, and convert the polygon's distance units to the Base map's distance unit system. In mapping this is akin to Translation (position), Rotation (direction alignment), and Scale (distance unit conversion).

A reliability coding system for Polygon Geo-position each parcel is proposed that has an attribute assigned to each parcel containing a numeric value of 0 to 5; thereby rating the source document's reliability to define a polygon's geo-position.

Code of 0: polygon of unknown quality (for parcels mapped prior to application of parcel quality rating system).

Code of 1: no starting or rotation point definable from the recorded description or base map.

Example: A deed that only calls for the boundaries of the parcels surrounding it (adjoiners).

Code of 2: the deed description or plat has an identifiable point that is on the boundary or is tied in such a way that a point on the boundary can be visually identified; however, there is no bearing reference that can be related to the cadastral north reference.

Example: A description that has only one photo identifiable point and no notation of the source of the north reference i.e. True North, Magnetic North (date) or Grid North that can be converted to the base map's North.

Code of 3: the deed description or plat has a visually identifiable point that is on the boundary or is tied in such a way that a point on the boundary can be identified as well as a bearing reference that can be visually related to the cadastral map north reference, i.e. commencing at an intersection, thence bearings and distances along the centerline of the road to a point can provide a visual orientation.

Example: If two or more points described in a recorded description are Photo identifiable, the polygon can be rotated to align with the base map.

Code of 4: the deed description or plat has a visually identifiable point that is on the boundary or is tied in such a way that a point on the boundary can be

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identified and the bearing reference can be mathematically converted to the cadastral map north reference, i.e. true north to grid north.

Example?

Code of 5: the deed description or plat incorporates all information that is sufficient to compute a boundary coordinate and bearing reference that can be mathematically converted to the cadastral map coordinate system and north reference.

Example?

It is proposed that all parcels on the pre-existing cadastral map have both attributes (polygon Integrity and Polygon Geo-position) initially assigned as 0, unless the current mapping had been compiled with a parcel coding schema that can be converted to this proposed schema. When parcels are revisited in the course of day to day mapping and maintenance, the rating for pre-existing individual parcels can be re-assigned. Once the ratings are in place, a mapper can review the assigned ratings to help make mapping decisions when mapping adjacent parcels, splits or combinations. This overall procedure should increase the ongoing integrity and reliability of the cadastral map as well as serve as an invaluable source of information for parcel and cadastral map evaluation and on-going maintenance.

The increasing quantity of parcels for which a code rating is entered over time will provide a number of meaningful applications for evaluation of and reporting on individual parcels, groups of parcels, neighborhoods, regions, etc. through the tools provided within GIS. This could include statistical reports, color coded maps, etc.

## **11 GIS Basics**

### **11.1 Nonproprietary Data Storage and Accessibility**

The system shall store data using open standards and architecture and each data set and table shall be well-documented, enabling conversion to a different system at the counties sole discretion without need for proprietary software, licenses, or approvals to which the county does not have full and irrevocable rights and access as part of the use agreement for the system. The business contract with the County shall include language that guarantees compliance.

### **11.2 Data Dictionary**

An up to date data dictionary is required by law. **§ 132-6.1. Electronic data-processing records,** (b) Every public agency shall create an index of computer databases compiled or

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created by a public agency. ... The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. ... The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies. (See "Public Database Indexing" at [www.records.ncdor.gov/erecords/pubdata/default.htm](http://www.records.ncdor.gov/erecords/pubdata/default.htm) ,)

This is not a static document; every time there is an edit to an attribute, the data dictionary is to be revised. This document is to inform the public as to the content of the data base. A geographic information system (GIS) is considered a database. A compliant GIS metadata file (see Section 6.6.3) is sufficient to meet the statutory requirements of § 132-6.1. Electronic data-processing records, in most cases.

### **11.3 Annotations (Topology) (Symbology)**

Topology and Symbology help to display map data in a consistent and organized readable manner. Because this is for the presentation of data it is considered a preference dictated by the particular use of the product and therefore left up to the map producer. A key aspect of creating a beautiful map is the choice of symbols, colors, and map elements that you will use. Not everyone in the GIS community has the design skills necessary to choose elegant symbols and color schemes on their own or apply them effectively. This is one of the big challenges faced by many GIS users.

Fortunately, there are highly skilled cartographers in the ArcGIS community who compile libraries of symbols, colors, and other related map elements. They share these as ArcGIS styles. In ArcGIS, a style is a library of symbol collections, color schemes, rendering rules, and related map elements that help users build better maps.

#### **11.3.1 Topology**

Topology is a way to ensure the spatial integrity of your data and assist with data management. It is important to have topological relationships among features in a cadastral dataset. At a minimum, adjacent cadastral features (i.e. parcels or boundaries) should not have gaps or overlaps between them. This will ensure adjacent features share the same geometry.

#### **11.3.2 Symbology**

Symbology is defined in geographic information systems (GIS) as the set of conventions, rules, or encoding systems that define how geographic information is represented with

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symbols on a map. A characteristic of a map feature may influence the size, color, and shape of the symbol used. This includes line types, line weights, marker symbols, fill (color and symbols) lettering (style, size, and color), and map scale

## 11.4 Geometry and Attribution

Cadastral mapping is a representation of real property as geographic features. The features in a geographic information system (GIS) consist of vector data in the form of points, lines and polygons. A vector feature is represented by geometry consisting of one or more vertices, or locations on the earth using x and y coordinates. A single vertex is a point. A line is two or more connected vertices where the first and last vertices are not equal. Three or more interconnected vertices where the last vertex equals the first make an enclosed polygon feature. Descriptive data, called attributes, may be attached to each feature. For example, a point may represent the location of a fire hydrant and attributes may include the date of installation. A line may represent the centerline of a street and attributes may include street name. A polygon may represent the boundaries of a property and attributes may include a unique parcel identification number (PIN), owner name, situs address, etc. A cadastral dataset is made up of many polygons with many attributes. A cadastral data set is commonly called “parcels” or “tax parcels” referring to parcels of land with associated property tax information.

In a GIS, other datasets may share a boundary with a property, intersect (cross or touch) a property, be partly within a property or be contained within a property. Common examples are easements, hydrography, structures, streets, or subdivision boundaries.  
(See State Wide Base layers Section 16.2)

### 11.4.1 Parcels

Parcels are digital representations property data including property boundaries and associated property tax information. The Bureau of Land Management definition states that "cadastral" is derived from the word cadastre, meaning a public record, survey, or map of the value, extent, and ownership of land as a basis of taxation.

*SEE Appendix “A” for attributes collected by the state from local government. Counties may add additional attributes as needed to support their needs.*

### 11.4.2 Easements

Easements are represented by polygons that may share a boundary with a parcel as an adjacent easement, may cross and/or be contained within the boundaries of a property, and/or may intersect multiple properties.

Geometry: Line or Polygon

Attributes:

Easement type (granted rights)

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water,  
sewer,  
stormwater,  
conservation,  
sidewalk,  
access,  
Utility (power, telephone, cable)  
etc.

Source deed, plat, or both

Grantor  
Grantee  
Mapbook/Page as recorded in county ROD

Deedbook/Page

URLs to recorded map/deed books our web applications are hyperlinked to the recorded document so the original source can be retrieved as needed.

Easement date  
Easement size  
Easement Maintenance - Public or Private

If Public

Offer of dedication made by (Name - Grantor)  
Dedication accepted by (Name of government entity responsibility for maintenance)

If Private

Dominant tract (*benefited parcel*)  
Servient tract (*burdened parcel*)

Easement acceptance status – Offered Dedicated / accepted. Important to know

## 11.4.3 Hydrograph - Rivers/Streams

Hydrography includes surface waters such as rivers, streams, creeks, ponds, lakes, sounds, oceans. A hydrographic feature may be represented as a line (centerline) or as a polygon (water body with width and length). A feature may share a boundary with a parcel or intersect a parcel.

Geometry: Line, Polygon, and Point  
Attributes:

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WaterBody\_name

River\_Basin

WaterBody\_type

River  
Stream  
Sound  
Ocean  
Lake  
Pond  
Pocosin  
Bay  
Swamp  
Etc.

Navigable

Yes  
No  
Unknown

Source

## 11.4.4 Transportation

Digital representations of transportation centerlines are separate from cadastral data. Streets may be a map layer displayed with parcel boundaries and other base map layers. A transportation right-of-way may share a boundary with a property or cross a property.

Geometry: Line, Polygon, and Point

Attributes:

Type

RailRoad  
Interstate  
US\_Highway  
NC\_Highway  
State Secondary  
Municipal  
Private

Name

Dirction  
St\_Name  
Type: Street Type Usage Guide



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City

Number (SR #, US #, Interstate #, NC #, etc.)

Abbreviation	Represents	Description when to Use *
ALY	ALLEY	A right-of-way, substandard in width, designed to bisect a block for pedestrians or service vehicles, such as garbage collection and delivery trucks. No permanent parking will be allowed in alleys.
AVE	AVENUE	A street more than 1,000 feet in length.
BLV	BOULEVARD	A street divided by a landscaped median.
CIR	CIRCLE	A street less than 1000' in length that returns to itself.
CT	COURT	A cul-de-sac or permanent dead-end road.
DR	DRIVE	A curvilinear street of more than 1,000 feet in length.
HWY	HIGHWAY	A State, Inter-State, or US Highway distinction
LN	LANE	A curvilinear street of less than 1,000 feet in length.
LP	LOOP	A street that loops around and terminates on itself.
PKY	PARKWAY	A special scenic route or park drive.
PL	PLACE	A cul-de-sac or permanent dead-end road.
PLZ	PLAZA	A multi-use road with businesses and homes.
PT	POINT	A road that is adjacent to a waterway.
RD	ROAD	A street more than 1,000 feet in length.
ROW	ROW	No existing specifications
RUN	RUN	No existing specifications
ST	STREET	A street more than 1,000 feet in length.
TER	TERRACE	A curvilinear street of more than 1,000 feet in length.
TRL	TRAIL	A street serving as a collector for one or more local thoroughfare
WAY	WAY	A curvilinear street of less than 1,000 feet in length.
WLK	WALK	A pedestrian walkway that has been named.

## 11.4.5 Structures:

A digital representation of a structure may consist of a point located coincident with a structure (or at the entrance to a structure or adjacent to a structure, etc.), or it may consist of a polygon derived from a roof outline visible in orthoimagery or a polygon created to represent the “footprint” of a structure. A parcel may contain one or more structures.

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## 11.4.6 Subdivision Development Boundaries

The boundaries of a subdivision may be represented by one or more polygon(s) containing multiple parcels. Properly platted and mapped subdivision and parcel polygons would have some coincident boundaries.

## 11.5 Parcel Identification Number (PIN):

A Parcel Identification Number (PIN) is a unique number created by the merging of the east and north coordinate of the parcels visual centroid. The PIN does not represent the parcel boundary, it is a key field that aides in linking other data sets to the parcel geometry.

A parcel identifier number reflects the State plane coordinates of some point in the parcel, the visual centroid is preferable.

The parcel identifier numbering system is designed so that no parcel will be assigned the same number as any other parcel within the county.

The parcel identifier numbering system should include a retired parcel layer showing the polygons of parcels that have been split or combined along with the respected retired PIN. This should be done at the same time the newly-created parcels are mapped and new PINs assigned.

The parcel identifier numbering system shows for parcels of land created by the combining of separate parcels, the numbers of the land parcels that were combined in addition to the number of the newly-created parcel;

The parcel identifier numbering system is capable of identifying condominium units and other separate legal interests that may be created in a single parcel of land.

The PIN shall be associated with a single parcel as long as that parcel is not subdivided or joined with another parcel.

The PIN system is to be implemented in such a manner that it would meet the requirements of NCGS 161-22.2 if the county decides to implement the parcel identifier number index in the Register of Deeds office.

See Appendix B

## 11.6 Data Sharing

It is not required that the local government maintain a specific standard data schema for their internal operations or for dataset publication. It is required that parcel data be

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suitable for export and translation to a standard schema for use in the aggregation of statewide datasets. Local government data managers are encouraged to share parcel data with a state provided data transformer that translates local government dataset attributes to standardized attributes based a statewide schema. County parcel data remains the authoritative data and the best source for information about properties within that county. County data managers may choose to point some consumer requests to aggregated, standardized datasets for multi-county mapping and analysis. Contact the NC Center for Geographic Information and Analyses for data transformer information.

## **11.7 Archiving**

The North Carolina Department of Natural and Cultural Resources (NCDNCR) requires archiving of county geographic information. This can be accomplished by filing directly with the State Archives of North Carolina in NCDNCR. Data shared with NC OneMap for aggregated statewide datasets such as the NC Parcels Project will be archived according to the NC OneMap Retention Schedule. For archiving internally several things should be considered; (1) since archiving implies saving for a long time, the format of the document is saved in must be documented so it can be migrated to a new format in the future, even in a hundred years; (2) most electronic storage media must be periodically refreshed to prevent the decay of the electromechanical energy stored on the media; (3) it should be stored in several locations(on site and off site) to prevent the destruction of all copies.

## **11.8 Backup**

A backup of electronic information is for redundancy and is to be available for immediate use in case the primary data is somehow corrupted. It should be stored in its native form and it will be replaced periodically. It should stored in several locations (on site and off site) to prevent the destruction of all copies.

## **11.9 History**

Historical layers should be created that document mapping elements that are no longer representative of current documents of title. For example, when a boundary line is dissolved, it should be migrated to a history layer for preservation and tagged with the date of change and the appropriate document references. This will provide a timeline to the changes.

## **11.10 Map Presentation overlay**

At times there will be a request made for a portion of the GIS data in a map format suitable for printing. It is desirable to be able to brand this map with source information, disclaimers, a border, a vicinity map, north arrow, etc. To make this product efficient all the common data should be setup so it can be applied easily, so it can be layer over the map masking what is not needed and just displaying the desired area.

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## 11.11 Metadata

The cadastral map is to have compliant metadata Based on North Carolina endorsed standards and resources. Consult the GICC’s (<http://www.ncgicc.com/>) [State and Local Government Metadata Profile](#), Adopted by the NC Geographic Information Coordinating Council November 20, 2014, or see the NC OneMap (<http://www.nconemap.gov/home.aspx> ) page to Metadata <http://www.nconemap.gov/DiscoverGetData/Metadata.aspx>

### ISO-Based State and Local Government Metadata Profile

The North Carolina Geographic Information Coordinating Council ([GICC](#)) has formally adopted the "State and Local Government Metadata Profile", based on the ISO 191\*\* suite of geospatial metadata standards, as the current recommended standard for compliant geospatial metadata for North Carolina state agencies and local governments. The International Organization for Standardization (ISO) is the world’s foremost developer of voluntary international standards. By adopting the ISO series of standards, state agencies and local governments ensure their metadata will be published and searched in a consistent manner by agencies, organizations, and individuals throughout the world. Metadata creators are urged to transition from the CSDGM to ISO.

[\*CURRENT VERSION OF THE STATE AND LOCAL GOVERNMENT METADATA PROFILE\*](#)

[\*HOW-TO GUIDE FOR METADATA USING ESRI'S ARCCATALOG\*](#)

[\*HOW-TO GUIDE FOR METADATA USING CATMDEDIT\*](#)

### ISO Metadata Resources:

The XML metadata **templates** below are application-specific and are based on samples from the software listed. They can be imported into their respective applications to provide a starting point for metadata creation. The ISO metadata **examples** below show what profile-compliant metadata can look like. In addition, a [how-to document using Esri's ArcGIS](#) is available to guide users.

Software	Feature		Web Service		How-To Guide
	Template	Example	Template	Example	
Esri ArcGIS	<a href="#">XML</a>	<a href="#">XML, HTML</a>	<a href="#">XML</a>	<a href="#">XML, HTML</a>	<a href="#">PDF</a>
QGIS	Coming Soon	Coming Soon			
CATMDEdit	<a href="#">XML</a>				<a href="#">PDF</a>

### CSDGM Metadata Templates

Figure 1. Metadata Resources on NC OneMap: Example from 2016

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## 11.12 Web Services

The Open GIS Consortium defines a web map service as a geo-registered map image from a geospatial database. A web map service digital request defines the geographic feature and area of interest and the resulting rendered map image can be viewed in a browser application or in desktop software. Web services for cadastral data are in the form of web map services and also web feature services that are comparable to polygon features created in a GIS. Web services are updated at the source (geospatial database) and automatically refreshed in applications into which they stream from a server.

## 12 Measurements

Azimuths or courses and distances of every property line that has been surveyed are to be shown under North Carolina Administrative Code (21NCAC 56.1604). Distances shall be in feet or meters and decimals thereof (21 NCAC 56 .1604 (2)). All plat lines shall be horizontal or grid measurements (21 NCAC 56 .1604 (3)). A considerable number of older Metes and Bounds (measurements and boundaries) surveys and descriptions were historically measured using a compass read to a ¼ of a degree and measured with a gunter's chain: 66 feet long. The distance within these older surveys must be converted to feet in order to be incorporated into a modern cadastre map. A modern survey performed a a greater degree of accuracy is preferable to using the historical measurements between monuments.

### 12.1 Directional Conversions

Bearing/Course - an angle referenced to North or South with up to a 90-degree deflection to the East or West.

Azimuths: an angle referenced to North and up to a deflection of 360 degrees in a clock wise direction.

1 Circle	360 Degrees
1 Degree	60 Minutes
1 Minute	60 Seconds

*Note: direction should be orientated to NC Grid North in the cadastral map.*

### 12.2 Distance Conversions

1 Meter	3.2808333333 US Survey Foot*
1 US Survey Foot*	0.304801 Meters
1 Chain	4 Rods or 4 Poles
1 Chain	100 links
1 Chain	66 feet
1 Rod or Pole	25 Links
1 Rod or Pole	16.5 Feet
1 Link	0.66 Feet

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1 Mile

5280 Feet

*Note: distance should be converted to horizontal grid distance. Horizontal grid distance is the result of applying the local grid factor and conversion to zero elevation based on NAD 88 to horizontal ground distance.*

*\*US Survey Foot is the adopted foot to meter conversion in North Carolina (NC GS 102-1.1)*

## 12.3 Area Conversions

1 Acre	43,560 Square Feet
1 Acre	10 Square Chains
640 Acres	1 Square Mile
1 Hectare (10,000 sq. meters)	2.4711 Acres

Note: area calculations in the cadastre map are to be based on horizontal grid distances.

## 13 Mapping Accuracy

Map accuracy is the degree toward which any given feature(s) on a map conforms to its true position on the ground.

### 13.1 Benefits

The direct benefit of map accuracy is to ensure accurate spatial representation of mapped features not only on cadastral maps, but also for features included in other map themes such as those used for planning, permitting, routing and emergency services. Accurate cadastral maps aid property appraisers in the determination of equitable assessments throughout the jurisdiction.

### 13.2 Control

A base map consists of geometrically controlled features in a digital mapping system that permits many specialized theme layers to be brought into absolute position by registration on the base map. A base map that would support property appraisal has three base components (Geodetic Control, Orthophotography (collected under state standards), and Parcel Boundaries) that permit the overlaying of other themes, such as boundaries, roads, and water features.

### 13.3 Horizontal Accuracy

Horizontal accuracy should meet or exceed U.S. National Map Accuracy Standards (NMAS). <http://nationalmap.gov/standards/nmas.html>. Note, however, that adherence to NMAS can usually be achieved only when maps are compiled directly by survey, GPS, and/or photogrammetric methods.

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U.S. National Map Accuracy Standards require that at scales of 1:20,000 and larger (for example, 1:12,000 or 1:1,200) that 90% of a randomly chosen sample of well-defined map features will be on the map within 1/30 inch (0.03 inches) (at scale) of their true location on the ground. The table below illustrates the positional accuracy of several relevant scales using this measure.

## **Scale Horizontal Accuracy**

1:1,200 + (1" = 100') or: 3.33 feet

1:2,400 + (1" = 200') or: 6.67 feet

1:4,800 + (1" = 400') or: 13.33 feet

1:9,600 + (1" = 800') or: 26.67 feet

1:12,000 + (1" = 1000') or: 33.33 feet

It is worth noting that the NC orthophoto base mapping project currently uses a more stringent standard for base map accuracy; being ASPRS Class 1. The latest ASPRS standard for Class 1 mapping for a 1:1200 (1"=200' scale) orthophoto is 1/133 of the map scale; being 1.5 foot.

### **13.4 Mixing data collected with different geo-positional accuracies**

The mixing of digital map data from widely divergent accuracies into a common database may not be avoidable and in such cases should be noted to provide adequate caution, metadata and/or footnoting as the positional accuracy within the aggregate database. The metadata for each data source should be consulted to determine if the data is appropriate for inclusion. The use of the data being inserted will dictate if it is appropriate for insertion.

## **14 Geodetic Reference Framework**

The county cadastral map shall be based on the latest state adopted North Carolina Grid System horizontal reference datum. This is necessary to provide a consistent geospatial framework within the county and across the state.

### **14.1 NC Survey Base**

The Official Survey Base for North Carolina is defined and described in NC General Statute 102. North Carolina Geodetic Survey is lead agency in North Carolina for the development and maintenance of the Official Survey Base for North Carolina.

### **14.2 Projections**

North Carolina's state plane coordinate system uses a Lambert Projection

North American Datum of 1983

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Projection	Lambert
Latitude of Origin	33 degrees 45 minutes
Central Meridian	79 degrees 00 minutes
Standard Parallel 1	34 degrees 20 minutes
Standard Parallel 2	36 degrees 10 minutes
False Easting	609,601.22 meters
False Northing	0 meters

## 14.3 NC Coordinate system

Lambert Projection  
Single Zone  
Defined in NC General Statute 102

## 14.4 Datum:

Horizontal: North American Datum of 1983

Vertical: North American Vertical Datum of 1988

## 14.5 Realizations

- The original adjustment of the North American Datum of 1983 is denoted as NAD83/86.
  - The National Geodetic Survey performed additional adjustments of geodetic control in North Carolina following the original NAD83. These additional adjustments are described as NAD83 realizations. The North Carolina realizations are:
- NAD83/95
  - This realization held fixed only A and B order geodetic monuments. Some Continuous Operating Reference Stations (CORS) were fixed in this realization.
- NAD83/2001
  - This realization is labeled by NGS as the High Accuracy Reference Network (HARN) adjustment in North Carolina. A+B order geodetic monuments and the existing CORS were held fixed in this realization.
- NAD83(NSRS2007)
  - CORS were held fixed in this realization and only geodetic monuments positioned with Global Navigation Satellite System (GNSS) positioning technology were included in this adjustment.
- NAD83(2011)
  - This realization is similar to the NAD83(NSRS2007) realization, but before this realization was finalized the CORS network was evaluated and a separate adjustment was performed on the CORS network and the results of the CORS network adjustment was held fixed in order to determine the NAD83(2011) information for the geodetic monuments that were



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positioned with GNSS positioning techniques.

## 14.6 NC Geodetic Control

Geodetic control monuments information can be obtained from the NC Geodetic Survey's (NCGS) online database located at this link.

<http://ncgs.nc.gov/geodeticmonuments/>

NCGS submits all geodetic projects performed by NCGS to the National Geodetic Survey for inclusion into the National Spatial Reference System (NSRS).

## 14.7 Working with the Geodetic Reference Framework for county wide cadastral mapping

Use the latest realization of NAD83 for as the reference data/realization for your cadastral mapping

Utilize software developed by the National Geodetic Survey (NGS) to perform transformations from earlier NAD83 realizations. The NGS transformation software (GEOCON and GEOCON11) can be found on the NGS web page ([www.ngs.noaa.gov](http://www.ngs.noaa.gov)) under the "Geodetic Tool Kit" link.

For transformations that involve the North American Datum of 1927 or NAD83/86, NGS has developed a program transformation tool for these applications. NADCON can be found at the same location on the NGS web page as GEOCON.

If the bearings/azimuths of the survey are not reference to the State Plane Coordinate System (SPCS) (grid bearings), you can use the following formula to convert the true bearings to grid.

Grid Azimuth = True Azimuth - Convergence + 2<sup>nd</sup> Term

Convergence (also labeled as theta or mapping angle) is a function of the location of the property (geographic longitude) and the constants for the SPCS (see pages 13-14 of the Development and Application of the State Plane Coordinate System). The 2<sup>nd</sup> term in most cases can be assumed to equal zero.

## 14.8 Working with map and descriptions containing a grid tie

Examples of recommendations for grid ties can be found at this link on the North Carolina Board of Examiners for Engineers and Surveyors (Survey Tie Guidelines)

<http://www.ncbels.org/policies.html>

If Global Navigation Satellite System (GNSS) positioning technology was used by the Professional Land Surveyor for the grid tie, the metadata for the grid tie will be provided in the GNSS certification (21 NCAC 56.1607)

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Example GNSS certification.

The certificate shall be substantially in the following form:

"I, \_\_\_\_\_, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:

- (1) Class of survey: \_\_\_\_\_
- (2) Positional accuracy: \_\_\_\_\_
- (3) Type of GPS field procedure: \_\_\_\_\_
- (4) Dates of survey: \_\_\_\_\_
- (5) Datum/Epoch: \_\_\_\_\_
- (6) Published/Fixed-control use: \_\_\_\_\_
- (7) Geoid model: \_\_\_\_\_
- (8) Combined grid factor(s): \_\_\_\_\_
- (9) Units: \_\_\_\_\_

## **14.9 Working with plats with horizontal ground distance measurements**

Horizontal ground distances can be converted to grid distance utilizing the Combined Grid Factor (CGF), which is one of the items required by 21 NCAC 56.1607 (#8 in the GNSS certification).

If the CGF is not included in the survey information, the CGF can be computed. The formula for computing a CGF is found on pages 19-20 of the Development and Application of the State Coordinate System. The document is available from the NCGS web page ([www.ncgs.state.nc.us](http://www.ncgs.state.nc.us)) under the "Library" link.

The CGF is included on each geodetic monument data sheet.

To compute the CGF you need the following information:

- Location of the measured distance (geographic or state plane coordinates)
- Mean elevation of the project area
- Scale factor (derived from the geographic latitude of the project area and constants of the SPC system)
- SPC system constants

## **14.10 Latitude and Longitude References**

The mapping staff should refrain from giving latitude/longitude references based on the cadastral map. While we work to make the system as accurate as possible the public will take any number given and rely on it as if it was an absolute truth. The latitude / longitude references are too easily misused in readily available electronic devices. If a location is needed a consultant should be engaged.

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## 14.11 Working with Different coordinate systems, Projections and transformations in Data sets.

Many GIS users have little or no experience projecting data from one coordinate system to another, invariably wrong conversions result from selection of an incorrect tool or method. Instead of actually projecting the data, inexperienced users tend to assign locations for the new or desired coordinate system using the Define Projection tool or just change the Coordinate system under the Shape file or Feature Class properties believing this project the data from one coordinate system to another. Neither of these methods actually projects data from one coordinate system to another.

This method simply changes the coordinate system ArcGIS or other software packages project the data as, and may subsequently lead to incorrect data display at the wrong location. Sadly if a user has done this with all of their data, the user will not be alerted that there is a problem, thus falsely believe the projections and locations are correct the features appear to overlay correctly. It is only when the user attempts to add data from outside sources that the problem may become apparent.

Additionally, if using ArcGIS, the coordinate system of the entire map document (.mxd) is specified in the data frame properties. If the data frame is undefined, any layers in the .mxd will display according to the definition of each individual layer. This is a good way to determine if layers are in different coordinate systems, assuming they are correctly defined. The data frame can also be defined, either manually, or automatically by inheriting the definition of the first GIS layer added to the .mxd. If the data frame is defined, any layers in the .mxd will automatically reproject on-the-fly to match the definition of the data frame. It's imperative that each layer, or GIS file, be correctly defined.

So what to do if you get data that has been assigned the wrong coordinate system because someone used one of the methods mentioned above? Assuming you are using ArcGIS, the following presents one method for fixing such issues.

1. Delete the projection and coordinate system for the Feature Class or Shape file that is questionable.
2. Open a blank map and add the above mentioned data. You will get a warning about it missing a spatial reference. That is ok. It is what you should see.
3. Look at the coordinates you see as you move your mouse in the map display. See if they look similar to other values for data that you have worked with that has a properly assigned coordinate system. If they are in the 0,0 or 5000,5000 or 10000,10000 range, then it is possible the data is not georeferenced at all and will need to be projected using another process. This often happens with data that was created by surveyors or engineers and has been displayed or inadequately

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converted from CAD.

4. If you identify some existing data that you think may match your questionable data, add it as a layer. If they align, then you have identified the correct coordinate system for your questionable data. If not, then it may be time to move to a trial and error method.
5. With the data you added above that is in an established and verified coordinate system, start changing the coordinate system to the data frame until you get the questionable data and the known data to line up. I would recommend starting with the following:
  - Local State Plane NAD 83 (original NAD 83 not HARN, CORS 96, 2011)
  - Local State Plane NAD 83 variants also try different Units
  - Local State Plane NAD 27
  - Local UTM Zone
  - Geographic WGS 84 (especially if data was captured with GPS)
  - Web Mercator Auxiliary Sphere
6. Start running through any other coordinate systems commonly used in your area.
7. Once you have identified the coordinate system, use the Define Projection tool to assign the correct coordinate system to the data in question.

Quick check based on coordinate values: If the coordinate values were between 30 and 150 in the continental US, it was almost always in Lat/Lon geographic. In NC, for non-surveying applications above 1:1200, often it does not matter whether you choose NAD83 or WGS84. If the values are in the 100,000 - 8,000,000 range, you are going to be in UTM or State Plane. The higher the values, the more likely you're in State Plane instead of UTM.

Rules of thumb:

1. Data from a county government tends to be in NAD83 State Plane Feet
2. Data from NC state government tends to be in NAD83 State Plane Meters
3. Data from a federal government local office, or military office, tends to be in UTM – check here for zone numbers based on location:  
[http://www.tips.osmre.gov/Geospatial/Data\\_Miner/usutm.shtml](http://www.tips.osmre.gov/Geospatial/Data_Miner/usutm.shtml)
4. Data from a federal government regional or national project or office is often in an Albers projection if it's not in NAD83.

There are exceptions to any rule of course, but these are observed trends. It's the exceptions that will certainly trip you up, but once you've worked through a few of these projection problems, the process and solution it gets easier. ESRI has provided guidelines in the past that I found helpful:

<http://support.esri.com/es/knowledgebase/techarticles/detail/24893>

*As a general rule, the projection in an ArcGIS project is established by the first feature layer that is brought into the project. All other features that are added after that are re-projected by arc to the projection of that first added feature set, unless and until the operator goes into data frame properties*

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*and changes the arc project projection. Few users understand how to do this. The main problem occurs when someone adds features from a different projection and they seem to align OK because arc has transparently re-projected them to the project's original projection. This is generally OK for most applications, except that when you go in and query properties, the projection description of the added layer has not been changed from what it was from its original projection (another arc project, CAD projection, other data source such as online download, etc.) this can get confusing after a number of layers have been added and the user loses track of what the actual real projection is. I am certain there is an easy way to go in and determine the base layer projection from data frame properties, but you need to talk to a more experienced user such as Hays to be instructed on that process. –Larry K.*

### **15 Governmental Boundaries:**

A government boundary defines the physical jurisdiction that said government may exercise the power it has been granted without special provisions such as a municipal extraterritorial jurisdiction.

#### **State Boundaries:**

The US Constitution- Article I, Section 10, Clause 3, States “No state shall, without the consent of congress, ... enter into any agreement or compact with another state”. The US Supreme Court in Virginia v Tennessee, (1893) ruled “An agreement or compact as to boundaries may be made between two states, and the requisite consent of congress may be given to it subsequently, or may be implied from subsequent action of congress itself towards the two states, and when such agreement or compact is thus made and is thus assented to, it is valid.

Just as between private parties, this is the case “even if it be ascertained that it varies somewhat from the courses given in the original grant, and the line so established takes effect not as an alienation of territory, but as a definition of the true and ancient boundary...” State boundaries are under federal jurisdiction, ...”A boundary line between states or provinces which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive.” (Virginia v Tennessee, 148 U.S. 503 (1893).

The state line boundary is not a property line boundary, therefore is not considered a record monument as is a call to an adjoiner, however a call to a physical feature (a monument) referenced in the state line can be a record monument. If a description calls to the state line the surveyor must determine where the intent of the boundary location was at the time of the original survey of the parcel not the actual location of the state line.

The State line is a Jurisdiction line. It is a line where the laws of one state stop and the laws of another state start. Land title law is quite different between North Carolina and South Carolina, for example North Carolina Recording Act (NC GS 47-18) is pure race

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statute (first deed registered in the court house wins) and South Carolinas Recording Act (SC code SECTION 30-7-10) is a Race Notice statute (prior notice overrides registration date). Let's not get caught up in what the differences are but remember one basic fact. **State law is unenforceable beyond the border!**

Even though as of August 17, 2015 the Survey done by the for the Joint Boundary Commission under the Supervision of North Carolina Geodetic Survey and South Carolina Geodetic Survey has not been officially adopted by North Carolina and South Carolina, the preliminary maps represent the best available information for the survey location of the original boundary State Line. These survey maps are available as “**Preliminary Plats**” on the North Carolina Geodetic Survey Website, County and State Boundaries page under Data.  
[http://www.ncgs.state.nc.us/Documents/nc\\_sc\\_coast\\_to\\_polk\\_county\\_update\\_22Jul15\\_disclaimer\\_protected.pdf](http://www.ncgs.state.nc.us/Documents/nc_sc_coast_to_polk_county_update_22Jul15_disclaimer_protected.pdf)

## **County Boundaries**

County Boundaries are established by the legislature per Article VII of the North Carolina Constitution and can only be changed by an act of the legislature. If a County Boundary is physically located in any location other that defined by the legislature it is in error. The County should review the legislated boundary and identify any areas that are in question. In doing so the boundary being used should be compared with the official County Boundary Map held by North Carolina Geodetic Survey.  
(<http://www.ncgs.state.nc.us/> ) The State held Shape file should be downloaded and compared with the boundary presently in use by the county. Any discrepancy should be investigated and resolved between the data sets. Any changes should be reported to The County Boundary Line Surveyor at North Carolina Geodetic Survey for inclusion in the Official County Boundary Map.

North Carolina Geodetic survey is available to consult with the county and if need be to help adjoining counties resolve a boundary conflict per NC GS 153A-18.  
See (Taxing Jurisdictions and Related Governmental Boundaries: County Boundary) for mapping guidance.

## **15.1 Government Jurisdiction Boundaries**

Governmental jurisdiction boundaries such as municipal limits, county boundaries and state boundaries should not be used to control the location of deed calls. These lines have historically been poorly defined in writing and on the ground. The courts have held that a call to a governmental jurisdiction boundary is not to be given the same authority as a call to an adjoiners boundary (see Appendix “F”).

## **15.2 Taxing Jurisdictions and Related Governmental Boundaries:**

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If in forming jurisdiction boundaries, the entity in charge of defining the boundary will follow a few simple rules, mapping and map maintenance will be much simpler. Choose easily defined boundaries, at no time should a government boundary intersect with a house. It is not advisable to bisect a parcel. Boundaries should follow visible features such as roads, streams, rivers, railroads, etc or along property boundaries whenever possible. When drawing a description, use the metes and bounds approach. The bounds part of the description calls for monuments, a tree, a rock, a river, an existing boundary. The metes give bearings and distances along the boundary but in the case of conflict the bounds control over metes. If the jurisdiction boundary is described along a property boundary and its bounds call for the parcel boundary as defined in the document of title, a mapping change to the parcel also is a mapping change to the jurisdiction boundary and does not need a jurisdiction change to conform to the new map position. The jurisdiction boundary line is by definition tied to the property boundary, thereby resides where the property boundary resides, the map representation is just the best available information on the boundary location. However, if the jurisdiction boundary does not call for the property line, it is a standalone boundary and cannot be updated during map maintenance.

## 15.2.1 County Boundary Mapping

When starting any mapping project it is essential to establish the project boundaries. In a tax mapping project it is the legally authorized limits of the governmental jurisdiction (County, Municipality and or Municipal Corporation). A county that accepts the responsibility of generating a municipal tax role has a responsibility to maintain an accurate boundary file for that municipality.

- The lines in that data set that have been surveyed and adopted by the adjoining counties are authoritative.
- Lines that run natural features such as rivers, streams and ridges may not have been surveyed. If the feature is visible on Orthophoto or identifiable from a LiDAR based Digital Terrain Modal (DTM) a digitized representation may be used.
- Lines that do not follow natural features to be included using the best available data but should not be relied on as authoritative.
- To avoid conflict with adjoining counties and citizen, it is best to establish those lines properly. Contact North Carolina Geodetic Survey for additional information.

It is recommended that the county maintain a separate GIS file for the county boundary in which each line is a geographic feature and relational “one to many” table to store documents and track status of each line in the county boundary. Digitized lines of natural features may be held as a single feature. A polygon of the boundary should also be inserted or linked to the county cadastre. The adjoining county and North Carolina Geodetic County Boundary Surveyor should be consulted.

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## 15.2.2 Municipal Boundaries (City, Town, Village)

Shall have two layers maintained:

1. A working layer that has the annexation boundary as defined in the ordinance along with the ordinance number, effective date, and municipality name. Deed book and page and map book and page are recommended but optional.
2. A boundary layer composed of all lines in the working layer that touch non-municipal areas. This layer is to have the municipal name and address as attributes.

### **Construction Notes:**

1. If the annexation description identifies the boundary as being a parcel boundary the annexations line should be linked with said parcel boundary so that if the parcel boundary location is updated the municipal boundary will automatically stay aligned with the parcel boundary.

2. If the description in the annexation ordinance does not include the street right-of-way within the described boundary polygon, the municipality does not claim said street until the municipality annexes the land on the opposite side of said street. For the purpose of involuntary annexation, the municipality is allowed under NC GS 160A-31(f) to treat land on the opposite side of intervening territory (i.e., streets, rivers, railroad right-of-way, etc.) as being contiguous to the existing town boundary. Once the annexation is complete on the opposite side of the street the intervening territory automatically becomes part of the town. There may be some exceptions to this rule, (i.e., if the intervening territory is already within the municipal boundaries of another municipality).

Under subsection (f) of that statute, property is deemed contiguous if it is separated from the municipal boundary by, among other listed features, a “street or street right-of-way,” or “lands owned by the State of North Carolina.” This provision specifically authorizes the city to include this category of property in the area described in the petition. The North Carolina Court of Appeals has held that this type of intervening property automatically becomes a part of the city when it is included in the petition to create contiguity. *Town of Valdese v. Burke, Inc.*, 125 N.C. App. 688 (1997). (Excerpt from Coats’ Canons: NC Local Government Law “Annexation of Streets” by Frayda Bluestein)

N.C. Gen. Stat. § 160A-31

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the



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municipal boundary or is separated from the municipal boundary by the width of a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of a street or street right-of-way may not be used to establish contiguity. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation. (emphasis added)

Simply put, use the description within the annexation ordinance for the boundary until the city annexes both sides of the street, at which time draw a line perpendicular to the centerline across the right-of-way at the first and last point that both sides of the right-of-way are within the municipality.

To comply with the US Census Boundary and Annexation Survey, they require mapping from the centerline and right and left attributes define which addresses are within the municipality. This is a reporting requirement and does not mean that the city boundary is on the centerline of the road.

### **Legal Note:**

The requirement in G.S. 160-453.19 (now 160A-29) that a map of the annexed territory, together with a certified copy of the ordinance, be recorded in the office of the register of deeds and in the office of the Secretary of State is, obviously, not a condition precedent to the effective annexation of the territory but the imposition of a duty to be performed after the annexation is complete. [Dale v. Morganton, 270 N.C. 567, 155 S.E.2d 136, 1967 N.C. LEXIS 1389 \(N.C. 1967\)](#) (The annexation is not considered invalid if not filed in the Register of Deeds.)

### 15.2.3 Municipal Corporations (Excluding City, Town or Village) Organized for a Special Purpose – General Information.

Examples of Municipal Corporations:

- Fire Districts
- School Districts
- Soil and Water Conservation Districts
- Sanitary Districts
- Special Assessment Districts
- Other Utility Districts

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## 15.2.4 Extraterritorial Jurisdictions (ETJ) (NC GS 160A-360)

## 15.2.5 Townships

### **§ 153A-19. Establishing and naming townships.**

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names,

For mapping purposes, the official description of the district boundary should be consulted. That description is to be used to establish one or more polygons depicting the jurisdiction boundary. A layer shall be established for each jurisdiction. The attributes associated with each polygon should include the name of the jurisdiction, the address and phone number, contact name, a reference for the boundary description, a date of the description,

## **16 Base Map Reference Layers**

### **16.1 General information:**

Base Map Reference Layers are supplemental layers that give the mapper a reference frame to assist in the placement of the parcel polygons. If the document of title description contains a mathematical closed figure without a tie to the state plane coordinate system, the base maps provide the geographic information to assist in the placement of the parcel.

It is important to know the origin and accuracy of the base maps used. If you were to use the United States Geologic Survey (US GS) 1:24000 (1" = 2,000') Hydrography dataset as a base map for 1" = 200' parcel mapping, you would be introducing an unacceptable error level into your mapping project. It is important that before inserting a Base Map Layer into your project that the Metadata be evaluated to insure that the data is compatible with your project goals.

Look for:

- Author/custodian (should be a trusted source)
- Spatial accuracy: to meet National Map Accuracy Standards including a statement affirming no more than 10% of the points tested shall have positional error of more than 1/30 inch measured on the publication scale. For a 1"=200' map that is 6.66 ft. Also determine how many points were tested. There is a statistical difference between 10 points and a 100. Just because a data set can be view at a scale does not mean that it meets map standards for that scale. National Map Accuracy Standards (<http://nationalmap.gov/standards/pdf/NMAS647.PDF>) may not be adequate for your project. Six feet could be the difference in a house

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meeting the zoning setback requirement or the parcel boundary going through the house.

- Make sure that the base map coordinate reference frame and your mapping reference frame are synchronized when displayed. The mapping system may transform the inserted reference frame on the fly if the parameters are available or you may have to manually adjust.
- Periodically base map data sets are updated by the custodian; it is advisable to check for updates several times a year with the base map custodians, thereby always having the best available data.
- Many mapping software products have rubber sheeting routines. **Do not use** these routines to fit base maps to existing data. The result will be a cartoon that looks good but has little relation to reality.
- In the past datasets had to be downloaded on the system before they could be used. This required lot hardware and memory to support the project. It also required updates.
- Today we have an alternatives in the form of Map Services, Web Mapping Service (WMS), Web Feature Service (WFS) as well as ESRI © REST web services that can be consumed in software and applications without having to host the data. Consumers have the latest version all the time.
- NC One Map (<http://www.nconemap.com/>) is your primary source for Base Maps in download or map service. Metadata is associated with each dataset.

## 16.2 Statewide Base Mapping Layers: (see NC OneMap)

General Definition:

A map showing certain fundamental information, used as a base upon which additional data of specialized nature are compiled.

### 16.2.1 Orthophotography

Orthophotography/Orthoimagery is an aerial photograph geometrically corrected ("ortho-rectified") such that the scale is uniform and can be used to measure true distances, because it is an accurate representation of the Earth's surface, having been adjusted for topographic relief, lens distortion, and camera tilt.

For Cadastral Mapping, the most current county wide orthoimagery available should be used. The collection of the orthoimagery should conform to the requirements in the North Carolina Technical Specifications for Digital Orthophoto Base Mapping. Other Orthoimagery data sets may be associated with the cadastral map to be used as historical reference; these would not be considered the base map.

Access to imagery available from the State Orthoimagery Program can be found in the NC OneMap GeoSpatial Portal, <http://data.nconemap.gov>

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## 16.2.2 Hydrology

The United States Geologic Survey (USGS) National Hydrographic Dataset (NHD) is the official source for hydrographic location (water boundaries relating to seas, lakes, streams, rivers, etc.). The dataset is the required source for some environmental permitting. US Census is required to use it in forming block boundaries.

The drawback to this dataset is that it is mapped at 1:24000 scale (1 in. = 2000 ft.), it is a compilation of data over a period of 50 to 75 years, and has never been ground truthed. For general reference it is a valuable resource but like all remote sensing data it should be verified by comparing it with more accurate information. If being used for cadastral mapping it should be verified with the Ortho Base Map. A ground survey should always be used as best available data. LiDAR data or a digital terrain model can be used to predict drainage patterns but cannot be used to authenticate the presence of water.

The North Carolina Flood Mapping program also has a hydrography dataset, developed from the LiDAR information collected for the flood mapping program. However it is not recognized by USGS as an approved data source. If used it should be checked visually with the orthophotography base map.

## 16.2.3 Transportation

The North Carolina Department of Transportation is tasked with providing transportation information at the state level.

Transportation Base Mapping data sets:

[Road Characteristics Arcs Shapefile Format](#)  
[Road Characteristics Arcs File Geodatabase Format](#)  
[LRS Arcs Shapefile Format](#)  
[LRS Arcs File Geodatabase Format](#)  
[Integrated Statewide Road Network Data](#)  
[Bridge Locations Statewide](#)  
[NCDOT Rail Track Shapefile Format](#)  
[NCDOT Rail Track File Geodatabase Format](#)

<https://connect.ncdot.gov/resources/gis/pages/gis-data-layers.aspx>

## 16.2.4 Terrain

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## 16.2.5 NC Geodetic Control Map overlay

## 16.2.6 Additional Name Layers:

(these may need to be locally generated)

For ease of location it is advisable to generate a layer that will document the locations of local geographic names that may be used in deed descriptions or in general directions.

## 16.2.7 Recognizable Local Names (Nodes)

Subdivisions  
Neighborhoods/Communities

## 16.2.8 U.S. Board of Geographic Names (BGN)

BGN includes features such as airports, land features, special buildings, cemeteries, churches, civil boundaries, dams, hospitals, islands, parks, communities, schools, streams, rivers, communication towers, trails, and etc. (Nodes, Lines, and Polygons)

# **17 Cadastral Layers (layers associated with documents of title)**

## **17.1 General:**

By definition changes to the cadastral map are to be based on the recorded public records for real estate. It is the duty of those maintaining the cadastre to safeguard the accuracy of the information placed in the system. Example: when a document of title is presented for inclusion, the official should review the documents grantor information for some right of transfer. If the right of transfer is not evident within the tax record, a request should be made for additional documentation before the information is included in the cadastre. It is the duty of the tax department to tax everything within the county that is taxable. To do this those properties that are not taxable have to be accounted for as well. If a property is exempt from taxation the exemption type should be noted.

## **17.2 Parcels**

Parcels- include all ownerships where surface rights are held pursuant to a document of title. For the purpose of tax mapping a Torrens title is treated the same as a parcel with a Fee Simple deed.

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## 17.3 Easements

(See Section 11.4.2, 18.15 and 25)

## 17.4 Mineral Rights

§ 105-302. In whose name real property is to be listed.

(c) (11) When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, waterpower, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.

§ 105-303. Obtaining information on real property transfers; permanent listing.

(b) (2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 are relieved of that duty, but annually, during the listing period established by G.S. 105-307, these persons must furnish the assessor with the information concerning improvements on and separate rights in real property required by G.S. 105-309(c)(3) through (c)(5).

§ 105-309. What the abstract shall contain.

(c) (5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, waterpower, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.

Mineral rights are real property and permanently listed so unless there is a change in the mineral rights, they should continue to be permanently listed unless it is reported otherwise. 105-303(b)

Note: The dates of the listing are important to the statute of limitation (GS 1-42.1 through GS 1-42.9) and should be documented; a court may use these dates to rule on the validity of the claim.

It is best management practice to notify the surface owner of a new listing or listing change of a mineral right.

Mineral rights include all ownership where the mineral estate is held separate from the surface estate. Mineral Rights boundaries are to be mapped on a separate layer from the parcel layer assigned a PIN in the same manner as a parcel. The attribute list shall be the same as the parcel layer with an additional field denoting a mineral right.

Typically, the mineral right estate will have the same boundary as the surface

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estate it is being severed from at the time of said right is severed. Any subsequent division of the surface estate will have no effect on the boundary of the mineral right estate. Likewise, a division of the mineral estate will not affect the boundary of the surface estate.

It would be prudent to include an attribute in the surface estate data dictionary denoting if the mineral rights have been severed.

This recommendation is not intended to require any county to retroactively list mineral rights but a suggestion to track from day forward.

### **17.5 Air Parcel's**

Air parcel's are defined as any parcel that has an upper boundary and a lower boundary limitation, without surface rights, such as a building over a city street as authorized in GS 160A – 273, or the Marriott on top of the city's parking garage in Charlotte. The air parcel shall be given the base PIN on the parent surface parcel with the three-digit suffix.

#### **160A-273. Grant of easements. (Air rights over streets)**

A city shall have authority to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as a grant of an easement.

### **17.6 Condominium Units**

§ 47C-1-103. Definitions. (7) “Condominium” means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

§ 47C-2-101. Execution and recordation of declaration.

(a) A declaration creating a condominium shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the condominium is located.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and

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mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an architect licensed under the provisions of Chapter 83 [83A] of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes.

### **§ 47C-2-104. Description of units.**

A description of a condominium unit which sets forth the name of the condominium, the recording data for the declaration, and the identifying number of the unit or which otherwise complies with the general requirements of the laws of this State concerning description of real property is sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

### **§ 47C-2-109. Plats and plans.**

(a) The declarant shall file with the register of deeds in each county where the condominium is located the condominium's plat or plan prepared in accordance with this section. The plat or plan shall be considered a part of the declaration but shall be recorded separately, and the declaration shall refer by number to the file where such plat or plan is recorded. Each plat or plan must contain a certification by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes that it contains all of the information required by this section.

The Plats and plans provide the horizontal and vertical location of the condominium unit. The decoration gives the definition of what the private ownership entails.

A condominium unit will be assigned the same PIN as the common areas of the facility with the addition of a suffix number to the PIN of -001 through -999 to be assigned incrementally to each unit. This will form a many to one relationship. The common area will be assigned a conventional PIN but the taxes are to be prorated among the units if so prescribed by law. Think about mapping AIR PARCELS as points on a separate layer, the attribute list would be the same as the parcel attribute list. See § 47A-21. Units taxed separately, § 47C-1-105. Separate titles and taxation, § 47F-1-105. Taxation, § 160A-273. Grant of easements. Note: the common area is owned by the unit owners as shares as defined in the declaration under GS 47C.

### **§ 47A-21. Units taxed separately. (prior to October 1 1986)**

Each condominium unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Each unit holder shall be liable solely for the amount of taxes



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against his individual unit and shall not be affected by the consequences resulting from the tax delinquency of other unit holders. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.

### **§ 47C-1-105. Separate titles and taxation. (after October 1, 1986)**

(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no developmental rights.

(c) Any portion of the common elements for which the declarant has reserved any developmental right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

(e) Except as provided in subsection (c) of this section, extraterritorial common property taxed pursuant to G.S. 105-277.8 shall be assessed, pro rata, among the unit owners based on the number of the units in the association.

### **§ 47F-1-105. Taxation.**

Extraterritorial common property taxed pursuant to G.S. 105-277.8 shall be assessed, pro rata, among the lot owners based on the number of lots in the association. (2012-157, s. 3.)

### **§ 47C-3-116. Lien for sums due the association; enforcement. (selected section)**

(a) Any assessment attributable to a unit which remains unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision.

## **17.7 Planned Community:**

While a planned community is managed by its own association through rules and restrictive conveyance, the administration of these are private or through civil court

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action between the members of the association and not by county or municipal government. These developments are also subject to state and local rules which are administered by the appropriate government authorities. State law has granted certain tax concessions for common spaces that enhance the value of the individual lots. Usually the Declarant owns the land designated as common property for a little while as the development is newly created (he hasn't deeded it to the Association, yet) So, the tax parcel for that piece of common element land exists, possibly taxed at a zero/low value because the real value is included in the development's lots/units. When it is conveyed to the Association, it becomes eligible for a tax benefit (or exemption/exclusion). 105-277.8(a) requires 3 use conditions to be met. If met, the common element property can officially be assessed/taxed within the members units/lots. If the 3 use conditions are not met, the common property parcel would be taxed to the Association and they can apply for a benefit/exemption/exclusion through the 1 time application required under 105-282.1. If extraterritorial common property is owned by the association it is taxed in accordance with GS 105-277.8 (a1), extraterritorial common property (property that is owned by the Association and meets all 3 use conditions but is in a different taxing jurisdiction than the Association's members lots/units are in) cannot be included within the appraisals of the members lots/units. BUT GS 47F-1-105 & GS 47C-1-105 specifically overrides this law/rule. That kind of common property can also be valued/assessed/taxed within the members units/lots

### **§ 47F-2-101. Creation of the planned community.**

A declaration creating a planned community shall be executed in the same manner as a deed and shall be recorded in every county in which any portion of the planned community is located.

§ 47F-1-103 Definition: (23) "Planned community" means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. "Ownership of a lot" does not include holding a leasehold interest of less than [than] 20 years in a lot, including renewal options.

Application: **§ 47F-1-102.**

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration

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provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws), G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through (17) (Powers of owners' association), G.S. 47F-3-103(f) (Executive board members and officers), G.S. 47F-3-107(a), (b), and (c) (Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47F-3-121 (American and State flags and political sign displays), and G.S. 47F-3-104 (Transfer of Special Declarant Rights) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

## **§ 47F-2-117. Amendment of declaration.**

1. Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47F-2-118(b), the declaration may be amended only by affirmative vote or written

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a agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

3. Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation.

4. Any amendment passed pursuant to the provisions of this section or the procedures provided for in the declaration are presumed valid and enforceable.

5. Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.

### **§ 47F-2-118. Termination of planned community.**

(b) An agreement to terminate shall be evidenced by the execution of a termination

agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of lot owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recordation.

### **§ 47F-2-121. Merger or consolidation of planned communities.**

(b) An agreement of two or more planned communities to merge or consolidate

pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting planned communities following approval by owners of lots to which are allocated the percentage of votes in each planned community required to terminate that planned community. Any such agreement shall be recorded in every county in which a portion of the planned community is located and is not effective until recorded.

### **§ 47F-1-105. Taxation.**

Extraterritorial common property taxed pursuant to G.S. 105-277.8 shall be assessed, pro rata, among the lot owners based on the number of lots in the association.

**§ 105-277.8.** (Effective for taxes imposed for taxable years beginning on or after July 1, 2012) Taxation of property of nonprofit homeowners' association.

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(a) Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association if each of the following requirements is met:

- (1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association equally.
- (2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the association.
- (3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of extraterritorial common property shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection, as determined by the latest schedule of values, shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value. The governing board of a nonprofit homeowners' association with property subject to taxation under this subsection shall provide annually to each member of the association the amount of tax due on the property, the value of the property, and, if applicable, the means by which the association will recover the tax due on the property from the members.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code, and "extraterritorial common property" means real property that is (i) owned by a nonprofit homeowners association that meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) entirely contained within a taxing jurisdiction that is different from that of the taxable real property owned by members of the association and providing the appurtenant rights to use and enjoy the association property. (1979, c. 686, s. 1; 1987, c. 130; 2012-157, s. 1.)

### **§ 47F-3-104. Transfer of special declarant rights.**

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Except for transfer of declarant rights pursuant to foreclosure, no special declarant right (G.S. 47F-1-103(28)) may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. The instrument is not effective unless executed by the transferee

## **§ 47F-3-101. Organization of owners' association.**

A lot owners' association shall be incorporated no later than the date the first lot in the planned community is conveyed. The membership of the association at all times shall consist exclusively of all the lot owners or, following termination of the planned community, of all persons entitled to distributions of proceeds under G.S. 47F-2-118. Every association created after the effective date of this Chapter (January 1, 1999) shall be organized as a nonprofit corporation.

## **§ 47F-3-116. Lien for sums due the association; enforcement.** (selected section)

(a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision  
See Section 19.18

## **17.8 Chattel Real**

“**Chattels real** are interests in **real** estate less than freehold, and are personal property. They are to be distinguished, on the one hand, from things which have no concern with the land, such as mere movables and rights connected with them, which are **chattels** personal, and on the other hand, from a freehold, which is realty. Where a person erects buildings on leased premises under an agreement in the lease that he may remove them, or places machinery in buildings under a similar agreement, the buildings and the machinery follow the term and partake of its character as a **chattel real**.” (N.C. Op. Atty. Gen. 109 (N.C.A.G.), 1986 WL 219258)

### **§ 47-20.4. Place of registration; chattel real.**

To be validly registered pursuant to G.S. 47-20, a deed of trust or mortgage of a leasehold interest or other chattel real must be registered in the county where the land involved lies, or if the land involved is located in more than one county, then the deed

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of trust or mortgage must be registered in each county where any portion of the land involved lies in order to be effective as to the land in that county.

## 17.9 Manufactured Home

A Manufacture Home is to be treated as real property just as any other building if it meets the statutory requirements for real property. If it is not classified as real property it is to be classified as a lease hold or chattel real and will be assigned the PIN of the surface estate with a suffix number assigned consecutively starting with .0001.

### **§ 143-143.9 (6) Manufactured home.**

A structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

### **§ 105-273 (13) Real property, real estate, or land. - Any of the following:**

- d. A manufactured home as defined in G.S. 143-143.9(6), unless it is considered tangible personal property for failure to meet all of the following requirements:
  1. It is a residential structure.
  2. It has the moving hitch, wheels, and axles removed.
  3. It is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years and the lease expressly provides for disposition of the manufactured home upon termination of the lease.

### **§ 47-20.6. Affidavit for permanent attachment of titled manufactured home to real property.**

- (a) If the owner of real property or the owner of the manufactured home who has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed has surrendered the title to a manufactured home that is placed on the real property and the title has been cancelled by the Division of Motor Vehicles under G.S. 20-109.2, the owner, or the secured party having the first security interest in the manufactured home at time of surrender, shall record the affidavit described in G.S. 20-109.2 with the office of the register of deeds of the county where the real property is located. Upon

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recordation, the affidavit shall be indexed on the grantor index in the name of the owner of the manufactured home and on the grantee index in the name of the secured party or lienholder, if any.

- (b) After the affidavit is recorded, the manufactured home becomes an improvement to real property. Any lien on the manufactured home shall be perfected and given priority in the manner provided for a lien on real property.
- (c) Following recordation of the affidavit, all existing liens on the real property are considered to include the manufactured home. Thereafter, no conveyance of any interest, lien, or encumbrance shall attach to the manufactured home, unless the interest, lien, or encumbrance is applicable to the real property on which the home is located and is recorded in the office of the register of deeds of the county where the real property is located in accordance with the applicable sections of this Chapter.
- (d) The provisions of this section control over the provisions of G.S. 25-9-334 relating to the priority of a security interest in fixtures, as applied to manufactured homes.

### **§ 47-20.7. Declaration of intent to affix manufactured home; transfer of real property with manufactured home attached.**

- (a) A person who owns real property on which a manufactured home has been or will be placed or the owner of a manufactured home who has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home has been or will be placed, as defined in G.S. 105-273(13), and either where the manufactured home has never been titled by the Division of Motor Vehicles or where the title to the manufactured home has been surrendered and cancelled by the Division prior to January 1, 2002, may record in the office of the register of deeds of the county where the real property is located a declaration of intent to affix the manufactured home to the property and may convey or encumber the real property, including the manufactured home, by a deed, deed of trust, or other instrument recorded in the office of the register of deeds.
- (b) The declaration of intent, deed, deed of trust, or other instrument shall contain a description of the manufactured home, including the name of the manufacturer, the model name, if applicable, the serial number, and a statement of the owner's intention that the manufactured home be treated as property.
- (c) On or after the filing of the instrument with the office of the register of deeds pursuant to subsection (a) of this section, the manufactured home placed, or to be placed, on the property becomes an



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improvement to real property. Any lien on the manufactured home shall be perfected and have priority in the manner provided for a lien on real property.

## **17.10 Taxable Areas**

Parcels owned by individuals, corporations or unknown owner.  
Parcels/Structures cut by county, state boundaries or other taxing jurisdictions.

## **17.11 Common Areas within a Development.**

Common areas within a development such as private streets, parks, play grounds open space, etc., enhance the value of the lots. Therefore the value of the common area is incorporated into the lot. A taxing of the common area would result in double taxation. The courts have ruled that when a lot is deeded using a plat reference everything on that plat is incorporated into the description. The streets, parks, common areas, etc., are part of the inducement to buy therefore the description has the effect of granting an easement of appurtenance over the streets, parks, common areas, etc. There should be no taxes assessed on the common area within a subdivision even if there is no tax exempt home owners association in place holding title.

## **17.12 Non taxable Areas (Tax Exempt for County Tax Department)**

*Note: non-taxable areas should have an attribute referencing the applied rule for the exclusion.*

DOT Right of Ways

Public Trust Lands (Submerged Lands)- Should map mean high water for navigable title water to county boundary if applicable contact data is the department of administration.

Residual of parcels split by county or state boundaries

Governmental (Federal, State, Local) G. S. 105-278.1

Federal:

Tennessee Valley Authority lands GS 105-459

Federal Payment in lieu of tax lands Ch 69, Title 31 of US Code

<http://www.doi.gov/pilt/county-payments.cfm>

Military Bases - % Revenue of timber sale from federal land including military bases to state for roads and schools in county.

<http://www.law.cornell.edu/uscode/text/10/2665>

State

Local

Educational (Non-governmental) G. S. 105-278.4, G. S. 105-278.7(f)(1)

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Educational (Religious) G. S. 105-278.5  
Religious G. S. 105-278.3  
Charitable—Hospital Property G. S. 105-278.8  
Charitable—Homes for the Aged, Sick, and Infirm: G. S. 105-278.6(a)(2)  
Charitable—Low and Moderate Income Housing: G. S. 105-278.6(a)(8)  
Charitable—All Others: G. S. 105-278.6(a)(1), (3), (4), (5), (6) and (7), G. S. 105-278.7(f)(4)  
Scientific, Literary, and Cultural G. S. 105-278.7(f)(2), G. S. 105-278.7(f)(3), G. S. 105-278.7(f)(5)  
All Other Exemptions Any Exemptions Not Listed Above  
    Cemeteries  
    Indian trust lands  
    Escheat Property  
Department of Revenue Assessed Lands (public service company) G. S. 105-284(b), G. S. 105 335(b)(1)  
    Rail Road Right of Ways  
    Utility owned Impoundments  
    Public utility Easements  
    Public utility Lands

## 17.13 Tax Exclusion (partial deferment of value)

*Note: Reasons for the application for partial deferment of value may not be applicable to a total parcel of land and may not pertain to the use of that land. It is recommended that the deferment type be withheld from the cadastral map. A parcel with a partial deferment value may be generically identified by comparing the appraised value with the assessed value.*

Continuing Care Retirement Centers  
Present Use Value (PUV) (Deferred Amount for Current Year Only)  
Wildlife Conservation (Deferred Amount for Current Year Only)  
Elderly and Disabled  
Disabled Veteran Exclusion  
Pollution Abatement and Recycling  
Builder's Deferral (Deferred Amount for Current Year Only)  
American Legion, DAV, Lodges, etc.  
Medical Care Commission Bonds  
All Other Exclusions

## 17.14 Cemeteries

### Definitions:

- Abandoned. – Ceased from maintenance or use by the person with legal right to the real property with the intent of not again maintaining the real property in the foreseeable future.

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- Cemetery. – A tract of land used for burial of multiple graves.
- Grave. – A place of burial for a single decedent.

### **Regulations:**

- Privately owned, for-profit cemeteries are regulated by the North Carolina Cemetery Commission in Raleigh, NC.
- Family-owned private cemeteries and church cemeteries are regulated by their own appointed boards.
- Check with your county or city zoning and county health department for any local ordinances dealing with cemeteries.

### **Human Graves:**

1. When a human body is interred, that area is treated as if there was an easement placed over said area. The record title holder has no practical use of the grave area. Future access may be acquired under GS § 65-101 and § 65-102.
2. The fee is still owned by the record title holder.
3. If the human remains are removed in accordance with the provisions in NC GS §65-106, the restrictive condition is thus removed thereby restoring use rights to the fee holder in accordance with any restrictions or conditions stated in the title.

### **Creating a separate parcel for a cemetery:**

Under the definition of Subdivision found in NC GS § 153A-335, a new parcel is subject to the local subdivision ordinance if any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future). Private or church cemeteries parcels are not regulated under this definition. Commercial (for profit) cemeteries are subject to the local subdivision ordinance because the individual plots are for sale.

Since a recorded plat does not change or assign rights or restrictions on its own, it would be prudent for the subdivision administrator to require the recording of a document of title, stating that the intent of the fee holder is to use the property as a cemetery and to reference the plat as being the description (authorized in NC GS § 47-30 (i)). The tax assessor could then use said document to making a value determination on the parcel. The North Carolina County Cadastral Map is a document driven system the above mentioned document will be used to authorize the mapping.

## **18 Documents to be Filed in the County where the Land Lies – Statutory References.**

The tax owned on a parcel is in really a lien on the property. That makes the county a lien creditor. The Tax office must rely of the records filed in the office of Clerk of Court and

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the Register of Deeds office in that county to validate the chain of title.

The purpose of this section is to provide a quick reference to North Carolina General Statutes that require a Public Record filing of a document pertaining interest in land in the county where the land lies. The County Register of Deeds or Clerk of Superior Court offices hold the public registries for interest in land. There may be other statutes that require the filing of a document in the county where the land lies that are not referenced in this section.

## **18.1 Right-of-Way Plans and Transportation Corridor Maps**

### **§ 136-19.4. Registration of right-of-way plans.**

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties within which the project is located. The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

### **§ 136-44.50. Transportation corridor official map act (Monitor 2015 HB 183).**

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

(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.

## **18.2 Condemnation. (DOT)**

### **§ 136-103. Institution of action and deposit**

(a) In case condemnation shall become necessary the Department of Transportation shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Department of Transportation.

(b) Said declaration shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such

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persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement of the sum of money estimated by said Department of Transportation to be just compensation for said taking.

(c) Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which and the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who the Department of Transportation is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement as to such liens or other encumbrances as the Department of Transportation is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.

(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

(d) The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Department of Transportation to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Department of Transportation may amend the complaint and declaration of taking and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 136-105 of this Chapter

### **§ 136-104. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action.**

Upon the filing of the complaint and the declaration of taking and deposit in court, to the use of the person entitled thereto, of the amount of the estimated compensation stated in the declaration, title to said land or such other interest therein specified in the complaint and the declaration of taking, together with the right to immediate possession hereof shall vest in the Department of Transportation and the judge shall enter such orders in the cause as may be required to place the Department of Transportation in possession, and said land shall be deemed to be condemned and taken for the use of the Department of Transportation ... [O]n and after July 1, 1961, the Department of Transportation, at the time of the filing of the complaint and declaration of taking and deposit of estimated compensation, shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located and said memorandum shall be recorded among the land records of said county. Upon the amending of any complaint and declaration of taking affecting the property

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taken, the Department of Transportation shall record a supplemental memorandum of action.

...

## MEMORANDUM OF ACTION

G.S. 136-104 deals with memorandums of action and supplemental memorandums of action that are recorded by the Department of Transportation. These documents list the names of parties that may have a claim to a piece of property. The parties named in the instrument that may have a claim to the affected real property and the Department of Transportation is indexed on both the grantor and grantee indexes.

On the following example:

**Grantors:** DEPARTMENT OF TRANSPORTATION  
GOODRICH RONALD H.  
GOODRICH ANNA T.  
COMMUNITYONE BANK, N.A.

**Grantees:** DEPARTMENT OF TRANSPORTATION  
GOODRICH RONALD H.  
GOODRICH ANNA T.  
COMMUNITYONE BANK, N.A.

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### **§ 136-116. Final judgments.**

Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the property affected, together with a description of the property and estate of interest acquired by the Department of Transportation and a copy of said judgment shall be certified to the register of deeds in the county in which the land or any part thereof lies and be recorded among the land records of said county.

### **18.3 Condemnation Proceedings by Private condemnors**

#### **§ 40A-21. Notice of proceedings.**

Notice of all proceedings brought hereunder shall be filed with the clerk of superior court of each county in which any part of the land is located in the form and manner provided by G.S. 1-116, and the clerk shall index and cross-index this notice as required by G.S. 1-117. In the record of lis pendens and in the judgment docket required by G.S. 7A-109 the clerk shall always index the name of the condemnor as the plaintiff and the name of the property owner as the defendant irrespective of whether the condemning party is the plaintiff or defendant. The filing of such notice shall be constructive notice of the proceeding to any person who subsequently acquires any interest in or lien upon said property, and the condemnor shall take all property condemned under this Article free of the claims of any such person.

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## **§ 40A-43. Memorandum of action.**

The condemnor, at the time of the filing of the complaint containing the declaration of taking and deposit of estimated compensation, shall record a memorandum of action with the register of deeds in all counties in which the land involved is located and said memorandum shall be recorded among the land records of said county. Upon the amending of any complaint affecting the property taken, the condemnor shall record a supplemental memorandum of action. The memorandum of action shall contain:

- (1) The names of those persons who the condemnor is informed and believes to be or claim to be owners of the property and who are parties to said action;
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;
- (3) A statement of the property taken for public use;
- (4) The date of institution of said action, the county in which said action is pending, and such other reference thereto as may be necessary for the identification of said action.

## **§ 40A-54. Final judgments.**

Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the land affected, together with a description of the property acquired by the condemnor and a copy of said judgment shall be certified to the register of deeds in each county in which the land or any part thereof lies and be recorded among the land records of said county.

## **18.4 Judgments**

### **§ 1-76. Where subject of action situated.**

Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial in the cases provided by law:

- (1) Recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.
- (2) Partition of real property.
- (3) Foreclosure of a mortgage of real property.
- (4) Recovery of personal property when the recovery of the property itself is the sole or primary relief demanded.

Note: If a judgment is presented to the tax department from a jurisdiction where the land is not situs, a legal opinion from the county attorney is recommended before its inclusion into the tax records. See *McRary v. McRary* Supreme court of North Carolina April 7, 1948, 228 N.C. 714, 47 S.E. 2d 27.

### **§ 1-339.8. Public sale of separate tracts in different counties.**

- (a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement,

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sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued has jurisdiction with respect to upset bids submitted for separate tracts of property situated in other counties as well as in the clerk's own county. When the public sale is by auction an upset bid may be filed only with that clerk.

(b) The report of sale with respect to all sales of separate tracts situated in different counties shall be filed with the clerk of the superior court of the county in which the order of sale was issued, and is not required to be filed in any other county.

(c) When the public sale is by auction, the sale of each separate tract shall be subject to separate upset bids. To the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each tract shall be treated as a separate sale.

(d) When real property is sold in a county other than the county where the proceeding, in which the sale was ordered, is pending, the person authorized to hold the sale shall cause a certified copy of the order of confirmation to be recorded in the office of the register of deeds of the county where such property is situated, and it shall not be necessary for the clerk of court to probate said certified copy of the order of confirmation.

### **18.5 (Lis Pendens)**

#### **§ 1-116. Filing of notice of suit.**

(a) Any person desiring the benefit of constructive notice of pending litigation must file a

separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

- (1) Actions affecting title to real property.
- (2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property.
- (3) Actions in which any order of attachment is issued and real property is attached.
- (4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes.

(b) Notice of pending litigation shall contain:

- (1) The name of the court in which the action has been commenced or is pending;
- (2) The names of the parties to the action;
- (3) The nature and purpose of the action; and
- (4) A description of the property to be affected thereby.

(c) Notice of pending litigation may be filed:



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- (1) At or any time after the commencement of an action pursuant to Rule 3 of the Rules of Civil Procedure; or
  - (2) At or any time after real property has been attached; or
  - (3) At or any time after the filing of an answer or other pleading in which the pleading party states an affirmative claim for relief falling within the provisions of subsection (a) of this section.
- (d) Notice of pending litigation must be filed with the clerk of the superior court of each county in which any part of the real estate is located, not excepting the county in which the action is pending, in order to be effective against bona fide purchasers or lien creditors with respect to the real property located in such county.

## **§ 1-228. Regarded as a deed and registered.**

Every judgment, in which the transfer of title is so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person ordered to convey, and shall be registered in the proper county, under the rules and regulations prescribed for conveyances of similar property executed by the party. The party desiring registration of such judgment must produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate. All laws which are passed for extending the time for registration of deeds include such judgments, provided the conveyance, if actually executed, would be so included.

## **1A-1 Rule 70. Judgment for specific acts; vesting title.**

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the judge may direct the act to be done at the cost of the disobedient party by some other person appointed by the judge and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The judge may also in proper cases adjudge the party in contempt. If real or personal property is within the State, the judge in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to execution upon application to the clerk upon payment of the necessary fees. (Note: See § 1-228)

## **18.6 Mechanics' Liens**

### **§ 44A-13. Action to enforce claim of lien on real property.**

(a) **Where and When Action Commenced.** - An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real

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property. If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of the bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said real property. The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located within the time required by this section satisfies the requirement for the commencement of a civil action.

(b) Judgment. - A judgment enforcing a lien under this Article may be entered for the principal amount shown to be due, not exceeding the principal amount stated in the claim of lien enforced thereby. The judgment shall direct a sale of the real property subject to the lien thereby enforced.

(c) Notice of Action. - In order for the sale under G.S. 44A-14(a) to pass all title and interest of the owner to the purchaser good against all claims or interests recorded, filed or arising after the first furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property, a notice of lis pendens shall be filed in each county in which the real property subject to the claim of lien on real property is located except the county in which the action is commenced. The notice of lis pendens shall be filed within the time provided in subsection (a) of this section for the commencement of the action by the lien claimant. If neither an action nor a notice of lis pendens is filed in accordance with this section, the judgment entered in the action enforcing the claim of lien on real property shall not direct a sale of the real property subject to the claim of lien on real property enforced thereby nor be entitled to any priority under the provisions of G.S. 44A-14(a), but shall be entitled only to those priorities accorded by law to money judgments.

### **18.7 Separation - Marriage**

#### **§ 39-13.4. Conveyances by husband or wife under deed of separation.**

Any conveyance of real property, or any interest therein, by the husband or wife who have previously executed a valid and lawful deed of separation which authorizes said husband or wife to convey real property or any interest therein without the consent and joinder of the other and which deed of separation or a memorandum of the deed of separation setting forth such authorization is recorded in the county where the land lies, shall be valid to pass such title as the conveying spouse may have to his or her grantee and shall pass such title free and clear of all rights in such property and free and clear of such interest in property that the other spouse might acquire solely as a result of the marriage, including any rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of separation or memorandum thereof and properly executed and acknowledged by said husband and wife is recorded in the office of said register of deeds. The instrument which is registered under this section to authorize the conveyance of an interest in real property or the cancellation of the deed of separation or memorandum thereof shall comply with the provisions of G.S. 52-10 or 52-10.1.

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§ 52-10. Contracts between husband and wife generally; releases

(a) Contracts between husband and wife not inconsistent with public policy are valid, and any persons of full age about to be married and married persons may, with or without a valuable consideration, release and quitclaim such rights which they might respectively acquire or may have acquired by marriage in the property of each other; and such releases may be pleaded in bar of any action or proceeding for the recovery of the rights and estate so released. No contract or release between husband and wife made during their coverture shall be valid to affect or change any part of the real estate of either spouse, or the accruing income thereof for a longer time than three years next ensuing the making of such contract or release, unless it is in writing and is acknowledged by both parties before a certifying officer.

(a1) A contract between a husband and wife made, with or without a valuable consideration, during a period of separation to waive, release, or establish rights and obligations to post separation support, alimony, or spousal support is valid and not inconsistent with public policy. A provision waiving, releasing, or establishing rights and obligations to post separation support, alimony, or spousal support shall remain valid following a period of reconciliation and subsequent separation, if the contract satisfies all of the following requirements:

- (1) The contract is in writing.
- (2) The provision waiving the rights or obligations is clearly stated in the contract.
- (3) The contract was acknowledged by both parties before a certifying officer.

A release made pursuant to this subsection may be pleaded in bar of any action or proceeding for the recovery of the rights released.

(b) Such certifying officer shall be a notary public, or a justice, judge, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice, or the equivalent or corresponding officers of the state, territory or foreign country where the acknowledgment is made. Such officer must not be a party to the contract.

(c) This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a contract or release between such husband and wife.

§ 52-10.1. Separation agreements

Any married couple is hereby authorized to execute a separation agreement not inconsistent with public policy which shall be legal, valid, and binding in all respects; provided, that the separation agreement must be in writing and acknowledged by both parties before a certifying officer as defined in G.S. 52-10(b). Such certifying officer must not be a party to the contract. This section shall not apply to any judgment of the superior court or other State court of competent jurisdiction, which, by reason of its being consented to by a husband and wife, or their attorneys, may be construed to constitute a separation agreement between such husband and wife.

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## 18.8 Divorce

### **§ 50-20. Distribution by court of marital and divisible property.**

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property and divisible property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property and divisible property of the spouse's former marriage.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

Note: If an out of jurisdiction divorce proceeding is presented to the tax department that decrees a transfer of rights to real property, this must be accomplished by either a conveyance by the spouse ordered to convey to the spouse ordered to receive, recorded in the Register of Deeds of the county of the property, or entry by a North Carolina court of a judgment conveying title.

### **§ 50-12. Resumption of maiden or pre-marriage surname.**

(a) Any woman whose marriage is dissolved by a decree of absolute divorce may, upon application to the clerk of court of the county in which she resides or where the divorce was granted setting forth her intention to do so, change her name to any of the following:

- (1) Her maiden name; or
- (2) The surname of a prior deceased husband; or
- (3) The surname of a prior living husband if she has children who have that husband's surname.

(a1) A man whose marriage is dissolved by decree of absolute divorce may, upon application to the clerk of court of the county in which he resides or where the divorce was granted setting forth his intention to do so, change the surname he took upon marriage to his premarriage surname.

(b) The application and fee required by subsection (e) of this section shall be presented to the clerk of the court of the county in which such divorced person resides or where the divorce was granted, and shall set forth the full name of the former spouse of the applicant, the name of the county and state in which the divorce was granted, and the term or session of court at which such divorce was granted, and shall be signed by the woman in her full maiden name, or by the man in his full premarriage surname. The clerks of court of the several counties of the State shall record and index such applications in such manner as shall be required by the Administrative Office of the Courts.

(c) If an applicant, since the divorce, has adopted one of the surnames listed in subsection (a) or (a1) of this section, the applicant's use and adoption of that name is validated.

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## 18.9 Marriage Settlements

### **§ 47-25. Marriage settlements.**

All marriage settlements and other marriage contracts, whereby any money or other estate is secured to the wife or husband, shall be proved or acknowledged and registered in the same manner as deeds for lands, and shall be valid against creditors and purchasers for value only from registration.

See GS 52-10.1 above.

## 18.10 Wills

**Note:** Property sold by the estate is not transferred by will or intestacy ... it is transferred by contract. The will may order the property to be sold, but that does not mean the property is transferred by will. It is a sale, meaning record ownership changes whenever the deed is recorded. (Christopher B McLaughlin, ptax mailing list 12-21-2012)

If decedent owned real property in NC outside of the county where the probate administration is taking place, the will needs to be filed in the county in NC where the decedent's real estate is located.

Note: A foreign court: international or domestic may issue a judgment directing a conveyance of North Carolina realty but that jurisdiction cannot under North Carolina law issue a judgment that orders title to vest in North Carolina realty. If this type of action is presented to the tax department, a legal opinion from the county attorney is recommended before its inclusion into the tax records. See Green v. Wilson 163 N.C. App. 186.

### **§ 28A-2A-15. Certified copy of will proved in another state or country.**

When a will, made by a citizen of this State, is proved and allowed in some other state or country, and the original will cannot be removed from its place of legal deposit in such other state or country, for probate in this State, the clerk of the superior court of the county where the testator had his last usual residence or has any property, upon a duly certified copy or exemplification of such will being exhibited to him for probate, shall take every order and proceeding for proving, allowing and recording such copy as by law might be taken upon the production of the original.

### **§ 28A-2A-13. Wills filed in clerk's office; certified copies filed for real property in other counties.**

- (a) All original probated wills shall remain in the office of the clerk of superior court, among the public records of the court where the wills were probated.
- (b) If a probated will devises real property outside the county where the will was probated, a copy of the will and a copy of the certificate of probate of the

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will, certified under the hand and seal of the clerk of the superior court of the county where the will was probated, may be filed in the office of the clerk of the superior court of any other county in this State in which the real property is situated. The filing of the probated will in the county where the real property is situated shall have the same effect for purposes of G.S. 31-39(c) as to the priorities of claims against the real property as if the will had originally been probated in that county and as if the clerk of superior court of that county had jurisdiction to probate the will.

### **§ 28A-2A-17. Certified copy of will of nonresident recorded.**

(a) Subject to the provisions of subsection (b) of this section, if the will of a citizen or subject of another state or country is probated in accordance with the laws of that jurisdiction and a duly certified copy of the will and the probate proceedings are produced before a clerk of superior court of any county wherein the testator had property, the copy of the will shall be probated as if it were the original. If the jurisdiction is within the United States, the copy of the will and the probate proceedings shall be certified by the clerk of the court wherein the will was probated. If the jurisdiction is outside the United States, the copy of the will and probate proceedings shall be certified by any ambassador, minister, consul or commercial agent of the United States under his official seal.

(b) For a copy of a will probated under the provisions of subsection (a) of this section to be valid to pass title to or otherwise dispose of real estate in this State, the execution of said will according to the laws of this State must appear affirmatively, to the satisfaction of the clerk of the superior court of the county in which such will is offered for probate, from the testimony of a witness or witnesses to such will, or from findings of fact or recitals in the order of probate, or otherwise in such certified copy of the will and probate proceedings.

(c) If the execution of the will in accordance with the laws of this State does not appear as required by subsection (b) of this section, the clerk before whom the copy is exhibited shall have power to take proof as prescribed in G.S. 28A-2A-16, and the will may be adjudged duly proved, and if so proved, the will shall be recorded as herein provided.

(d) Any copy of a will of a nonresident heretofore allowed, filed and recorded in this State in compliance with the foregoing shall be valid to pass title to or otherwise dispose of real estate in this State.

### **§ 28A-3-1. Proper county. (Venue for Probate of Wills and Administration of Estates of Decedents.)**

The venue for the probate of a will and for all proceedings relating to the administration of the estate of a decedent shall be:

(1) In the county in this State where the decedent was domiciled at the time of the decedent's death; or

(2) If the decedent had no domicile in this State at the time of death, then in any county wherein the decedent left any property or assets or into which any property

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or assets belonging to this estate may have come. If there be more than one such county, that county in which proceedings are first commenced shall have priority of venue; or

(3) If the decedent was a nonresident motorist who died in the State, then in any county in the State.

### **§ 28A-15-2. Title and possession of property.**

(b) Real Property. - The title to real property of a decedent is vested in the decedent's heirs as of the time of the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39

### **§ 31-39. Probate necessary to pass title; rights of lien creditors and purchasers; recordation in county where real property lies.**

(a) A duly probated will is effective to pass title to real and personal property.

(b) A will is not effective to pass title to real or personal property as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent, unless the will is probated or offered for probate before the earlier of (i) the date of the approval by the clerk of the superior court having jurisdiction of the decedent's estate of the final account filed by the personal representative of the decedent's estate, or (ii) the date that is two years from the date of death of the decedent. If the will is fraudulently suppressed, stolen, or destroyed, or is lost, and an action or proceeding is instituted within the time limitation set forth in this subsection to obtain that will or establish that will as provided by law, the time limitation under this subsection begins to run from the termination of that action or proceeding.

(c) A will duly probated in one county of this State is not effective to pass title to an interest in real property located in any other county of this State as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent unless a certified copy of the will and a certified copy of the certificate of probate of the will are filed in the office of the clerk of superior court in the county where the real property lies within the time limitation set forth in subsection (b) of this section.

(d) A conveyance made by the intestate heirs at law of a decedent before the expiration of the time limitation set forth in subsection (b) of this section shall, upon the expiration of that time, become effective to the same extent as if the conveyance were made after the expiration of that time, unless before the expiration of that time, a proceeding is instituted in the proper court to probate a will of the decedent.

### **18.11 Intestacy**

**Note:** Property sold by the estate is not transferred by will or intestacy ... it is transferred by contract. The will may order the property to be sold, but that does not mean the property is transferred by will. It is a sale, meaning record ownership changes whenever the deed is recorded. (Christopher B McLaughlin, ptax mailing list 12-21-2012)

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Because title passes by law to the heirs at the time of death of the decedent, or at the time of the probate of a valid will if one exists, with ownership relating back to the time of death, there is no requirement for a deed to be recorded in the name of the heirs. NCGS §28A-15-2(b). Otherwise, if the property is to be conveyed to a third party (not the heirs, devisees or fiduciaries), a deed should be recorded that was executed by the heirs, devisees and/or personal representative. Who is required to sign on behalf of the estate is a common title issue. (Greg Henshow “The Transfer of Real Property from a Decedent’s Estate”, 2013)

### **§ 28A-15-2. Title and possession of property.**

(b) Real Property. - The title to real property of a decedent is vested in the decedent's heirs as of the time of the decedent's death; but the title to real property of a decedent devised under a valid probated will becomes vested in the devisees and shall relate back to the decedent's death, subject to the provisions of G.S. 31-39.

### **§ 105-302. In whose name real property is to be listed.**

- (6) Real property of which a decedent died possessed, if not under the control of an executor or administrator, shall be listed in the names of the heirs or devisees if known, but such property may be listed as property of "the heirs" or "the devisees" of the decedent, without naming them, until they have given the assessor notice of their names and of the division of the estate. It shall be the duty of an executor or administrator having control of real property to list it in his fiduciary capacity, as required by subdivision (c)(7), below, until he is divested of control of the property. However, the right of an administrator or executor of a deceased person to petition for the sale of real property to make assets shall not be considered control of the real property for the purposes of this subdivision.
- (7) Real property, the title to which is held by a trustee, guardian, or other fiduciary, shall be listed by the fiduciary in his fiduciary capacity except as otherwise provided in this section.

Note: Without reasonable proof of the names of all the heirs the tax office probably will not accept the word of one of the heirs that the list he presents is a full accounting of the heirs.

### **§ 31-39. Probate necessary to pass title; rights of lien creditors and purchasers; recordation in county where real property lies.**

- (c) A will duly probated in one County of this State is not effective to pass title to an interest in real property located in any other county of this State as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent unless a certified copy of the will is filed in the office of the clerk of superior court in the county where the real property lies within the time limitation set forth in subsection (b) of this section



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## **18.12 Deeds, Contracts, Leases**

### **§ 47-18. Conveyances, contracts to convey, options and leases of land.**

(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration, and (ii) if instruments are registered simultaneously, then the instruments shall be presumed to have priority as determined by:

- (1) The earliest document number set forth on the registered instrument.
- (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

### **§ 47-20.4. Place of registration; chattel real.**

To be validly registered pursuant to G.S. 47-20, a deed of trust or mortgage of a leasehold interest or other chattel real must be registered in the county where the land involved lies, or if the land involved is located in more than one county, then the deed of trust or mortgage must be registered in each county where any portion of the land involved lies in order to be effective as to the land in that county.

## **18.13 Deed of Trust or Mortgage**

§ 47-20. Deeds of Trust, mortgages, ... (a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section. Unless otherwise stated either on the registered instrument or on a separate registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration, and (ii) if instruments are registered simultaneously, then the instruments shall be presumed to have priority as determined by:

- (1) The earliest document number set forth on the registered instrument.

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(2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.

The presumption created by this subsection is rebuttable.

### **§ 47-20.1. Place of registration; real property.**

To be validly registered pursuant to G.S. 47-20, a deed of trust or mortgage of real property must be registered in the county where the land lies, or if the land is located in more than one county, then the deed of trust or mortgage must be registered in each county where any portion of the land lies in order to be effective as to the land in that county.

### **18.14 Deeds of gift**

#### **§ 47-26. Deeds of gift.**

All deeds of gift of any estate of any nature shall within two years after the making thereof be proved in due form and registered, or otherwise shall be void, and shall be good against creditors and purchasers for value only from the time of registration.

### **18.15 Easements**

#### **§ 47-27. Deeds of easements.**

All persons, firms, or corporations now owning or hereafter acquiring any deed or agreement for rights-of-way and easements of any character whatsoever shall record such deeds and agreements in the office of the register of deeds of the county where the land affected is situated. Where such deeds and agreements may have been acquired, but no use has been made thereof, the person, firm, or corporation holding such instrument, or any assignment thereof, shall not be required to record them until within 90 days after the beginning of the use of the easements granted thereby. If after 90 days from the beginning of the easement granted by such deeds and agreements the person, firm, or corporation holding such deeds or agreements has not recorded the same in the office of the register of deeds of the county where the land affected is situated, then the grantor in the said deed or agreement may, after 10 days' notice in writing served and returned by the sheriff or other officer of the county upon the said person, firm, or corporation holding such lease or agreement, file a copy of the said lease or agreement for registration in the office of the register of deeds of the county where the original should have been recorded, but such copy of the lease or agreement shall have attached thereto the written notice above referred to, showing the service and return of the sheriff or other officer. The registration of such copy shall have the same force and effect as the original would have had if recorded: Provided, said copy shall be duly probated before being registered.

Nothing in this section shall require the registration of the following classes of instruments or conveyances, to wit:

- (1) It shall not apply to any deed or instrument executed prior to January 1, 1910.

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- (2) It shall not apply to any deed or instrument so defectively executed or witnessed that it cannot by law be admitted to probate or registration, provided that such deed or instrument was executed prior to the ratification of this section.
- (3) It shall not apply to decrees of a competent court awarding condemnation or confirming reports of commissioners, when such decrees are on record in such courts.
- (4) It shall not apply to local telephone companies, operating exclusively within the State, or to agreements about alleyways.

The failure of electric companies or power companies operating exclusively within this State or electric membership corporations, organized pursuant to Chapter 291 of the Public Laws of 1935 [G.S. 117-6 through 117-27], to record any deeds or agreements for rights-of-way acquired subsequent to 1935, shall not constitute any violation of any criminal law of the State of North Carolina.

No deed, agreement for right-of-way, or easement of any character shall be valid as against any creditor or purchaser for a valuable consideration but from the registration thereof within the county where the land affected thereby lies.

From and after July 1, 1959, the provisions of this section shall apply to require the Department of Transportation to record as herein provided any deeds of easement, or any other agreements granting or conveying an interest in land which are executed on or after July 1, 1959, in the same manner and to the same extent that individuals, firms or corporations are required to record such easements.

### **18.16 Trusts**

§ 39-6.7. Construction of conveyances to or by trusts.

- (a) A deed, will, beneficiary designation, or other instrument that purports to convey, devise, or otherwise transfer any ownership or security interest in real or personal property to a trust shall be deemed to be a transfer to the trustee or trustees of that trust.
- (b) A deed or other instrument which purports to convey or otherwise transfer any ownership or security interest in real or personal property by a trust shall be deemed to be a transfer by the trustee or trustees of that trust. This rule of construction shall apply:
  - (1) Regardless of whether the instrument is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust; and
  - (2) Regardless of whether the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.
- (c) A deed or other instrument by which the trustee or trustees of a trust convey or otherwise transfer any ownership or security interest in real or personal property shall be deemed sufficient:

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- (1) Regardless of whether the instrument is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust; and
- (2) Regardless of whether the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.
- (d) The trustee or trustees of a trust may convey or otherwise transfer any ownership or security interest in real or personal property as trustee or trustees even though the deed or instrument by which the trustee or trustees acquired title purported to convey or transfer that title to the trust.
- (e) Nothing in this section shall be construed to limit the manner in which title to real or personal property may be conveyed or transferred to or by trustees.

### § 36C-4-401. Methods of creating trust.

A trust may be created by any of the following methods:

- (1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:
  - a. The devise to the trustee of the trust as provided in G.S. 31-47.
  - b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.
- (2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.
- (3) Exercise of a power of appointment in favor of a trustee.
- (4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code.

*A trust is not a separate legal entity, rather, it is a relationship between beneficiaries & trustees. Therefore, title to property should not be in the name of the trust. While GS 39-6.7 cures any problems resulting from that rule, it forces the mapper/listor of property to look for the trustee(s). If the deed is into the trusts name only, ask for a certificate of trust (36C-10-1013) or some proof of the trusts existence and the identity and address of the trustee(s).*

### **18.17 Mineral Rights v Surface Rights**

#### **18.17.1 (Adverse possession)**

#### **§ 1-42. Possession follows legal title; severance of surface and subsurface rights.**

In every action for the recovery or possession of real property, or damages for a trespass on such possession, the person establishing a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person is deemed to have been

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under, and in subordination to, the legal title, unless it appears that the premises have been held and possessed adversely to the legal title for the time prescribed by law before the commencement of the action. Provided that a record chain of title to the premises for a period of thirty years next preceding the commencement of the action, together with the identification of the lands described therein, shall be prima facie evidence of possession thereof within the time required by law.

In all controversies and litigation wherein it shall be made to appear from the public records that there has been at some previous time a separation or severance between the surface and the subsurface rights, title or properties of an area, no holder or claimant of the subsurface title or rights therein shall be entitled to evidence or prove any use of the surface, by himself or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said surface rights or title; and likewise no holder or claimant of the surface rights shall be entitled to evidence or prove any use of the subsurface rights, by himself, or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said subsurface rights, unless, in either case, at the time of beginning such allegedly adverse use and in each year of the same, said party or his predecessor in title so using shall have placed or caused to be placed upon the records of the register of deeds of the county wherein such property lies and in a book therein kept or provided for such purposes, a brief notice of intended use giving (i) the date of beginning or recommencing of the operation or use, (ii) a brief description of the property involved but sufficiently adequate to make said property readily locatable there from, (iii) the name and, if known, the address of the claimant of the right under which the operation or use is to be carried on or made and (iv) the deed or other instrument, if any, under which the right to conduct such operation or to make such use is claimed or to which it is to be attached.

### 18.17.2 (Mineral claims extinguished/preserved)

§ 1-42.1. through 1-42.9 Certain ancient mineral claims extinguished in certain counties.

**(b)** ... Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two (2) years after September 1, 1965, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such

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notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record”

### **18.18 Powers of attorney**

#### **47-28. Powers of attorney.**

- (a) Recording required for powers of attorney affecting real property:
- (1) Before any transfer of real property executed by an attorney-in-fact empowered by a power of attorney governed by Article 1, Article 2, or Article 2A of Chapter 32A of the General Statutes, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds of the county in which the principal is domiciled or where the real property lies. If the principal is not a resident of North Carolina, the power of attorney or a certified copy of the power of attorney may be recorded in any county in the State wherein the principal owns real property or has a significant business reason for registering in the county.
  - (2) If the real property lies in more than one county or in a county other than where the principal is domiciled, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds in one of the counties, and the instrument of transfer shall refer to the recordation specifically by reference to the book, page, and county where recorded.
  - (3) Any instrument subject to the provisions of G.S. 47-17.2, 47-18, or 47-20 and signed by an attorney-in-fact and recorded in a county other than the county where a power of attorney is recorded in this State shall include the recording information, including book, page, and county for the power of attorney.
  - (4) The failure to comply with the provisions of this subsection shall not affect the sufficiency, validity, or enforceability of the instrument but shall constitute an infraction.
- (b) If the instrument of conveyance is recorded prior to the registration of the power of attorney or a certified copy of the power of attorney pursuant to subsection (a) of this section, the power of attorney or a certified copy of the power of attorney may be registered in the office of the register of deeds as provided in subsection (a) of this section thereafter provided that the attorney-in-fact was empowered at the time of the original conveyance. Notwithstanding the provisions of subsection (a) of this section, no conveyance shall be rendered invalid by the recordation of the power of attorney or a certified copy of the power of attorney after the instrument of conveyance, and the registration shall relate back to the date and time of registration of the instrument of conveyance.

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(c) The provisions of subsection (a) of this section shall apply to all real property transfers utilizing an authority under any power of attorney whether made on or after April 1, 2013, and the provisions of subsection (b) of this section shall apply to all real property transfers utilizing an authority under any power of attorney whether made before, on, or after April 1, 2013.

### **18.19 Bankruptcy**

#### **§ 47-29. Recording of bankruptcy records.**

A copy of the petition with the schedules omitted beginning a proceeding under the United States Bankruptcy Act, or of the decree of adjudication in such proceeding, or of the order approving the bond of the trustee appointed in such proceeding, shall be recorded in the office of any register of deeds in North Carolina, and it shall be the duty of the register of deeds, on request, to record the same. The register of deeds shall be entitled to the same fees for such registration as he is now entitled to for recording conveyances.

Note: Transfer of Real Property will be the result of a deed from the Bankruptcy proceedings and is to be filled in accordance with GS 47-18

### **18.20 Foreclosure**

#### **§ 45-21.17. Posting and publishing notice of sale of real property.**

In addition to complying with such provisions with respect to posting or publishing notice of sale as are contained in the security instrument,

- (1) Notice of sale of real property shall
  - a. Be posted, in the area designated by the clerk of superior court for posting public notices in the county in which the property is situated, at least 20 days immediately preceding the sale.
  - b. And in addition thereto,
    1. The notice shall be published once a week for at least two successive weeks in a newspaper published and qualified for legal advertising in the county in which the property is situated.
    2. If no such newspaper is published in the county, then notice shall be published once a week for at least two successive weeks in a newspaper having a general circulation in the county.
    3. In addition to the required newspaper advertisement, the clerk may in his discretion, on application of any interested party, authorize such additional advertisement as in the opinion of the clerk will serve the interest of the parties, and permit the charges for

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such further advertisement to be taxed as a part of the costs of the foreclosure.

- (2) When the notice of sale is published in a newspaper,
  - a. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than seven days, including Sundays, and
  - b. The date of the last publication shall be not more than 10 days preceding the date of the sale.
- (3) When the real property to be sold is situated in more than one county, the provisions of subdivisions (1) and (2) shall be complied with in each county in which any part of the property is situated.
- (4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A.
- (5) Repealed by Session Laws 1993, c. 305, s. 10.
- (6) Any time periods relating to notice of hearing or notice of sale that are provided in the security instrument may commence with and run concurrently with the time periods provided in G.S. 45-21.16, 45-21.17, or 45-21.17A.

**Note:** The deed from the Substitute Trustee must be filed in the county where the land lies. A notice of deed is not sufficient to transfer the property.

### **18.21 Corporate Instruments**

§ 47-18.3. Execution of corporate instruments; authority and proof.

(e) Any corporation may convey an interest in real property which is transferable by instrument which is duly executed by either an officer, manager, or agent of said corporation and has attached thereto a signed and attested resolution of the board of directors of said corporation authorizing the said officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and



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attested resolution of the board of directors of the corporation to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, or chief financial officer. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein.

### **18.22 Corporation effect of dissolution**

#### **§ 55-14-05. Effect of dissolution.**

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its shareholders according to their interests; and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Subject its directors or officers to standards of conduct different from those prescribed in Article 8;
- (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.

(c) After the end of the tax year in which dissolution occurs, a dissolved corporation is not subject to the annual franchise tax unless it engages in business activities not appropriate to winding up and liquidating its business and affairs as permitted by subsection

Note:

1. The shares of a corporation are part of the estate of the share holder.
2. The officers of the corporation are responsible for signing deeds of transfer for real property during wind up.
3. If the officers of the corporation are no long living or competent, a quorum of the shareholders may elect new officers to conduct the corporate business or by written consent of all share holders.

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## **18.23 Non-Profit Corporations**

Articles of Incorporation or Certificate of Authority filed at NC Secretary of State  
Acknowledgments GS 47-18.3, 47-41.1, and 47-41.02

Filing of merger or name change (See Section 19.27) See § 55A-11-02. Limitations on  
mergers by charitable or religious corporations.

§ 55A-12-01. Sale of assets in regular course of activities and mortgage of assets.

- (a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:
  - (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or
  - (2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.
- (b) Unless the articles of incorporation require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required.

## **18.24 Limited Liability Companies (LLC)**

§ 57D-1-20. Filing requirements.

- (a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed as provided in Chapter 55D of the General Statutes.
- (b) A document submitted on behalf of a limited liability company must be executed by one of the following:
  - (1) A manager or other company official.
  - (2) If the document is the articles of organization, a person acting in the capacity of an organizer or a member as provided in G.S. 57D-2-21(a)(2).
  - (3) If the LLC has never had any members, an organizer.
  - (4) If the LLC is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. (2013-157, s. 2)

§ 57D-2-01. Nature, purposes, duration, existence.

- (a) An LLC is an entity distinct from its interest owners.
- (b) An LLC has perpetual duration.
- (c) Subject to subsection (d) of this section, an LLC may engage in any lawful business.
- (d) A limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter if not precluded by the other statute and is otherwise subject to the application of the other statute, which in the case of a limited liability company rendering a professional service requires giving effect to G.S. 57D-2-02.

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(e) After the dissolution of an LLC, the LLC continues its existence but shall wind up pursuant to G.S. 57D-6-07.

## § 57D-9-43. Effects of merger.

(a) When the merger takes effect, the following shall occur:

- (1) Each merging entity other than the surviving entity merges into the surviving entity, and the separate existence of each merging entity other than the surviving entity ceases.
- (2) The title to all real estate and other property owned by each merging entity is vested in the surviving entity without reversion or impairment.
- (3) The surviving entity has all liabilities of each merging entity.

Filing of merger or name change (See Section 19.27)

## 18.25 Partnerships

Type of Partnership	Description	Created By
General Partnership (GP)	Formed between two or more persons	Operating Agreement and possibly filing a d/b/a at the county level.
Limited Partnership (LP)	At least one limited partner and one general partner	Filing a Registration at the Secretary of State's Office
Limited Liability Partnership (LLP)	A general partnership having limited liability	Filing a Registration at the Secretary of State's Office
Limited Liability Limited Partnership (LLLLP or RLLLLP)	Limited partnership that has limited liability	Filing a Registration at the Secretary of State's Office

## § 59-36. Partnership defined.

(a) A partnership is an association of two or more persons to carry on as co-owners a business for profit. NC General Statutes - Chapter 59 4

(b) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this Article, unless such association would have been a partnership in this State prior to the adoption of this Article; but this Article shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith. (1941, c. 374, s. 6.)

## § 59-37. Rules for determining the existence of a partnership.

In determining whether a partnership exists, these rules shall apply:

- (1) Except as provided by G.S. 59-46 persons who are not partners as to each other are not partners as to third persons.
- (2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

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(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

- a. As a debt by installments or otherwise,
- b. As wages of an employee or rent to a landlord,
- c. As an annuity to a widow or representative of a deceased partner,
- d. As interest on a loan, though the amount of payment vary with the profits of the business,
- e. As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

### **§ 59-38. Partnership property.**

(a) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(b) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(c) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(d) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

### **§ 59-40. Conveyance of real property of the partnership.**

(a) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of subsection (a) of G.S. 59-39, or unless such property has been conveyed by the grantee or a person claiming through such grantee to holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(b) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of G.S. 59-39.

(c) Where title to real property is in the name of one or more, but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of subsection (a) of G.S. 59-39, unless the purchaser or his assignee, is a holder for value, without knowledge.

(d) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the

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equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of G.S. 59-39. (e) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

### **§ 59-60. Partnership not terminated by dissolution.**

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. Name Change for General partnership file an assumed name form at the county register of deeds in the county where the partnership conducts business. Name Change or Merger for limited partnership, registered limited liability partnership foreign limited partnership, or foreign limited liability partnership (see Section 19.26)

## **18.26 Business Trust**

### **§ 39-46. Title vested; conveyance; probate.**

Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this section, if the conveyance has attached to it a signed resolution adopted by the board of trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been

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complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority.

### **18.27 Corporation Name Change or Merger**

#### **§ 55D-26. Real property records.**

(a) A certificate issued by the Secretary of State as described in subsection (b) of this section must be recorded when:

- (1) The name of any domestic corporation, nonprofit corporation, limited liability company, limited partnership, or registered limited liability partnership or foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership that holds title to real property in this State is changed upon amendment to its articles of incorporation or organization, its certificate of limited partnership, or its registration as a limited liability partnership or foreign limited liability partnership;  
or

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- (2) Title to real property in this State held by any entity listed in subdivision (1) of this subsection is vested by operation of law in another entity upon merger, consolidation, or conversion of the entity.

The certificate must recite the name change, merger, consolidation, or conversion and must be recorded in the office of the register of deeds of the county where the property lies or, if the property is located in more than one county in each county where any portion of the property lies.

(b) The Secretary of State shall issue uniform certificates for recordation in accordance with this section. In the case of a foreign corporation, foreign nonprofit corporation, foreign limited liability company, foreign limited partnership, or foreign limited liability partnership, a similar certificate by any competent authority of the jurisdiction of incorporation may be recorded in accordance with this section.

(c) The certificate required by this section must be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the entity holding title to the real property before the name change, merger, consolidation, or conversion shall appear in the "Grantor" index, and the new name of the corporation or the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index.

### **§ 47-18.1. Registration of certificate of corporate merger, consolidation, or conversion.**

(a) If title to real property in this State is vested by operation of law in another entity upon the merger, consolidation, or conversion of an entity, such vesting is effective against lien creditors or purchasers for a valuable consideration from the entity formerly owning the property, only from the time of registration of a certificate thereof as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of merger, consolidation, or conversion, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the entity involved is not a domestic entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The name of the entity formerly owning the property shall appear in the "Grantor" index, and the name of the entity owning the property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index.

## **18.28 Unincorporated Nonprofit Association / (Voluntary Organizations)**

### **§ 59B-2. Definitions.**

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(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

### **§ 59B-4. Title to property; choice of law.**

Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State

### **§ 59B-5. Real and personal property; nonprofit association as devisee or beneficiary.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract or a devisee.

(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated.

### **§ 59B-6. Statement of authority as to real property.**

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

(1) The name of the nonprofit association.

(2) Reserved for future codification purposes.

(3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.

(4) That the association is an unincorporated nonprofit association.

(5) The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(6) That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the



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nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority.

### **18.29 Religious Societies, (bishops, ministers, other ecclesiastical officer or Trustees**

#### **§ 61-1. Trustees may be appointed and removed**

(a) The conference, synod, convention or other ecclesiastical body representing any church or religious denomination within the State, as also the religious societies and congregations within the State, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise.

#### **§ 61-2. Trustees may hold property.**

The trustees and their successors have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation; and they may sue or be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matters relating thereto. They shall be accountable to the churches, denominations, societies and congregations for the use and management of such property, and shall surrender it to any person authorized to demand it.

#### **§ 61-3. Title to lands vested in trustees, or in societies.**

All glebes, lands and tenements, heretofore purchased, given, or devised for the support of any particular ministry, or mode of worship, and all churches and other houses built for the purpose of public worship, and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious denomination, religious society or congregation within the State for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society or congregation for which the glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which such churches, chapels or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested, as between the parties thereto, in the trustees respectively of such churches, denominations, societies and congregations, for their several use, according to the intent expressed in the conveyance, gift,

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grant or will; and in case there shall be no trustees, then in such churches, denominations, societies and congregations, respectively, according to such intent.

### **§ 61-5. Authority of bishops, ministers, etc., to acquire, hold and transfer property; prior transfers validated.**

Whenever the laws, rules, or ecclesiastic polity of any church or religious sect, society or denomination, commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by gift, purchase or otherwise, and to hold, improve, mortgage, sell and convey the property, real or personal, of any such church or religious sect, society or denomination, for the purposes, in the manner and otherwise as authorized and permitted by its laws, rules or ecclesiastic polity; and in the event of the transfer, removal, resignation or death of any such bishop, minister or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon appointment or election, and pending appointment or election of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules or ecclesiastic polity of such church or religious sect, society or denomination.

### **18.30 Public Utilities including Rail Roads**

#### **§ 62-292. Certificate to be filed with Secretary of State.**

It is the duty of the new corporation provided for by this Article, within one month after its organization, to make certificate thereof, under its common seal, attested by the signature of its president, specifying the date of the organization, the name adopted, the amount of capital stock, and the names of its president and directors, and transmit the certificate to the Secretary of State, to be filed and recorded in his office. A certified copy of this certificate so filed shall be recorded in the office of the clerk of the superior court of the county in which is located the principal office of the corporation, and is the charter and evidence of the corporate existence of the new corporation.

#### **§ 62-291. New owners to meet and organize; special rule for railroads.**

(a) The persons for whom the property and franchises have been purchased pursuant to G.S. 62-290 shall meet within 30 days after the delivery of the conveyance made by virtue of said judgment or decree, and organize the new corporation, 10 days' written notice of the time and place of the meeting having been given to each of said persons. At this meeting they shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and shall have power and authority to make and issue certificates of stock in shares of such amounts as they see fit. The corporation may then, or at any time thereafter, create and issue preferred stock to such an amount, and at such time, as they may deem necessary.

(b) Whenever the purchaser of the real estate, track and fixtures of any railroad corporation which has heretofore been sold, or may hereafter be sold, by virtue of any mortgage executed by such corporation or execution issued upon any judgment or decree of any court, shall acquire title to the same in the manner prescribed by law, such purchaser may associate with him any number of persons, and make and acknowledge

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and file articles of association as prescribed by this Chapter. Such purchaser and his associates shall thereupon be a new corporation, with all the powers, privileges and franchises and subject to all of the provisions of this Chapter.

(c) When any railroad corporation shall be dissolved, or its property sold and conveyed under any execution, deed of trust, mortgage or other conveyance, the owner or purchaser shall constitute a new corporation upon compliance with law.

### **18.31 Name Change**

#### **18.31.1 By Matter of Law**

##### **§ 101-2. Procedure for changing name; petition; notice.**

(a) A person who wishes, for good cause shown, to change his or her name must file an application before the clerk of the superior court of the county in which the person lives, after giving 10 days' notice of the application by publication at the courthouse door.

(b) The publication in subsection (a) of this section is not required if the applicant:

- (1) Is a participant in the address confidentiality program under Chapter 15C of the General Statutes;

##### **§ 101-7. Recording name change.**

When the name of any individual, corporation, partnership, or association has been changed in a manner provided by law, any attorney licensed to practice law in this State may file an affidavit with the clerk of superior court stating facts concerning the change of name. The clerk shall cause the affidavit to be filed and indexed among the records of his office, pursuant to G.S. 7A-180(3) and G.S. 7A-343(3). The clerk shall also forward a copy of the affidavit under the seal of his office to the clerk of superior court of any other county named in the affidavit where it shall also be filed and indexed in accordance with this section. Affidavits filed and indexed under this section are for informational purposes only and neither the affidavit nor the manner of its filing and indexing shall in any manner affect the rights or liabilities of any person.

##### **§ 101-8. Resumption of name by widow or widower.**

A person at any time after the person is widowed may, upon application to the clerk of court of the county in which the person resides setting forth the person's intention to do so, resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband in the case of a widow, or his pre-marriage surname in the case of a widower. The application shall set forth the full name of the last spouse of the applicant, shall include a copy of the spouse's death certificate, and shall be signed by the applicant in the applicant's full name. The clerks of court of the several counties of this State shall record and

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index such applications in the manner required by the Administrative Office of the Courts

### 18.31.2 By Marriage

A married woman acquires her husband's surname by repute only, as a matter of custom, rather than as a matter of law.

#### **§ 51-18. Record of licenses and returns; originals filed.**

The register of deeds shall maintain a separate index for marriage licenses and returns thereto. Each marriage license shall be indexed alphabetically according to the name of the proposed husband and proposed wife. Each index entry shall include, but not be limited to, the full name of the intended husband and wife, the date the marriage ceremony was performed, and the location of the original license and the return thereon. The original license and return shall be filed and preserved.

### 18.31.3 By Divorce

**§ 50-12. Resumption of maiden or premarriage surname (see Divorce chapter in this section)**

### 18.32 Doing Business As

#### **§ 66-68. Certificate to be filed; contents; exemption of certain partnerships and limited liability companies engaged in rendering professional services; withdrawal or transfer of assumed name.**

(a) Unless exempt under subsection (e) hereof, before any person or partnership engages in business in any county in this State under an assumed name or under any designation, name or style other than the real name of the owner or owners thereof, before any limited partnership engaged in business in any county in this State other than under the name set out in the Certificate filed with the Office of the Secretary of State, before any limited liability company engages in business in any county other than under the name set out in the articles of organization filed with the Office of the Secretary of State, or before a corporation engages in business in any county other than under its corporate name, such person, partnership, limited partnership, limited liability company, or corporation must file in the office of the register of deeds of such county a certificate giving the following information:

- (1) The name under which the business is to be conducted; and
- (2) The name and address of the owner, or if there is more than one owner, the name and address of each.

(b) If the owner is an individual or a partnership, the certificate must be signed and duly acknowledged by the individual owner, or by each general partner. If the owner is a corporation or limited liability company, it must be signed in the name of the

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corporation or limited liability company and duly acknowledged as provided by G.S. 47-41.01 or G.S. 47-41.02.

## **18.33 Torrens:**

### Chapter 43. Land Registration

#### **§ 43-6. Who may institute proceedings.**

Any person, firm, or corporation, including the State of North Carolina or any political subdivision thereof, being in the peaceable possession of land within the State and claiming an estate of inheritance therein, may prosecute a special proceeding in rem against all the world in the superior court for the county in which such land is situate, to establish his title thereto, to determine all adverse claims and have the title registered. Any number of the separate parcels of land claimed by the petitioner may be included in the same proceeding, and any one parcel may be established in several parts, each of which shall be clearly and accurately described and registered separately, and the decree therein shall operate directly upon the land and establish and vest an indefeasible title thereto. Any person in like possession of lands within the State, claiming an interest or estate less than the fee therein, may have his title thereto established under the provisions of this Chapter, without the registration and transfer features herein provided.

## **18.34 Environmental Notices**

#### **§ 47-29.1. Recordation of environmental notices.**

- (a) A permit for the disposal of waste on land shall be recorded as provided in G.S. 130A-301.
- (a1) The disposal of land clearing and inert debris in a landfill with a disposal area of 1/2 acre or less pursuant to G.S. 130A-301.1 shall be recorded as provided in G.S. 130A-301.1(c).
- (a2) A Notice of Open Dump shall be recorded as provided in G.S. 130A-301(f).
- (a3) Expired pursuant to Session Laws 1995, c. 502, s. 4, as amended by Session Laws 2001-357, s. 2, effective September 30, 2003.
- (a4) The disposal of on-site demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, shall be recorded as provided in G.S. 130A-301.3.
- (b) An inactive hazardous substance or waste disposal site shall be recorded as provided in G.S. 130A-310.8.
- (c) A Notice of Brownfields Property shall be recorded as provided in G.S. 130A-310.35.
- (d) A Notice of Oil or Hazardous Substance Discharge Site shall be recorded as provided in G.S. 143-215.85A.
- (e) A Notice of Dry-Cleaning Solvent Remediation shall be recorded as provided in G.S. 143-215.104M.
- (f) A Notice of Contaminated Site shall be recorded as provided in G.S. 143B-279.10.
- (g) A Notice of Residual Petroleum shall be recorded as provided in G.S. 143B-279.11.

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(h) A land-use restriction that provides for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans shall be recorded as provided in G.S. 143-214.7(c1).

## **19 How to Deal with Heir Property**

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Few things cause more headaches for property tax offices than heir property. When a taxpayer dies owning real property, listing, exemption eligibility, billing, and enforced collection questions suddenly become very difficult to resolve.

The traditional approach to resolving these questions is for the tax office to wait until a court administers the dead taxpayer's estate and identifies the parties who are the rightful new owners of that taxpayer's property. But that might take years, or it might never happen.

After discussing the issue with my property law expert colleague Chuck Szypszak and other experienced practitioners, it's become clear to me that tax offices may change ownership of heir property without waiting for action by a court. The new approach described below should reduce the time property remains listed in the name of unknown owners and the headaches associated with those listings.

All real property must be listed "in the name of the owner of record" as of January 1 each year. [G.S. 105-303\(b\)\(1\)](#) and [G.S. 105-302\(a\)](#). Although the Machinery Act does not define the term "owner of record" it is generally understood to mean the party identified in public records as the owner of the property.

Usually owner of record for real property can be determined easily by locating the most recent deed to the property recorded with the register of deeds. But when a taxpayer dies owning real property, ownership of that property can and usually will transfer without a deed.

If the decedent (fancy name for the dead taxpayer) had executed a will, then that will controls subsequent ownership of the property. A will can be the subject of a probate proceeding in the N.C. Superior Court in the county where the decedent maintained his or her primary (legal) residence. (For more details on probate proceedings, see [this guide published by the N.C. Administrative Office of the Courts](#).) If a probate proceeding occurs, then the tax office can rely on the filings in that proceeding as the public records needed to identify the new record owner(s) of the decedent's property.

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But it may take years for a will to make it to probate. And if the decedent owned little property at the time of death, the will may never be probated. Without a probate proceeding, the tax office has no public records to justify a change in record ownership for property tax purposes.

The same problem often arises when a taxpayer dies without a will. State intestacy laws then govern who owns the decedent's property. G.S. Chapter 29. Although the decedent's estate could still be the subject of a court proceeding, that is rare unless there is a substantial amount of assets involved. If there are no court filings for the estate, then there are no public records to identify the heirs and change record ownership for tax purposes.

My customary advice when there is no will probate or estate proceeding after the death of a taxpayer is to list the property in the name "heirs of decedent" as authorized by G.S. 105-302(b)(6).

That approach is a quick fix but it doesn't really solve the ownership problem. Tax offices need to list property in the names of specific taxpayers so that they have someone to hold responsible if the taxes on that property become delinquent. Attachment and garnishment, often the most effective and efficient method of collecting delinquent property taxes, cannot be employed unless there is a specific responsible taxpayer to target. If property is listed in the name of unknown heirs, the only enforced collection remedy will be foreclosure.

After much thought, I now feel confident amending my advice about heir property. I don't think it is necessary for counties to wait until a will is probated or an intestate estate is administered before listing heir property in the name of its new owner.

Here's why: G.S. 105-302(b)(6) instructs the tax office to list the property under the name "heirs of" or " devisees of" the decedent until the heirs or the devisees "have given the assessor notice of their names and of the division of the estate." (An heir is someone who takes property under the intestacy laws; a devisee is someone who takes property under a will).

Essentially, this provision says that if the new owners of the decedent's property self-identify with the tax office then the tax office should list the decedent's property in the names of these (self-proclaimed) new owners.

This approach should be helpful to tax offices, as it is in their best interests to get property listed in the names of specific individuals rather than unknown heirs or devisees as quickly as possible. Doing so helps answer listing, exemption, and collection questions that will otherwise remain unresolved.

Unfortunately, G.S. 105-302(b)(6) does not describe the type of notice that is required from heirs or devisees to prove they are the owners of the property for the purpose of property taxes. An unsupported assertion ("I promise I'm Uncle Ernie's only relative!") likely is not sufficient. But conversations with my School of Government property law expert colleague Chuck Szypszak and other experienced practitioners suggest that an affidavit from an alleged heir or devisee, signed and notarized under oath, should be sufficient.

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At a minimum, the affidavit must identify the real property, the decedent, and the alleged owner's relationship with the decedent. It should assert an ownership right to the real property under either a will or under state intestacy law and identify any other known devisees or heirs who may have an interest in the property. If ownership is claimed under a will, a copy of the will should be attached to the affidavit.

Once an affidavit is submitted to the tax office it becomes a public record and can be relied upon by the tax office to change the listing of heir property to the party that submitted the affidavit.

Keep in mind that nothing the tax office does or does not do regarding the listing of real property for taxes will affect legal ownership of that property. A party's ownership interest in the property will be determined by other facts and other law, not by whether the property is listed in that party's name.

The fact that the tax office accepts an affidavit of ownership from one alleged heir/devisee and lists the property in that party's name would not prevent another alleged heir/devisee from challenging ownership of the property. But that dispute would be for the courts to resolve, not the tax office. The best approach in that situation is for the tax office to conclude that ownership is in dispute. G.S. 105-302(b)(12) then instructs the tax office to list the property in the name of the occupant or, if property is unoccupied, in the name of "unknown owner."

Most importantly, the tax office needs to avoid providing legal advice to parties fighting about property ownership. There are plenty of real estate attorneys out there looking for work—the competing owners need to hire their own lawyers and not rely on the tax office for free (and possibly misleading) legal counsel. *(Reprint by permission of Chris McLaughlin)*

## **20 Creating the Boundary Polygon:**

### **20.1 Import A Digital File From The Surveyor**

The most accurate and least effort is to import a digital file from the surveyor that is referenced to North Carolina State Plane System. It is preferred that the surveyor only include the boundary lines and easements in the file. It may be in .shp, .dxf, .dwg, or another format that the GIS software will accept. The mapper should review the information provided to insure that the distances have been adjusted by the combined grid factor. If the surveyor provided the information in ground distance the mapper should apply the adjustment to reduce the mapping to a zero elevation.

### **20.2 Coordinate Geometry (COGO)**

In the absence of a digital file Coordinate Geometry (COGO) should be used. The



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mapper enters the bearings and distances from the deed description or referenced map into the GIS. If the map is not referenced to grid it may be necessary to translate and rotate the figure using best available data. This may be the base maps and/or adjoining parcels.

Because the function of a deed description is to identify or locate a parcel so it may be distinguished from any other parcel of land. The courts will tolerate errors in a deed as long as the descriptions serve to identify the boundaries. Courts rely heavily on the intent of the deed and on surveys.

A “boundary” is the physical location on the earth that restricts the area in which granted rights are applicable. A “description” (land description) is the written finding aid used to identify the boundary. The physical location of the boundary controls over the description. A boundary does not give or take away rights. A description can be updated to better define the boundary, but cannot legally change the boundary location. In the case of a property division, the intent of the title document may define the splitting of rights; thereby requiring a new boundary definition and a new land description. That definition can only be effective on the area owned by the grantor. You cannot transfer what you do not own regardless of the verbiage in the description.

The process of orienting a parcel on a cadastral map uses the principles that a surveyor would use doing a retracement survey. The Surveyor/Mapper must use the finding aid (description) to find the placement of the corners in their original boundary location. This is done by following in the footsteps of the original surveyor. If there is conflict between a record monument (bounds) and course and distances (metes) in a title document the “most sure” controls, the bounds. The bounds are the true definition of the boundary and better reflect the intent of the grantor because he can visualize them in contrast to the metes (course and distance), which are empirical and not visible to the grantor.

Many dimension and acreage discrepancies can be brought within tolerance using these general rules for interpreting deed descriptions.

If the language is sufficient to identify the property on the ground, the description is valid.

Indefinite particulars in a description do not invalidate definite particulars. Boundaries or monuments take precedence over bearings or distances. Calls to monuments always overrule distances or bearings.

A call for a monument is to the center of the monument unless otherwise defined.

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Most monuments are in a fixed location and if disturbed cannot be relied upon.

However, there are monuments that are not in a fixed location, such as water bodies. A call to one of these includes the gradual natural movement of the water body not a sudden movement caused by storms such as hurricanes.

A call to an adjoining boundary line is considered a call to a monument and the description for that line controls. Some effort should be made to prove that the adjoining line has senior rights.

Bearings take precedence over distances, if the distances are inconsistent with the boundary bearings. However, in interpreting the deed some judgment should be used to make sure that the bearing is “more sure” than distance. A distance measured in the city is probably more accurate than a compass bearing.

A map takes precedence over other particulars that are inconsistent, if it appears that the parties acted with reference to the map.

When a road is the boundary in a deed, the road is a monument, title to the center of the road is conveyed, unless title to the road has previously been conveyed.

Where there are conflicting descriptions of the same property, the more definite one should be given preference.

An accurate metes-and-bounds or detailed description controls over a more general one.

An inaccurate statement as to acreage in a description may be ignored, unless the language of the deed shows that only a specific quantity of land was intended to be conveyed.

A reference to another deed or map of record has the effect of incorporating that referenced instrument into the deed.

### **20.3 Rules for Resolving metes and bounds in conflict**

When interpreting a deed description mappers should follow the Rules for Resolving metes and bounds in conflict (established by North Carolina legal precedent).

A - Right of possession (unwritten conveyance)

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B - Senior right (in the event of an overlap) (surveyors and mappers cannot make a legal determination, only a judge can make that legal call).

C - Written intentions of the parties

1. Call for a survey or an actual survey on which the conveyance is based.
2. Call for Monuments
  - a. Natural
  - b. Artificial
3. Call for Adjoiners
4. Direction and Distance
5. Direction or Distance
6. Area (quantity)
7. Coordinates

*Note 1: We do not map unwritten conveyances, when a judge rules that the conveyance has accrued the court order is used to document the change.*

*Note 2: A call for a monument is a call to a particular object in its original position. A call to an iron pipe cannot be held to control when a rebar is found.*

## **21 Parcel Boundary Decisions**

### **21.1 Public Trust Land and conflicting deed calls.**

When land is held in public trust it is held for the public. The fee holder has no more use of the land than another member of the public. In North Carolina there are several categories of public trust land:

Land within the right-of-way of a public road. 136-19

Land below mean high water in navigable tidal waters. 146-6

Land below normal high water in navigable non-title waters 146.6

Ocean front lands between mean high water and first line of vegetation or other boundary indicator. NC GS 77-20

Land within the right-of-way of Neighborhood public roads. **§ 136-67.**

If a deed description includes a portion of the public trust land, that area is excluded from the taxable portion of the deed.

### **21.2 A Deed call to the River**

If a call in a deed is to the river or body of water and that river or body of water is not navigable, the call is to a natural monument and a call to a monument is a call to the center of the monument. If the call is to a navigable river or body of water the call is treated like a call to an adjoining boundary because you cannot transfer what you do not

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own. The state is the owner of the submerged land below the normal high-water mark or mean high tide elevation, therefore the call is to the normal high-water mark or mean high tide elevation of the navigable body of water rather than to the center of the body of water.

### **21.3 Listing of Unknown Property and Disputed Property**

#### **§ 105-302. In whose name real property is to be listed**

(12) If the person in whose name real property should be listed is unknown, or if title to real property is in dispute, the property shall be listed in the name of the occupant or, if there be no occupant, in the name of "unknown owner." Such a listing shall not affect the validity of the lien for taxes created by G.S. 105-355. When the name of the owner is later ascertained, the provisions of subsection (b), above, shall apply.

### **21.4 Listing of property subject to a Boundary Line Dispute**

A boundary line dispute should be viewed in a different light than a Disputed Property. If 105-302 was applied literally you would create a new parcel for the disputed area and list it as unknown owner. The county would get no tax payment because there would be no one to bill it to and you create a real potential for some unrelated party to file a quit claim deed and confuse the issue even more. The term "Unknown Owner" sends up a red flag for an opportunist to attempt to get something for nothing. The disputed area should be marked as such, 100 % of the value of the properties should be taxed and allocated between the properties. *Note: it is illegal to double tax.* At the time of resolution, the parties may apply for any over payment they may have made and be billed for any underpayment in accordance with provisions for tax refunds and underpayments should be billed as Immaterial irregularities (§ 105-394).

### **21.5 Property Transfer by Torrens Certificate**

The Land Registration Act, also known as the Torrens System is an alternate method of documenting title to real property in North Carolina Set out in Chapter 43 of the North Carolina General Statutes.

"The general purpose of the Torrens system is to secure by a decree of court, or other similar proceedings, a title impregnable against attack; to make a permanent and complete record of the exact status of the title with the certificate of registration showing at a glance all liens, encumbrances, and claims against the title; and to protect the registered owner against all claims or demands not noted on the book for the registration of titles. The basic principle of this system is the registration of the official and conclusive evidence of the title of land, instead of registering, as the old system requires, the wholly private and inconclusive evidences of such title." Frederick B. McCall, *The Torrens System After Thirty-Five Years*, 10 N.C.L.Rev. 329 (1932); Cape Lookout Co.

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v. Gold, 167 N.C. 63, 83 S.E. 3 (1914); 8A Thompson on Real Property (Grimes Ed., 1963), § 4353.

Excerpts from State v. Johnson 179 S.E.2d 371 (1971) 278 N.C. 126

The judicial system of registering titles to land was enacted in North Carolina by Chapter 90 of the 1913 Public Laws, now codified as Chapter 43 of the General Statutes. It is known generally as the Torrens Law. "The principle of the `Torrens System' is conveyance by registration and certificate instead of by deed, and assimilates the transfer of land to the transfer of stocks in corporations.

The Torrens Law authorizes any person in the peaceable possession of land in North Carolina who claims an estate of inheritance therein to "prosecute a special proceeding in rem against all the world in the superior court for the county in which such land is situate, to establish his title thereto, to determine all adverse claims and have the title registered." G.S. § 43-6. (See chapter 18.32)

Judgment by default is not permitted. The court must require an examination of the title in every instance except as to parties who, by proper pleadings, admit petitioner's claim. If no answer is filed, the clerk must refer the matter to the examiner of titles anyway. If title is found in the petitioner, then the clerk enters a decree to that effect, declares the land entitled to registration, and certifies it for registration after approval by the judge of the superior court. G.S. § 43-11(d).

"Every decree rendered as hereinbefore provided shall bind the land and bar all persons and corporations claiming title thereto or interest therein; quiet the title thereto, and shall be forever binding and conclusive upon and against all persons and corporations, whether mentioned by name in the order of publication, or included under the general description, `to whom it may concern'; and every such decree so rendered \* \* \* shall be conclusive evidence that such person or corporation is the owner of the land therein described, and no other evidence shall be required in any court of this State of his or its right or title thereto." G.S. § 43-12.

The county commissioners are required to furnish a book to the register of deeds, to be called "Registration of Titles", in which the register shall enroll, register and index (1) the decree of title mentioned in G.S. § 43-11(c) and (d), (2) the copy of the plot contained in the petition, (3) all subsequent transfers of title, and (4) all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered thereon. G.S. § 43-13. Upon the registration of such decree, the register of deeds is directed to issue an "owner's certificate of title", the form of which is prescribed, bearing a number which is retained as long as the boundaries of the land remain unchanged. G.S. § 43-15; G.S. § 43-16.

Every registered owner of land brought under the Torrens System (with certain exceptions not pertinent here) holds the land free from any and all adverse claims, rights or encumbrances not noted on the certificate of title. G.S. § 43-18. And "[n]o title to nor

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right or interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession." G.S. § 43-21.

The only way to transfer or affect the title to registered land is by registration of the writing, instrument or document by which such transfer is accomplished. Thus no voluntary or involuntary transaction affects the title to registered lands until registered, and the registration of titles book is the sole and conclusive legal evidence of title. G.S. § 43-22.

The sale and transfer, in whole or in part, of registered land is accomplished by the execution and acknowledgment of a paper writing in the form set out in G.S. § 43-31, which paper writing has the full force and effect of a deed in fee simple. This paper writing must be presented to the register of deeds together with the seller's certificate of title, and the transaction is then duly noted and registered in accordance with the provisions of the Torrens Law. G.S. § 43-31; G.S. § 43-32; G.S. § 43-33; G.S. § 43-37.

Once a parcel is registered in the Torrens system all action affecting that parcel must be documented in the certificate of title filed in the Registration of Titles in the Register of Deeds in the county where the land lays. The Torrens Registration runs with the land (NC GS 43-20) until the property is officially removed from the system (see NC GS 43-25 Release from registration).

### **21.6 Property transfer by Quit Claim Deed**

When a quit claim deed is presented for processing to the tax office it should be reviewed to make sure that it is not an instrument of fraud. A quit claim deed transfers any rights that the grantor has but no more. It also carries no warranty from the grantor. Before processing, the tax office should review the title to insure that there is a good probability that the grantor has some rights to transfer. If questions arise additional information should be requested from the grantee. Tax assessors sometimes question whether the recording of such a deed requires property affected by such a deed be listed to an "unknown owner" on the basis that title to the property is disputed. In the author's opinion, there is no requirement that the assessor change listing records to acknowledge a deed from a grantor that indisputably falls outside the chain of title for such property.

Even in an attempt to create color of title with a quit claim deed North Carolina affirms that color of title must be in writing and the document in question must present at least a semblance of title.

§ 1-38. Seven years' possession under color of title

(a) When a person or those under whom he claims is and has been in possession of any real property, under known and visible lines and boundaries and under color of title, for seven years, no entry shall be made or action sustained against such possessor by a person having any right or title to the same, except during the seven years next after his right or title has descended or accrued, who in default of suing within that time shall be excluded from any claim thereafter made; and such possession, so held, is a perpetual bar against all persons not under disability:

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Provided, that commissioner's deeds in judicial sales and trustee's deeds under foreclosure shall also constitute color of title.

(b) If

(1) The marking of boundaries on the property by distinctive markings on trees or by the implacement of visible metal or concrete boundary markers in the boundary lines surrounding the property, such markings to be visible to a height of 18 inches above the ground, and

(2) The recording of a map prepared from an actual survey by a surveyor registered under the laws of North Carolina, in the book of maps in the office of the register of deeds in the county where the real property is located, with a certificate attached to said map by which the surveyor certifies that the boundaries as shown by the map are those described in the deed or other title instrument or proceeding from which the survey was made, the surveyor's certificate reciting the book and page or file number of the deed, other title instrument or proceeding from which the survey was made, then the listing and paying of taxes on the real property marked and for which a survey and map have been certified and recorded as provided in subdivisions (1) and (2) above shall constitute prima facie evidence of possession of real property under known and visible lines and boundaries. Maps recorded prior to October 1, 1973 may be qualified under this statute by the recording of certificates prepared in accordance with subdivision (b)(2) above. Such certificates must contain the book and page number where the map is filed, in addition to the information required by subdivision (b)(2) above, and shall be recorded and indexed in the deed books. When a certificate is filed to qualify such a recorded map, the register of deeds shall make a marginal notation on the map in the following form: "Certificate filed pursuant to G.S. 1-38(b), book ..... (enter book where filed), page ... "

(c) Maps recorded prior to October 1, 1973 shall qualify as if they had been certified as herein provided if said maps can be proven to conform to the boundary lines on the ground and to conform to instruments of record conveying the land which is the subject matter of the map, to the person whose name is indicated on said recorded map as the owner thereof. Maps recorded after October 1, 1973 shall comply with the provisions for a certificate as hereinbefore set forth

## **21.7 Property Transfers by Adverse Possession Claim**

Courts often apply principles of adverse possession to determine limits of ownership that are at variance with lines as described in the title document. However, it is important to remember the court ruling does not alter the location of the original boundary lines as described in the deed. Rather, a new title in this parcel of land is essentially created with an entirely new title. The title of the tract so created is of the highest character and is vested to the adverse holder at the moment the parcel is created. (*Rooted in Stone: Kristopher M. Kline, 2Point, Inc 2013*)

The title of a property so created is the court ruling filed with the Clerk of Court. An adverse possession claim should not be documented in the county cadastral map until the court ruling Order or Judgment of a Superior Court Judge is filed with the Clerk of

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Superior Court and a certified copy of same recorded with the Register of Deeds of the county in which the property is located.

## **21.8 Deeds of Corrections, Re-Recordings, and Cures**

Distinctions between “clerical” or “typographical” error corrections, substantive correction and curative documents, “re-recordings” of the original documents are often misunderstood and confused by those who draft, those who execute and those who record them. N.C. Gen. Stat. § 47-36.1 addresses these distinctions, as clarified in 2013 (described below). *The following Sections 21.7 and 21.8 are based on “Chicago Bull” Volume 1, Edition 39 (Rev) “Corrections, Re-recordings & Cures: 2013 Edition,” (reprinted with permission given by Chicago Title).*

Typographical or other minor errors ONLY: Notice may be given by recording an affidavit, signed under penalties of perjury, under REVISED G.S. 47-36.1, Correction of errors in recorded instruments, as follows:

### **§ 47-36.1. Correction of errors in recorded instruments.**

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of typographical or other minor error in a deed or other instrument recorded with the register of deeds may be given by recording an affidavit. If an affidavit is conspicuously identified as a corrective or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective affidavit is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.

A suggested Corrective or Scrivener’s Affidavit for Notice of Typographical or Other Minor Error form is on-line at <http://www.northcarolina.ctt.com/articles.asp> --> Recording. This document becomes public notice of the error, NOT a substantive change to the document or the transaction or the priority, especially vis-à-vis third parties. Since the affidavit cannot substantively change the terms of the document, it is less important to limit the appropriate types of affiant. The validity of the public record transaction and its priority will still rise ... or fail ... based on the terms of the original recorded instrument, being recorded within the chain of title of the property and parties identified therein, and may still require intervention of the court pursuant to a reformation action. *Citifinancial Mortg. Co. v. Gray*, 187 N.C. App. 82, 652 S.E.2d 321 (2007).



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Use of the affidavit is appropriate only for minor clarifications (arguably probably items not really requiring a re-recording to preserve priority) which do not materially change the grantor's expression of intent or the agreement of the parties as determined from the face of the original document. See G.S. 39-1.1. NOTE: Any error that is substantively so significant that the original recording does not provide adequate constructive notice is NOT cured. *Statement or the new Affidavit of Correction, Green v. Crane, 96 N.C.App. 654, 386 S.E.2d 757 (1990)* but requires curative action by the parties affected.

Unaltered re-recording of the original document must (a) be conspicuously marked on the first page by the submitter as a "re-recording" (thereby representing that it is not altered in any way) and (b) clearly display the original recording stamp verifying previously recorded. G.S. 47-14(a). See G.S. 47-36.1(b) as revised in 2013 to clarify that:

### **§ 47-36.1. Correction of errors in recorded instruments.**

(b) Nothing in this section requires that an affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. ...

The unaltered certified copy will be recorded based upon the prior recorder's certification. Similar to the unaltered re-recording discussed above, if this is altered, that would have no legal effect and would arguably be a misrepresentation to the current register since it is no longer a truly certified copy.

Substantive alterations, purporting to change core information affecting the constructive notice and potentially priority of a document, require traditional curative instruments, executed by the appropriate parties (including original parties and possibly other third parties whose interests are now affected) and duly acknowledged before a notary or other officer authorized to take acknowledgments. The corrective instrument may appear as the original document but with changes marked and initialed, and a wholly new execution by the relevant parties and new notarial certificate indicating their later acknowledgment. Pursuant to G.S. 47-36.1(b), as revised in 2013:

### **§ 47-36.1. Correction of errors in recorded instruments.**

(b) ... Nothing in this section requires that an affidavit be attached to a previously recorded instrument with a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording, with proof or acknowledgment of their execution of the correction of the instrument."

The corrective instruments might, as another example, be a new original correction deed or deed of trust, modification, substitution of collateral, release deed, subordination, ratification, reaffirmation or other document appropriate for the particular situation. Missing parties, erroneous parties (even if related trusts or LLC's), additional parties, improper execution, improper notarial certificate, erroneous or insufficient or other substantive changes to the property description and changing the amount on the deed of

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trust are examples of situations which may necessitate true corrective instruments in order to assure priority on the public records vis-à-vis third parties, G.S. 47-18 and G.S. 47-20, especially if a substantive change in the documentation evidencing the agreements between the parties themselves is involved, and more especially if in regard to a matter governed by the statute of frauds, G.S. 22-2. See *Green v. Crane*, 96 N.C. App. 654, 386 S.E.2d 757 (1990).

## 21.9 Notarial Certificate corrections.

In situations in which a notarial certificate was incorrect or incomplete on a recorded instrument, correction of the notarial certificate only may be needed to assure that the document is properly recorded and has priority as of that recordation. If the original notary can be located, is still commissioned and can verify that the needed correction is accurate as to what actually happened at the time of the notary's notarial act, a form such as an "Affidavit of Correction of Notarial Certificate" can be completed and recorded. N.C.G.S. 47-36.1(c), as enacted in 2013, provides:

### **§ 47-36.1. Correction of errors in recorded instruments.**

(c) If the corrective affidavit is solely made by a notary public in order to correct a notarial certificate made by that notary public that was attached to an instrument already recorded with the register of deeds, the notary public shall complete the corrective affidavit identifying the correction and may attach a new acknowledgment completed as of the date the original acknowledgment took place, which shall be deemed attached to the original recording, and the instrument's priority shall remain the date and time originally recorded. The provisions of this subsection shall apply to corrective affidavits filed prior to, on, or after April 1, 2013.

\*\*\*\*\*

NOTE: With regard to correction of a defective notarial certificate, see "Acknowledgments, Oaths/Affirmations and Jurats: Notarial Certificates in North Carolina (Updated 06/30/2013)," Chicago Title ([www.northcarolina.ctt.com](http://www.northcarolina.ctt.com) → Legal → Bulls, Bulletins, Articles and Forms → Notaries)."

\* For further, more detailed information, see Szypszak, Charles, "2008 Changes in the Law Regarding Rerecording Prerequisites, Electronic Recording Verification, Indexing, and the Fee for Recording Deeds of Trust," UNC School of Government Land Records Bulletin, Number 33, August 2008.

## 22 Guidelines for Resolution of Discrepancies

Using quality control procedures, reduce or eliminate errors in the map  
Use and analyze all available map resources

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Use precise methods of measurement and recompilation, where necessary  
Check compilation work systematically

Analyze particular source materials from which discrepancies have resulted  
If document is in error, attempt to determine intent of the grantor from the recorded title documents.  
Resolve discrepancy based on said intent  
Note discrepancy on appraisal record

## **22.1 For discrepancies that still exist, identify type of discrepancy**

For acreage discrepancies that exceed a county adopted tolerance  
Verify that the lines, corners, and so on, are correct  
Verify correctness of description compilation  
Verify correctness of survey compilation, if used  
Verify accuracy of base  
Verify accretion for riparian parcels  
Use calculated acreage for taxing purposes  
Note discrepancy on assessment record

## **22.2 For acreage discrepancies that do not exceed tolerance**

Use deeded acreage for taxing purposes  
Note discrepancy on assessment record

## **22.3 For dimension discrepancies that exceed tolerance**

Use precedence of calls and general rules for interpreting deed descriptions to check compilation of description  
Verify accretion for riparian parcels  
Verify non-navigability of water body for riparian parcels  
Verify reversionary rights for parcels bordering vacated rights-of-way and other vacated/abandoned parcels  
Use scaled or computed dimension for taxing purposes  
Note discrepancy on assessment record

## **22.4 For dimension discrepancies that do not exceed tolerance**

Use deeded or platted dimension-for taxing purposes  
Note discrepancy on assessment records

## **22.5 For dimension discrepancies that create overlap or gap with adjoining parcels, and for overlap or gap that exceeds dimension tolerance for the map scale**

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Use precedence of calls and general rules for interpreting deed descriptions to check compilation of description for subject and adjoining parcel  
Indicate overlap or gap on map and calculate taxes accordingly  
Note discrepancy on assessment records

## **22.6 For dimension discrepancies that create overlap or gap with adjoining parcels, and for overlap or gap that does not exceed dimension tolerance for the map scale**

Divide overlap or gap equally and add or delete from subject and adjoining parcel, note discrepancy on assessment records

## **22.7 For ownership discrepancies**

Determine exact nature of problem  
Contact grantor and/or grantee to determine intent  
Conduct further deed research to determine cause of problem  
Contact jurisdiction's attorney staff to seek assistance when prolonged loss of tax revenue has occurred  
Implement final or interim solution to problem based on above activities  
Note discrepancy on assessment record  
Track research and other activities undertaken while attempting to identify resolution; keep record of activities

## **22.8 For plat discrepancies that exceed dimension and/or acreage tolerances**

Make appropriate adjustments to compensate for systematic errors, incorrect basis of bearing, and incorrect placement of monuments  
Contact original surveyor, if feasible, to determine intent  
Indicate overlap or gap on map and calculate taxes accordingly, Note discrepancy on assessment records

## **22.9 For plat discrepancies that do not exceed tolerances**

Divide overlap or gap and add or delete from adjoining parcels in equal proportion  
Note discrepancy on assessment records

Reference: Assessment Digest (IAAO May/June 1990), Resolving Discrepancies between Records during Modernization of the Assessment Cadastre, Cyril R Smith

## **23 Best Available Evidence**

In a metes and bounds description, the metes often refer to visible features on the earth. These features are generally considered a record monument. Record monuments control boundary description location.

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A surveyor is licensed by the state to identify and location of these objects using the principals of surveying. The surveyor generates a mathematical definition of the location of the metes using a series of vectors (bearings and distances). This definition is generally presented in the form of a map or report.

### **23.1 Base Map Layers**

The mapper is not licensed to do a physical survey therefore must rely of the best available evidence. Authoritative data sets produced by local, state, and federal government agencies are a good source of this evidence (see Chapter 16, Base Mapping Layers). The accuracy of these data sets may be inferior to a physical survey but with the lack of anything better are acceptable.

### **23.2 Retracement Plat (not referenced in a document of title)**

The cadastral map may be updated at any time if better data becomes available. It is not the duty of the tax department to create an accurate boundary, but to represent that boundary using the best available evidence. If a citizen has an objection to the location represented on the cadastral map, that citizen is encouraged to provide better data, generally in the form of a modern survey by which the map may be updated. The mapper is not required to blindly accept data for inclusion in the cadastral map. The mapper should validate the data by reviewing the source deed against the survey. A survey of a metes and bounds description in a deed is called a retracement survey. A retracement survey does not change the deeded boundary; it merely refines the boundary definition. The new survey may be used in the updating of the cadastral map without said survey being referenced in a document of title. It does not alter the intent expressed in the previously recorded document of title; it adds an updated definition of the same location. If the survey map is prepared in accordance with NC GS 47-30 it will include a certification by the surveyor as prescribed in 47-30(f)(11) c.1. "That the survey is of an existing parcel or parcels of land and does not create a new street or change an existing street;"

### **23.3 Record Monument Descriptions in a Junior Right Deed**

It is well documented that a grantor cannot grant what he does not own; a boundary is defined by the property that has the senior right, the junior right must honor the senior right boundary. It is also true that a junior right cannot be used to define a senior right. That does not mean that the location of a record monument contained in a deed of a junior right cannot be used to document of the location of the same record monument called for in a senior right deed. The location as stated in the junior deed may be the best available data.

### **23.4 Tie Lines**

A tie line is information that gives the location of a point relative to a known or identifiable point. The tie line referenced on a map or in a deed should be given the same

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consideration as any other call in the same document. Reference to physical points such as power poles, culverts, and road intersections should be verified as unchanged before acceptance. DOT may have adjusted the intersection or the power company may have reset the same power pole in a different location.

### **24 Mapping guidance for boundaries with special circumstances.**

#### **24.1 PIN as the Description**

While the use of a Parcel number or a PIN not the best description the courts have held that:

(1) It is well-established that "[a] deed purporting to convey an interest in land is void unless it contains a description of the land sufficient to identify it or **refers to something extrinsic by which the land may be identified with certainty.**" Overton v. Boyce, 289 N.C. 291, 293, 221 S.E.2d 347, 349 (1976)

(2) Extrinsic Evidence: [I]n some situations it is necessary to look beyond the four corners of the deed to ascertain the intent of the parties. Intention, as a general rule, must be sought in the terms of the instrument; but if the words used leave the intention in doubt, resort may be had to the circumstances attending the execution of the instrument and the situation of the parties at that time — the tendency of the modern decisions being to **treat all uncertainties in a conveyance as ambiguities to be explained by ascertaining in the manner indicated the intention of the parties.** Mason-reel v. Simpson, 100 N.C. App.

(3) The trial court found that the description of the real property encumbered by the GMAC Deed of Trust was ambiguous. This Court has held: To resolve cases in which a deed contains an ambiguous description, the courts have formulated various rules of construction and techniques to locate the boundaries of deeds whose descriptions are less than ideal. The most common rule of construction used by **the courts is to gather the intention of the parties from the four corners of the instrument. The courts seek to sustain a deed if possible on the assumption that the parties intended to convey and receive land or they would never have been involved in the first place.** GMAC Mortg., LLC v. Miller, 2011 N.C. App.

(4) First, the tax parcel number 595800013803 is a reference to a Surry County tax map which cites to a Plat that is recorded at the Surry County Register of Deeds at Plat Book 5, Page 41. The recorded Plat contains a survey for Tract I. The Frye deed referenced in the GMAC Deed of Trust also contains a metes and bounds description for Tract II. **Thus, when viewed together, the tax parcel number and the Frye Deed identify the entirety of Tract I and Tract II as the property encumbered by the GMAC Deed of Trust.** GMAC Mortg., LLC v. Miller, 2011 N.C. App.

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*Therefore if the Parcel Number/PIN refers to something extrinsic that can be used to determent the intent of the parties it is a valid reference. As long as the Tax Department maintains the reference associated with this Parcel Number/PIN you have that extrinsic link is that valid reference, But If the tax department discontinues that Parcel Number/PIN and does not maintain the History of that parcel the extrinsic link can be lost, that is the danger of using Parcel Number/PIN.*

## **24.2 Approved Subdivision Maps subdividing Property**

When an owner has gone through the procedures as defined in a local government development ordinance to subdivide a parcel of land, those approved subdivided tracts become available for transfer in their new configuration once said map is recorded in the office of the county Register of Deeds. These new tracts fall within the definition of a parcel. Not only should they be included in the cadastral map but are evidence of an increase in highest and best use and can be used in the establishment of value. The assessor must review the extent of physical improvements before making a final assessment. The rule of thumb is a recorded subdivision map (47-30(f)(11)a. or (b) can split property but a map of another category (47-30(f)(11) d.) cannot on its own combine or split property without a document of title.

## **24.3 Unapproved Subdivision of Property**

§ 153A-334. . Penalties for transferring lots in unapproved subdivisions.

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 may be denied for lots that have been illegally subdivided. In addition to other remedies, a county may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct. (emphasis added)

The municipal version is NC GS 160A-375

Possible course of action:

1. Note that the transfer is valid and can only be invalidated by a judge.

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2. Very few district attorneys will prosecute this type of a misdemeanor, the court calendar is already full on more serious cases.
3. It should be mapped and assessed for property tax. It should be noted as an unapproved subdivision in the tax system.
4. The best alternative is to notify the new owner of the counties intent classify the lot as nonconforming with the intent to deny any improvement permits until the lot division is brought into compliance with the subdivision ordinance per GS 153A-334 (county) or 160A -375 (municipal).

### **24.4 Maps Combining of Lots**

The assessor is responsible for establishing the highest and best use money value of a parcel. The highest and best use words are actually used in the USPAP (Federal standards) that were adopted after the Savings and Loan collapse in the 80s. Our statutes incorporate those standards as part of the required standards for Tax and Fee appraisal. That value is determined by legal rights associated with that parcel. The term “combined for tax purposes only” does not affect the rights of the parcel and should therefore not affect the evaluation. Taxation is not one of the bundle of rights that can be transferred therefore has no place in a document of title as a meaningful cause of action for a mapper.

The document of title is used to determine the intent of the grantor, the total document should be considered, using the plain meaning of the words to determine the intent. Just because adjoining parcels of land are transferred in one deed, it does not mean that the grantor intended to combine them into a single parcel. If the document does not say that it is to combine, there is no intent to combine and the parcels should be mapped individually.

A plat of survey is not a document of title. A recorded map combining parcels can be used as a description for the transfer of said property, but a map does not invalidate the existing description, and therefore the title holder has the option of which description to use. This option continues to exist until a document of title is filed in the Register of Deeds stating the title holder intent of combine the property. This is not considered an attempt to convey to oneself but to place a restriction on the property. If the title holder subsequently transfers the property using the former description without obtaining the approval of the planning board, he is probably guilty of creating an illegal subdivision. It is a valid transfer but now the parcel is nonconforming and development permits may be withheld by the county or municipality.

Only the rights of the grantor can be affected in a document of title. Parcels can only be combined if they are in the same ownership. If the parcels are in the same ownership and the grantor includes in the intent a combination phrase the recombination is affective. But if the parcels are in different ownership the intent phrase combined with (grantees name) parcel is not valid. A grantor cannot give a deed to himself but he can apply restrictions



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to his property. One way of doing this is with an Affidavit of Combination (See Appendix D for instructions”

## **24.5 Parcels Created as an Exception to the Definition of Subdivision**

The principal portion of the definition of a subdivision in North Carolina is when any one or more of divisions are created for the purpose of sale or building development (whether immediate or future).<sup>1</sup> If a plat depicts a proposed condition that does not meet definition of subdivision, falls in one of the four legislated exclusions or has been excluded by a local session law it should be classified as a survey of another category<sup>2</sup>

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<sup>1</sup> § 153A-335 & § 160A-376. "Subdivision" defined.

(a) For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
- (4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations

<sup>2</sup> § 47-30 (f)(11) Notwithstanding any other provision contained in this section, it is the duty of the surveyor, by a certificate on the face of the plat, to certify to one of the following:

- a. That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;
- b. That the survey is located in a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;
- c. Any one of the following:
  1. That the survey is of an existing parcel or parcels of land and does not create a new street or change an existing street;
  2. That the survey is of an existing building or other structure, or natural feature, such as a watercourse; or
  3. That the survey is a control survey.

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When a map certified by the surveyor as being an NCGS 47-30(f)(11)d. “That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision” is recorded in the office of the Register of Deeds, the proposed condition referenced in said map has no legal standing until the map is referenced in a document of title and then only in compliance with the stated intent of the document of title. Plus the stated intent must be viewed in the light of the grantors capacity to grant such intent.

For example, a plat may be drafted, proposing to subdivide a sliver of land from one parcel and have the sliver combined with the neighbors parcel. The two actions are not a function of the plat. The plat is available to be used as a description if referenced in an instrument of title<sup>3</sup>. The grantor of the sliver can give a deed granting any rights he has to the property<sup>4</sup>. He does not have the right to change the neighbor’s rights or conditions. Therefore he can give a deed for the subdivided sliver to the neighbor but cannot force the combination of the sliver with the neighbors parcel. The moment the title to the sliver is granted it becomes an illegal subdivision and remains such until it is combined with the neighbor’s parcel. If an illegal subdivision is created, the subdivider may be charged with a Class 1 misdemeanor and building permits may also be denied.<sup>5</sup> The substandard parcel will also be listed as a separate parcel in the county tax system.

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d. That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision;

e. That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of the surveyor's professional ability as to provisions contained in (a) through (d) above.

However, if the plat contains the certificate of a surveyor as stated in a., d., or e. above, then the plat shall have, in addition to said surveyor's certificate, a certification of approval, or no approval required, as may be required by local ordinance from the appropriate government authority before the plat is presented for recordation. If the plat contains the certificate of a surveyor as stated in b. or c. above, nothing shall prevent the recordation of the plat if all other provisions have been met.

<sup>3</sup> **NC GS 47-30 (g)** ... [A] plat, when certified pursuant to G.S. 47-30.2 and presented for recording, shall be recorded in the plat book or plat file and when so recorded shall be duly indexed. Reference in any instrument hereafter executed to the record of any plat herein authorized shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.

<sup>4</sup> An unsatisfied deed of trust contains a future interest that will ripen if the conditions of the deed of trust are not met, resulting in a foreclosure of the property subject to the deed of trust. Any granting action subsequent to the deed of trust is subject to the conditions of said deed of trust.

<sup>5</sup> **§ 153A-334. & § 160A-375 Penalties for transferring lots in unapproved subdivisions.**

(a) If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use

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Parcels may only be combined if they are in the same ownership and a document of title includes words that include the clear intent to combine. This action applies the new condition: the combined boundary description to the parcel. In doing so the stated intent also renders the previous boundaries descriptions unavailable for use as a valid description. To undo the combination the owner would have to go through the subdivision approval process. The use of the previous description would otherwise constitute an illegal subdivision.

Other divisions of land that are excluded from the definition of subdivision such as an heir division, a division of parcels into lots greater than 10 acres, or a tract less than 2 acres divided into no more than 3 lots may also result in non-buildable parcels due to zoning requirements.

Depending on when a parcel was subdivided septic system, setback requirements from boundaries, foundations, and well and required repair areas may be grandfathered. The reconfiguring of a boundary may also result in the loss of these environmental health grandfather provisions.<sup>6</sup>

As a land records technician enters a parcel in to the county GIS system they need to be aware of legal conditions that may affect the value of a parcel. NC GS 47-18 states that if the intent of the grantor is not recorded in the office of the county Register of Deeds where the property is located, it does not affect the rights of intervening lien creditors or third party purchasers. The county is considered a lien creditor because the annual property tax is a lien against the property with the county being the beneficiary.

**Recommendation:** It would be advisable for a county land record department with the assistance of the planning department to identify and devise a designation in the county GIS for those parcels that were illegally subdivided. This would benefit the tax appraisal staff, planning and zoning department and county building inspection department. The identification of the problem is the first step in correcting the problem. By ignoring the problem, taxes are inappropriately assessed; building permits may be illegally issued, etc.

### **24.6 Department of Transportation Right of Way Acquisition**

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of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 153A-357 and G.S. 160A-417 may be denied for lots that have been illegally subdivided.

<sup>6</sup> Laws and Rules For Sewage Treatment, And Disposal Systems 15A NCAC 18A .1951 (Applicability of Rules)  
<http://ehs.ncpublichealth.com/oswp/docs/rules/Aug98amen.pdf>

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## **Right of Way Acquisition Policies for New Department of Transportation System Roads**

While all Department of Transportation (DOT) maintained roads are part of the state system, there are differences in acquisition policies depending on the road type designation. Since the creation of the State Highway Commission in 1921, laws and procedures for the acquisition of right of way have varied. The following is an attempt to explain the procedures used today.

If a road has a secondary road designation, the right of way is generally acquired by agreement between DOT and the owners or by an offer of dedication. Because a secondary road is accepted into the system by request of the joiners, DOT does not purchase the right of way. In certain situations where DOT is requested by less than 100% of the joiners to have the road adopted into the state system, private funding must be arranged before DOT will condemn the property of those not in agreement. The agreements for secondary roads are recorded in the Register of Deeds Office in said county, and are also maintained in the Department of Transportation Division Right of Way Office. Those parcels that are acquired by condemnation will have a copy of the final judgment filed in the Register of Deeds. The fee for the underlying property in a secondary road right of way is generally in the name of the granting owner or his successors in title.

If a highway is designated as a Transportation Improvement Project (TIP), the permanent right of way is generally acquired in fee. Once a Transportation Improvement Project is approved for the purchase of property, DOT files a right of way plan with the Register of Deeds in accordance with NC GS 136-19.4. In some situations there may be what is called “advance acquisition.” This can occur prior to the filing of the right of way plan map. After the plan is filed, negotiations between DOT and the owners of the impacted parcels begin. If an agreement is reached, either during advance acquisition or after the filing of the right of way plan, a deed for the transfer is filed in the Register of Deeds office in the county or counties where the land lies.

If negotiations fail, DOT may institute a civil action in the superior court of any county in which the land is located. The filing of the complaint and the declaration of taking, along with a deposit of the sum of money estimated by DOT as just compensation, is required in order for the title of the land or such other interest specified in the complaint and declaration of taking to vest in DOT (136-103). At the time of filing the complaint, the declaration of taking and the deposit of estimated compensation, DOT shall record a memorandum of action with the Register of Deeds in all counties in which the land involved therein is located. Upon the amending of any complaint or the declaration of taking affecting the property taken, the DOT shall record a supplemental memorandum of action (NC GS 136-104).

The land owner may file an answer to the complaint only praying for a determination of just compensation. Within 90 days of receipt of the answer, DOT shall file in the cause, a plat of the land taken and such additional area as may be necessary to properly determine

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damages. However, DOT shall not be required to file a map or plat in less than six months from the date of filing the complaint (NC GS 136-106).

The land owner shall have 12 months from the date of service to file an answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceedings to determine just compensation. In such an event, the judge shall enter final judgment on the amount deposited and order the disbursement of money deposited to the owner (NC GS 136-107).

After the filing of the plat, the judge, upon motion and 10 days notice by either the Department of Transportation or the owner, shall, either in or out of term, hear and determine any and all issues raised by the pleadings other than the issue of damages, including, but not limited to, if controverted, questions of necessary and proper parties, title to the land, interest taken, and area taken (NC GS 136-108).

Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the property affected, together with a description of the property and estate of interest acquired by the Department of Transportation and a copy of said judgment shall be certified to the register of deeds in the county in which the land or any part thereof lies and be recorded among the land records of said county (NC GS 136-116).

Research and mapping guidance for TIP projects:

Tax mapping guidance:

Once DOT has filed the Right of Way plans in the office of the Register of Deeds, the county tax department may map the new right of way accordingly using these plans as the best available evidence for taxation purposes. A digital computer aided drafting (cad) file is available from DOT at the time of filing of the plan (see [www.ncpropertymappers.org/dot.html](http://www.ncpropertymappers.org/dot.html) ). DOT will inform the county employee designated as the county contact on their list posted on the above web page. It is important that the county keep this contact list current with updated names and contact information.

In using the cad file the mapper must be aware of what DOT is providing in the right of way plans. While the coordinates look like NC Grid coordinates only a single coordinate is in fact on NC Grid. That coordinate will be indicated on the plan. All other coordinates on the plan are tied to that coordinate using grid bearings and ground distance. Ground distance differs from grid distance by the combined scale factor published on the plan. Even though it is common practice for the mapper to ignore the difference between ground and grid on normal boundary surveys, when dealing with regional surveys such as a highway project, ignoring the difference could introduce significant error that should be resolved.

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Once the Right of Way plan is incorporated into the cadastral map, the information will remain the best available evidence until a document of title is filed in the office of the register of deeds transferring title to DOT. This muniment or document of title will either be a deed or a final (consent) judgment.

Statistics indicate that 80% of the affected tracts will be resolved by negotiated settlement resulting in a deed and no court action taken. These deeds will conform to the right of way plan as filed if no construction changes have take place. Of the remaining parcels, approximately 18% of the total parcels affected will file a complaint on compensation grounds. This type of complaint generally has no changes in the right of way plans as filed. Only about 2% of the parcels affected will file a complaint that may result in a change in the proposed right of way boundary.

The mapper should compare the deed or final consent agreement filed in the register of deeds against the best available evidence of the plan, make any changes necessary and reference the document of title. All the information needed will probably not be found in the register of deed. The complaint file in the office of Clerk of Superior Court should also be consulted.

The period of time between the original filing of the right of way plan and the final consent agreement may be several years. Therefore; it is not wise to wait for the final document. It is recommended that the ad valorem taxes be adjusted in accordance with the recorded right of way plan. Adjustments can be made at a later time based on the document of title if necessary.

Provisions are made in 136-131.1 for the reimbursement by DOT, for taxes paid by the property owner on condemned property. However; the tax office should make the effort to minimize the need for this compensation. Lack of action on the part of the tax office will result in increased expense for DOT.

While many tax offices have a standing agreement with their Register of Deeds to furnish copies of deeds recorded, this agreement may not include the notice of final judgment. The tax office may need to periodically search for these agreements or notices.

The county tax department should consider maintaining an additional layer consisting of the individual parcels being taking by dot. This layer would be used as a reference and not published with the cadastral information.

### **24.7 Water Boundaries**

#### **24.7.1 Riparian Boundaries:**

Some discrepancies involving deed descriptions may be caused by the movement of water bodies. Dimension discrepancies may be a result of erosion, accretion or avulsion. They may also be the result of misinterpretation of the owner's riparian rights. In North Carolina the land beneath a water body that is navigable in its

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natural state is public trust land and held by the state for the use and enjoyment of citizens of the State. Public Trust Lands cannot be claimed by a land owner. NC GS 146-64 (4) "Navigable waters" means all waters which are navigable in fact. The limits are Mean High Water (tidal waters) and Normal High Water (non-title waters). If the water line moved by a slow and natural process the riparian property boundary is adjusted in compliance the rules governing riparian rights. If the water body is not navigable, a call to the water body runs to the tread of the body unless otherwise defined. If the tread moves by a slow and natural process the boundary moves with it, but if the tread is artificially moved the boundary stays at the location of the tread just prior to the tread being moved.

Riparian Boundaries are subject to erosion, accretion, and reliction, so the boundary shall be determined by applying the rules of construction associated with riparian rights. The general rule is that if the call is to the water body subject to public trust bottom (a call to a monument) (and not just bearing and distance calls), the boundary follows the changing shore line defined by Mean High Water Line or the Normal High Water Mark. In the case of accretion the point of departure for assignment of riparian rights is at the intersection of the upland lateral boundary and the actual shoreline immediately prior to accretion. The extinction of the boundary over the area of accretion follows the same rules as the application of the riparian corridor.

### 24.7.2 Riparian Corridor:

Riparian Corridor is that area, water ward of the upland boundary in which an individual properties riparian rights apply. The Corridor lines generally are determined by extending lines perpendicular from the tread of the water body to the intersecting point of the property line with the riparian boundary. In cases such as in circular lakes, ends of canals, and bays the rule of apportion is applied to more fairly distribute the available water resources. It is the distribution or to allocate proportionally; in these situations the corridors will have converging sides.

### 24.7.3 Riparian owner

§ 113-201.1. Definitions (2) "Riparian owner" means the holder(s) of the fee title to land that is bordered by waters of an arm of the sea or any other navigable body of water.

### 24.7.4 Navigable waters

§ 146-64. Definitions. (4) "Navigable waters" means all waters which are navigable in fact. "if body of water in its natural condition could be navigated by watercraft, then it was navigable in fact and in law, and lands lying beneath it

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were thus subject to public trust doctrine;”Gwathmey v. State Through Dept. of Environment, Health, and Natural Resources 342 N.C. 287, 464 S.E.2d 674 N.C.,1995.

### 24.7.5 Title to land raised from navigable water.

§ 146-6. (a) If any land is, by any process of nature or as a result of the erection of any pier, jetty or breakwater, raised above the high watermark of any navigable water, title thereto shall vest in the owner of that land which, immediately prior to the raising of the land in question, directly adjoined the navigable water. The tract, title to which is thus vested in a riparian owner, shall include only the front of his formerly riparian tract and shall be confined within extensions of his property lines, which extensions shall be perpendicular to the channel, or main watercourses.

(b) If any land is, by act of man, raised above the high watermark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the commission of the act which caused the raising of the land in question shall have been previously approved in the manner provided in subsection (c) of this section. Title to land so raised, however, does not vest in the State if the land was raised within the bounds of a conveyance made by the State Board of Education, which included regularly flooded estuarine marshlands or lands beneath navigable waters, or if the land was raised under permits issued to private individuals pursuant to G.S. 113-229, G.S. 113A-100 through 113A-128, or both.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such person shall have 30 days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural causes, no easement to fill shall be required. In such a case the Department shall give the applicant written permission to proceed with the project. If the purpose of the proposed fill is not to reclaim lands lost by natural causes and the Department finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the written permission or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied



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with all requisite conditions precedent to the issuance of such written permission or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefore to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(d) If an island is, by any process of nature or by act of man, formed in any navigable water, title to such island shall vest in the State and the island shall become a part of the vacant and unappropriated lands of the State. Provided, however, that if in any process of dredging, by either the State or federal government, for the purpose of deepening any harbor or inland waterway, or clearing out or creating the same, a deposit of the excavated material is made upon the lands of any owner, and title to which at the time is not vested in either the State or federal government, or any other person, whether such excavation be deposited with or without the approval of the owner or owners of such lands, all such additions to lands shall accrue to the use and benefit of the owner or owners of the land or lands on which such deposit shall have been made, and such owner or owners shall be deemed vested in fee simple with the title to the same.

(e) The Governor and Council of State may, upon proof satisfactory to them that any land has been raised above the high watermark of any navigable water by any process of nature or by the erection of any pier, jetty or breakwater, and that this, or any other provision of this section vests title in the riparian owner thereof, whenever it may be necessary to do so in order to establish clear title to such land in the riparian owner, direct execution of a quitclaim deed thereto, conveying to such owner all of the State's right, title, and interest in such raised land.

(f) Notwithstanding the other provisions of this section, the title to land in or immediately along the Atlantic Ocean raised above the mean high water mark by publicly financed projects which involve hydraulic dredging or other deposition of spoil materials or sand vests in the State. Title to such lands raised through projects that received no public funding vests in the adjacent littoral proprietor. All such raised lands shall remain open to the free use and enjoyment of the people of the State, consistent with the public trust rights in ocean beaches, which rights are part of the common heritage of the people of this State.

## **25 Easements**

An easement is a right to use land belonging to another. The term easement denotes a status of ownership and right of use. The term right of way is often used as a substitute term but does not enjoy as a defined definition.

### **25.1 Easements in General**

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## 25.1.1 Easement of appurtenant:

1. Burdens one parcel of land while benefiting another parcel.
2. The parcel subject to the easement is the servient tract;
3. The parcel benefited is the dominant tract.
4. The Easement attaches to and passes with the dominant tract as an interest in real property, even if the reference is omitted in a subsequent instrument of conveyance
5. Can only be diminished by the dominant party's written agreement or
6. by law.
  - Eminent Domain
  - Real Property Marketable Title Act (similar to statute of limitations)
7. Since an easement is a privilege enjoyed in the land of another, when there is a coming together of the dominant and servient tract into one ownership, the easement may be permanently extinguished. (Doctrine of Merger) This is not automatic because the rights of other intervening interest-holders (i.e. deed of trust holders), prevents the "all" from being applicable, some rights are preserved.

## GS § 39-6.4. Creation of easements, restrictions, and conditions

- (a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.
- (b) Subsection (a) of this section shall not affect the application of the doctrine of merger after the severance and subsequent reunification of title to all of the benefited or burdened real property or interests therein. (1997-333, s. 1.)

## 25.1.2 An easement in gross:

1. Is a right to use land belonging to another.
2. Is not for the benefit of another tract of land.
3. It terminates with the death of the individual who possesses the right.
4. Is not assignable.

Note: in commercial easements in gross a corporate merger is not considered a death or assignment. The easement in gross continues.

## 25.1.3 Affirmative Easements:

An affirmative easements, empower the holder to go on the land subject to the easement for the purpose defined in the easement document.

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## 25.1.4 Negative Easements:

A negative easement, empowers the holder to restrict the use of the land subject to the easement, but the holder of the easement has no right to use the subject land. A negative easement is treated as a restriction and may not be subject to the Doctrine of Merger. (see GS 39-6.4 mentioned in Section 25-1.1 above.)

## 25.2 Easements (Effecting Value)

In a perfect cadastral map all things of record affecting the rights to land would be documented. In a taxation cadastral map that is impractical. However the map is used to help determine the value of the real property for taxation purposes. All easement lines that present a significant influence on property value should be displayed. A significant influence on property value may occur in the presence of an easement that is not general or common to all properties (i.e. conservation easements, drainage easements, and ingress and egress or right-of-way easements). In these cases the holder of the right, easement size, location, and use limitation should be noted. While an easement may have a negative impact on the value of the servient tract there is a real possibility that there is a positive impact in the dominate tract. In many cases this will be a positive net difference.

### 25.2.1 Easements that may have possible impact on value:

#### Utility

- Electric
- Water
- Sanitary Sewer
- Storm Sewer
- Telephone
- Gas Pipeline
- Cable TV
- Internet

#### Conservation

#### Transportation

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Transportation (government)—Easements-R/W  
US Highways  
State Highways  
Interstates  
Secondary Roads (SR)  
Municipal Roads  
Railroads  
Canals  
Transportation Corridors (NC GS 105-277.9) (proposed  
easement)

Transportation (private)  
Private streets  
Ingress, egress, and regress (enter, leave, and return)  
easements  
Pedestrian  
Bike  
Equestrian  
ETC.

Other

## **25.3 Annually review of Transportation corridor official maps**

105-296 (m) The assessor shall annually review the transportation corridor official maps and amendments to them filed with the register of deeds pursuant to Article 2E of Chapter 136 of the General Statutes. The assessor must indicate on all tax maps maintained by the county or city that portion of the properties embraced within a transportation corridor and must note any variance granted for the property for such period as the designation remains in effect. The assessor must tax the property within a transportation corridor as required under G.S. 105-277.9.

## **26 Layers related to appraisal value**

These layers are recommended because they affect value but may be omitted at the assessors discretion.

### **26.1 Register Transportation Corridor Official Maps**

The transportation corridor map filed in with the Register of Deeds severely limits the use of the property under § 136-44.51.

§ 105-277.9. Taxation of property inside certain roadway corridors.

Real property that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property

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under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the appraised value of the property if each of the following requirements is met:

- (1) As of January 1, no building or other structure is located on the property.
- (2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor.

(a) Reduced Assessment. - Real property on which a building or other structure is located and that lies within a transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable at fifty percent (50%) of the appraised value of the property if the property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor.

## 26.2 Structures

The foot print of all structures is extremely useful, this information can be compiled with the use of several different data sets, N C flood mapping has compiled building foot prints from aerial photography, this will provide you a starting point. You will probably want to edit the footprints using data from the tax property cards to more accurately reflect the shape of the structure. Be aware there will probably be some displacement on the flood mapping data set because the information was digitized using the roof as a guide. Newer photography and building permits should be consulted to discover newer structures.

## 26.3 Address points

Address points should be established for each structure that has been assigned an address. US Census establishes the address point at the front door of the addressed structure. By following that convention you will be able to avoid additional work when it comes to reporting to census.

## 26.4 Taxation Neighborhoods

## 26.5 Soil Maps

## 26.6 Land Use

## 26.7 Land Cover

## 26.8 Zoning

## 26.9 Utilities

## 26.10 EM Hazard Maps

## Appendix A: State Seamless Parcel Schema

Standard Field	Standard Definition	Values-Notes-Rules
STNAME	The state name	Auto: NC

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STFIPS	The state FIPS code, 2-digit code	Auto: 37
CNTYNAME	The county name	Auto: on upload
CNTYFIPS	The county FIPS code 3-digit code.	Auto: lookup
STCNTYFIPS	The state and county FIPS codes combined as a single field. Used to relate and link the parcel information to other records. It creates a unique national parcel identifier when used as a prefix to the local parcel number.	Auto
GNISID	The geographic names information system identifier for the local place for the parcel. The default value is the county GNIS number but as this data set develops, individual parcels may have a GNIS identifier, such as local parks or attractions.	Auto: lookup
SOURCEAGENT	The originating agency or source of the information for the feature or the data steward for data set.	Auto: on upload
PARNO	The local parcel number for the parcel record.	Unique ID
NPARNO	The local parcel number with the state and county FIPS added to the beginning of the local parcel number.	Separate StCnty FIPS and ParNo with underbar "_"
ALTPARNO	Alternative or local parcel number.	e.g., Tax ID
PARUSECODE	The local assessment parcel use code, this is the primary use of the parcel. The code may be the items in the such as governmental, vacant, commercial, etc.	This is a code not a description.

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PARUSEDESC	The local assessment parcel use description, which could include additional use descriptions in the present use attribute in CAMA such as, agriculture, forestry etc.	This may be populated from a code description lookup table.
PARUSECD2	Structure use code or building type such as single family, modular, commercial etc. The secondary use code applies to the structures on the parcels.	This is the code not the description.
PARUSEDSC2	Description for the Secondary use for the parcel, which would be building such as residential, agriculture, forestry, etc.	This may be populated from a code description lookup table.
STRUCT	Is there a structure or improvement on the parcel (Y = yes or N =no or U = unknown, this is the default value).	Default to U
STRUCTNO	The number of structures on the parcel. This is populated when the source data indicates how many structures. This is used primarily to support emergency planning and response. If structure number greater than 1 then MULTISTRUCT = yes.	
MULTISTRUCT	Does this parcel have multiple structures? (Y = yes or N = no or U = Unknown, this is the default value). If there are multiple structures but the total number is not known, the value = Y and STRUCTNO will be U. If the number of structures is known, the value = Y and STRUCTNO will be greater than 1.	Default to U
STRUCTYEAR	The year built of the primary building on the parcel.	This should be the most recent year if multiple years are listed.
IMPROVAL	The value of the improvements on the parcels.	This may be the sum of two fields if "out building" value is in a

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		separate field.
LANDVAL	The value of the land on the parcel.	
PARVAL	The total value of the parcel (IMPROVVAL + LANDVAL).	PARVAL may be less than the sum of building and land value if it represents taxable value (reduced by exemption, exclusion, or deferment).
PARVALTYPE	The type of value reported in the PARVAL field is typically "taxable." Exemptions or deferments such as present use (e.g., value for land in agricultural use), may result in PARVAL being less than building value plus land value.	Think about including surface, mineral, AIR PARCEL
OWNTYPE	The owner type (e.g. federal, state, private, etc.) The domain of values for this attribute is international, tribal, federal, state, county, local, private, non-profit, other, unknown. This may also be just public/private/exempt.	See OWNETYPE note:
OWNNAME	The primary surface owner name, the full name may be populated or the components of the name (first and last).	
OWNFRST	The primary surface owner first name.	Match only if available in the county source file; not extracting from a string.
OWNLAST	The primary surface owner last name.	"
SUBSURFOWN	The name of the subsurface rights landowner.	Field for potential future use
SUBOWNTYPE	The sub surface owner type (see surface owner type domain list).	Field for potential future use



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MAILADD	The full mailing address as a single field (the mailing address may also be broken into its component parts ; the source data may include the full mailing address , or its component parts or both).	This may be tax bill mailing address and not owner mailing address.
MADDRNO	The mailing address number.	Match only if available in the county source file; not extracting from a string.
MADDSTNAME	The mailing street name, the name without the type and directions.	"
MADDPREF	The mailing street prefix.	"
MADDSTR	The mailing street name, the name without the type and directions.	"
MADDSTTYP	The mailing street type, such as ST, AVE, BLVD.	"
MADDSTSUF	The mailing street suffix, typically a direction.	"
MUNIT	The mailing address unit, suite or apartment number; and may also be the half number.	"
MCITY	The mailing city name.	
MSTATE	The mailing state name, two letter abbreviation.	
MZIP	The mailing zip code.	
SITEADD	The full site address as a single field (the mailing address may also be broken into its component parts; the source data may include the full site address, or its component parts or both).	Typical in parcel data.
SADDNO	The site address number.	Match only if available in the county source file; not extracting from a string.

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SADDSTNAME	The full site address street name with prefixes and suffixes.	"
SADDPREF	The site address street prefix.	"
SADDSTR	The site address street name, the name without the type and directions.	"
SADDSTTYP	The site address street type, such as ST, AVE, BLVD.	"
SADDSTSUF	The site address street suffix, typically a direction.	"
SUNIT	The site address unit, suite or apartment number; and may also be the half number.	"
SCITY	The site address city name.	
SSTATE	Default to NC, the site should be in the state but there be border situations where this needs to be tracked; two letter abbreviation.	Default to NC
SZIP	This may not be the same as the mailing address zip code. If maintained and available, this supports physical address delivery and the vehicle tax system.	
LEGDECFULL	The full tax legal description - this is generally needed when the parcel data does not include a map of the parcel.	
SUBDIVISION	The name of the subdivision or condo that the parcel is in.	
SOURCEREF	The reference to the source document. This could be a reference to a map or plat or a deed as well as including the document type.	This should be the deed reference if available; it may be a concatenation of deed book and page.
SOURCEDATE	The date of the source document (listed in the source reference) that was used to generate the parcel information.	
SOURCEDATX	The source document date as a text field.	

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SALEDATETX	The date of the last sale if available. This is captured as a text field.	
RECRDAREANO	The record or recorded area as a numeric field.	May be deeded acres.
RECRDAREATX	The record or recorded area as a text field. This may include the units of area as well.	
GISACRE	The area of the feature in acres - computed from the GIS, this is not the recorded area.	
REVDATE	The date of the last revision of the parcel record as a text field.	
REVISEDDATE	The date of the last revision of the parcel record, this will primarily be the revision for the geometry.	
REVISEYEAR	The last year of revision to the parcel record.	

Note: OWNERTYPE, Proposed Codes (optional)

P	Private (Human or Non-Human) County Taxable
PT	Public Trust Land (submerged Lands)
DOT	Right of Ways controlled by NC DOT
SA	State Assessed Lands
01.0	Governmental (Federal, State, Local)
01.1	Federal
01.2	State
01.3	County
01.4	Municipal
01.5	Other
02.0	Educational (Non-governmental)
03.0	Educational (Religious)
04.0	Religious
05.0	Charitable--Hospital Property
06.0	Charitable--Homes for the Aged, Sick, and Infirm
07.0	Charitable--Low and Moderate Income Housing
08.0	Charitable--All Others

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09.0	Scientific, Literary, and Cultural
10.0	All Other Exemptions

## Appendix B: NC PIN

**North Carolina Parcel Identifier Number (PIN):** All Parcels will be assigned a Parcel Identifier Number conforming to construction criteria in the Derivation of Parcel Identifier Number (PIN) . The unique PIN will be included as an attribute to the polygon of each parcel. The PIN is the preferred identification number for parcels but is not required that it be the only identification number nor is it required that it be the primary key for linking the tax assessors Computer Assisted Mass Appraisal (CAMA) database with the geometry of the cadastral map.

The parcel identifier number (PIN) is constructed from the North Carolina State Plane Coordinates of the visual center of a parcel. The following is the procedure for determining the PIN.

- a. Grid Coordinates of the visual center of the parcel are measured from the parcel map:

"x" coordinate (easting) - E 2,715,569

"y" coordinate (northing) -N 756,737

- b. The digits in each coordinate value are paired by taking each digit separately from the east-coordinate and matching it with the corresponding digit of the north-coordinate.

20 77 15 56 57 63 97

EN EN EN EN EN EN EN

- c. With this arrangement, the example of a parcel identifier may be sorted as follows:

- d. The North Carolina "Parcel Identifier Number" or "PIN" is obtained by recording the middle three sets of numbers (ten digits), and is written with dashes as follows:

**7715 - 56 - 5763**

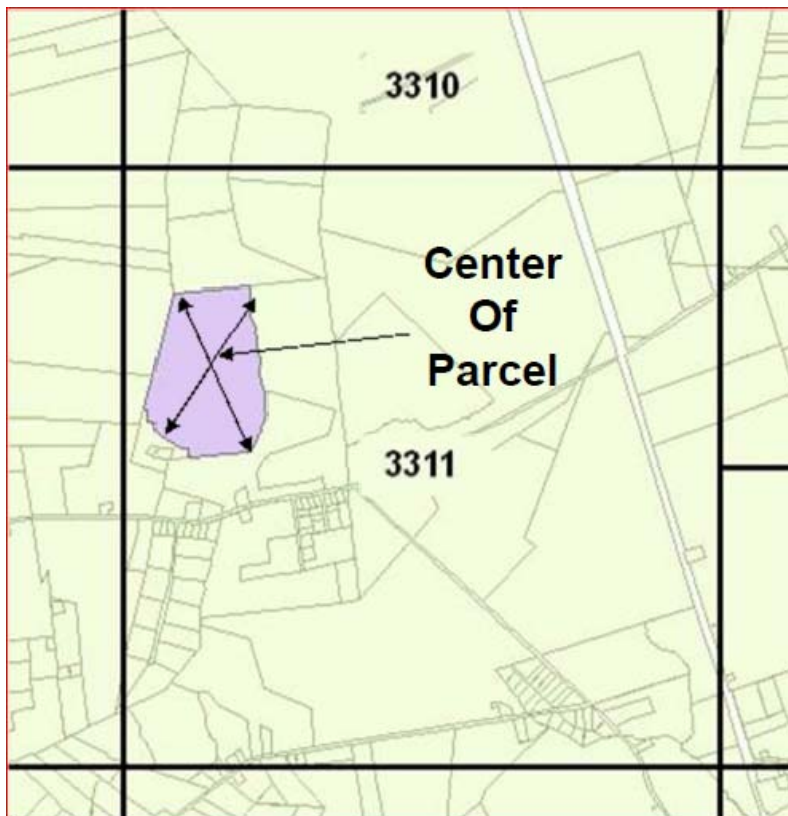
20	<b>7715</b>	<b>56</b>	<b>5763</b>	97
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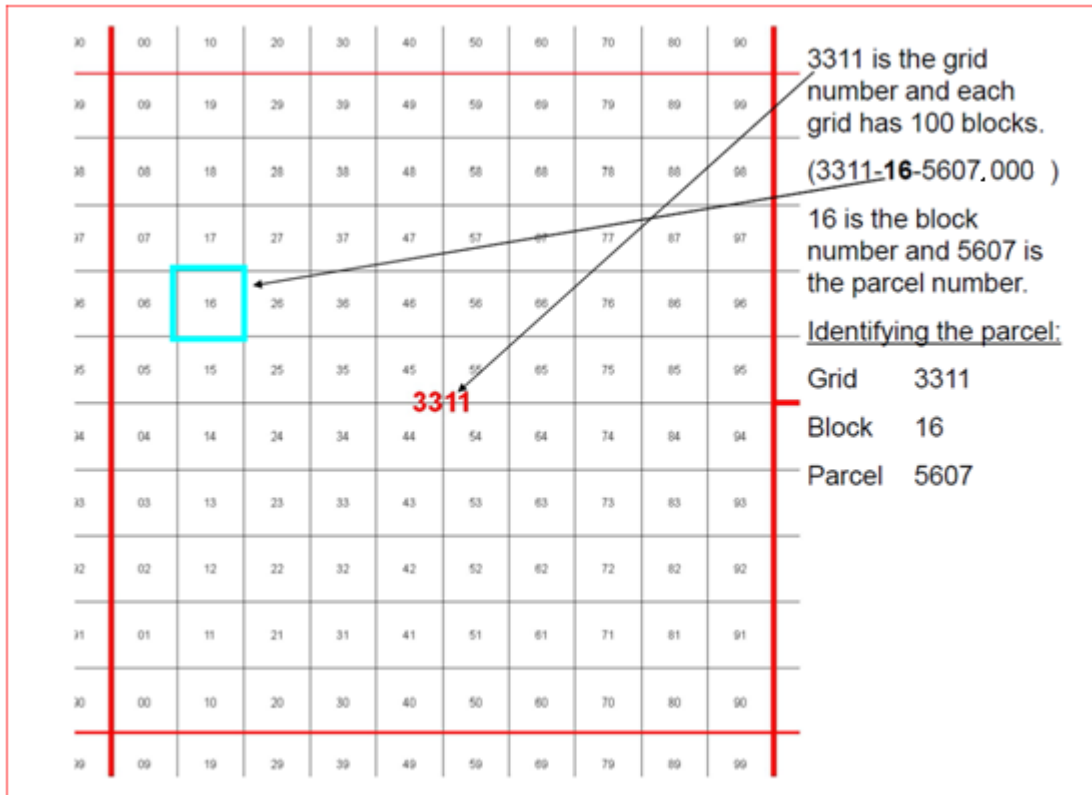
First two numbers are dropped	Grid number	Block number	Lot or parcel number	Last two numbers are dropped
-------------------------------	-------------	--------------	----------------------	------------------------------

- e. Records of condominiums, townhouses or other cases of diverse ownership on one parcel of land will be further identified by the use of a decimal at the end of the PIN with three (3) digits to the right of the decimal. The records for a condominium unit or units built on the above described hypothetical parcel could be assigned as a suffix number to the PIN of .001 through .999. For example, a condominium it could be 7715-56-5763.001.

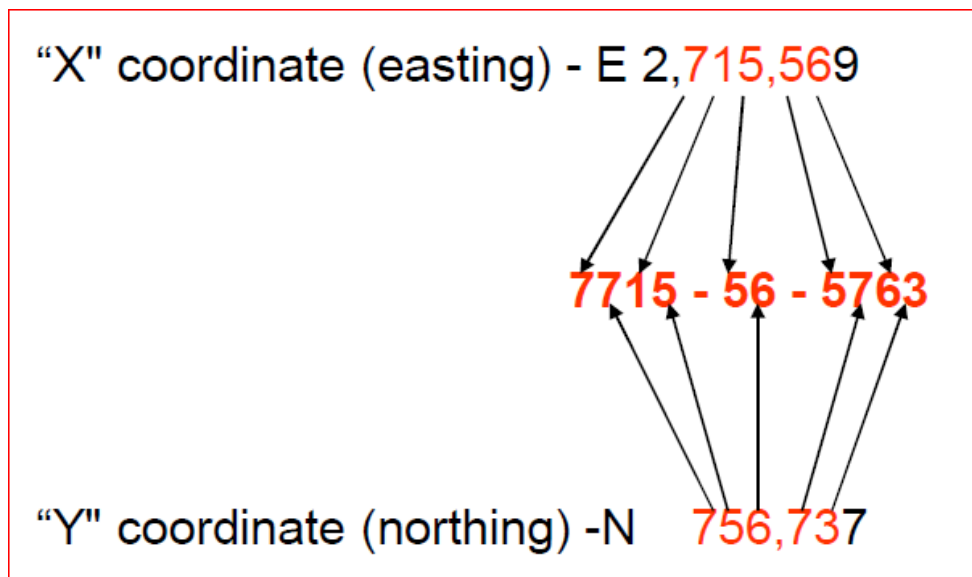
Here is the “visual” center of a parcel where the X, Y coordinate are assigned. In this case the parcel number is 3311-16-5607.000 and you can see the parcel is in the 3311 grid which corresponds to the first 4 digits.



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Here is a better diagram of how the PIN is derived from the X, Y coordinate.



The primary purposes of this number is that it directly identifies the location of every parcel within the County, no matter if it is an active number or not. This helps in locating parcel that no longer exist for historical purposes.

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**Appendix C: Attorney General Memorandum's (exclusion of  
Public R/W)**

While an AG's opinion is not the same as statutory or case law, it represents the State's interpretation of the law, for the circumstances described in the opinion.

RUFUS L. EDMISTEN  
ATTORNEY GENERAL

State of North Carolina  
Department of Justice  
P. O. BOX 629  
RALEIGH 27602-0629

28 July 1982

RUFUS L. EDMISTEN  
ATTORNEY GENERAL

MEMORANDUM

TO: D. R. Holbrook, Director  
Ad Valorem Tax Division

FROM: Myron C. Banks  
Special Deputy Attorney General

RE: Exclusion of highway right-of-way from real property subject to ad valorem taxes.

You have asked my opinion as to whether any land within any highway right-of-way should be included within the owner's (or former owner's) taxable property. There are some minor misconceptions stated in your memo, and in Mr. Holloway's memo

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to you, which would make a formal opinion somewhat awkward to write so, unless you wish otherwise, I will give you my conclusions informally.

As I understand it, and as E. A. Smith, Senior Deputy who heads our Highway Division has confirmed, property obtained by the State for highway construction is acquired either in fee simple or by an easement in perpetuity. The Supreme Court has held that there is virtually no difference between the two interests and an owner is compensated for either as if the fee had been acquired. See *SHC v. Black* (1953) 239 NC 198. Consequently when either a fee or an easement in perpetuity is acquired by the Department of Transportation, the rights of the former owner have for all practical purposes ceased and, in my opinion, none of the property within the limits of the right-of-way should be considered taxable to that owner. Neither is it taxable to the State. In re UNC (1980) 30 NC 563.

D.R. Holbrook  
1982

2

28 July

So far as I can determine, there is no such thing as the "perpetual lease" to which Mr. Holloway refers, and I suspect that what he really has in mind is the "easement in perpetuity." If so, I have already addressed that question.

As to DOT's designating land as "future right of way," I am not aware of any such formal procedure although clearly future highway plans can and do become known and that knowledge may certainly influence decisions made by an owner with respect to his property. However, until title to the property has actually been transferred, it is solely that of the owner and taxable as such. I can imagine, however, that information such as that might have a bearing upon the value of the property.

I believe that the term may be used in connection with some local planning maps, and that sometimes local authorities will not issue building permits for such areas. Even where this may be the case, title is still in the owner and the property is taxable to him, even though again value may be affected by the designation.

Where DOT has already acquired its interest it may designate part of its right-of-way as a "proposed future lane," as in the case where two lanes have been built and two



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more are planned. In that case, however, DOT already owns the property and the designation could have no bearing either on taxability or value.

To illustrate the totality of DOT's control of land area within right-of-way, Mr. Smith has pointed out to me that DOT by regulation prohibits certain uses that can be made of such land and G.S. 136-93 requires a permit for certain other uses, all without distinction between fee and easement. This seems to confirm my conclusion that such land area must properly be excluded from an owner's taxable land for ad valorem tax purposes.

MCB:jmd

cc: E.A. Smith

### **Appendix D: Affidavit of Recombination**

Memo

Thomas W. Morgan Land Records Manager

N.C. Department of the Secretary of State

Certification & Filing Division

From: Pat Hetrick, Professor of Law

Re: Recombination of Existing Parcels

Date: May 23, 2010

A transfer of legal title is not necessary to achieve a recombination of lots, assuming that all applicable statutes and planning ordinances are complied with. It is essential, as you note, that there be a properly indexed link to the new combined parcel in the chain of title.

The most efficient method of accomplishing recombination, in my opinion, is an affidavit, call it an "Affidavit of Recombination." This affidavit is clearly within the purview of N.C.Gen.Stat. § 161-14.1, "Recording subsequent entries as separate instruments." The

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purpose of the affidavit is to "modify" or "amend" the earlier legal description in the chain of title because of the recombination.

Assuming, for example, that three lots in a subdivision are being recombined into one, the affidavit, signed by the record owner or owners, would set forth the legal descriptions of the three lots, recite unequivocally that they have been recombined, set forth the new legal description for the recombined parcel, assert that the applicable laws and ordinances have been complied with, and reference the location of any new plat (if one exists). I would attach a new survey as an appendix to the affidavit. The recombination affidavit must be recorded in the chain of title of all three lots. Where a PIN or other tract indexing system is in use, the procedure of the Register of Deeds would need to be followed. (I don't know whether a new, combined PIN number would replace the former three numbers.) Ideally, the summary for a grantor-grantee index would include the term "recombination."

As a matter of preventive law and good practice, the first subsequent conveyance of the recombined lot should include both descriptions; i.e., the new description of the recombined lot with a back reference something along the lines of the following: "This recombined parcel is comprised of the parcels formerly described as Lots A, B & C, (etc.)."

A conveyance by a grantor to him- or herself or by grantors to themselves is not necessary for the successful recombination of lots. A conveyance is not a prerequisite to a recombination and might even confuse a subsequent title searcher.

A grantor, assuming compliance with applicable laws and ordinances, can achieve recombination by a deed to a third party without the need for an affidavit of recombination, as long as the new deed recites the recombination and includes a back-link to the descriptions of the former parcels. Care would need to be taken as to how this would be indexed by the Register of Deeds.

### **Appendix E: NC Department of Revenue Form AV-50**

Parcel Standard Review of the North Carolina Department of Revenue's AV-50 Form (Annual Report of Tax Relief)

The question was asked if the EPA parcel project could include a field(s) to the NC Statewide Parcel Standard that would allow for data collection regarding the NCDOR's annual report from the 100 North Carolina Counties for tax relief. Based on historic observation the state often receives this reporting from only 30-40 percent of the counties.

After reviewing the Henderson County CAMA database, supporting the AV-50 report requires adding a minimum of the following three fields:

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**Tax Relief Code:** This is the code stored in the CAMA database that corresponds with the AV-50 Code Table in figure 2 below. Henderson County stores these codes in the CAMA database as specified in this table.

**Jurisdiction:** The AV-50 report requires totals but also requires value amounts to be reported by municipal and county jurisdictions separately.

**Total Relief Value:** The amount of exemption/exclusion/deferral applied to a parcel of land. These are the totals requested by the AV-50 report. This amount subtracted from the PARVAL equals the “taxable” value.

Considerations:

- More than one relief code can be assigned to a parcel. For example one parcel could have 13.0 Elderly/Disabled, 12.0 Use Value and 12.1 Wildlife Conservation. In the case of reporting these in the three fields mentioned above, without considering multiple relief code fields or multiple codes in a field, there may be only one code in the Tax Relief Code field and the Total Relief Value could represent the entire relief amount if the relief values were summed.
- The AV-50 form requires the values to be reported by exemption categories. See figure 3 below. The category totals could be inaccurate while the grand total may or may not be correct.

**NOTE:** Henderson County has 6 parcels with PUV deferral and elderly relief. The rate of error calculated for the Elderly and Disabled category if the value of these 6 parcels was reported as Use Value was a decrease of .3 %. If the Use Value for these 6 parcels was reported as Elderly and Disabled the error was an increase of .7%. The percent of lost value or value reported in the incorrect category is a low and possibly insignificant percentage based on the data found in Henderson County’s CAMA database.

**NOTE:** Tax Relief Codes, Use Value Codes and Disabled Veterans Codes and the value for each are stored individually in the Henderson County database. The addition of a related table in the core data may be the most accurate format to obtain and report these one to many values required by the AV-50 report. With the addition of only a few fields’ one-to-many data can be reported with more accurate details. Figure 1 below is an example of a related table utilizing data from Henderson County.

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Figure 1 AV-50 Table supports a one-to-many relate to the Parcel Standard

PARNO	RELIEF CODE	CODE DESCRIPTION	JURISDICTION	RELIEF VALUE	YEAR FOR	PROPERTY TYPE
9690573008	12.3	HORTICULTURE	HENDERSON COUNTY	\$111,714	2014	REAL
9690573008	13.0	ELDERLY AND DISABLED	HENDERSON COUNTY	\$43,550	2014	REAL
9556580355	03.0	EDUCATIONAL RELIGIOUS	FLAT ROCK	\$33,700	2014	REAL
9690573008	12.1	WILDLIFE CONSERVATION	HENDERSON COUNTY	\$12,500	2014	REAL
9661152117	05.0	CHARITABLE-HOSPITAL PROPERTY	FLETCHER	\$72,400	2014	REAL
9661055170	05.0	CHARITABLE-HOSPITAL PROPERTY	FLETCHER	\$26,983	2014	PERSONAL
9612939877	12.2	AGRICULTURE	HENDERSON COUNTY	\$157,660	2014	REAL
9612939877	12.3	HORTICULTURE	HENDERSON COUNTY	53,750	2014	REAL
0600076028	12.4	FORESTRY	HENDERSON COUNTY	170,653	2014	REAL
0600076028	13.0	ELDERLY AND DISABLED	HENDERSON COUNTY	60,550	2014	REAL
9577125733	09.0	SCIENTIFIC LITERARY CULTURAL	FLAT ROCK	\$344,915	2014	PERSONAL
9690573008	13.0	ELDERLY AND DISABLED	HENDERSON COUNTY	\$43,550	2014	REAL
9568778710	01.0	GOVERNMENTAL	HENDERSONVILLE	\$5,111,200	2014	REAL

Note: Use value is additionally broken into individual types

The AV-50 includes personal property. This data is typically separated from the real property data and is more likely sitused by a physical address.

**NOTE:** On the 2013 Henderson County AV-50 report, 99.7% of the exemption/exclusion value reported was real property value. The small amount of personal exemptions reported is typical but could change dramatically if listing of exempt personal property were required. See note in the department of revenue instructions in **Figure 2 \***

Henderson County personal property once had limited connection to parcel data in a legacy system. In the current listing system, personal property is sitused by physical address and no parcel data is being collected.

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## Instructions for Form AV-50 and AV-50A

This Excel workbook contains Form AV-50 (Annual Report of Tax Relief Granted by Exemption or Exclusion) and Form AV-50A (Municipal Detail Report of Exemptions and Exclusions). These reports are required by G.S. 105-282.1(d) and are used to report the dollar amount of tax value exempted or excluded for the fiscal year. Form AV-50 is divided into two sections. The LOCATED IN A MUNICIPALITY section includes the value of exempted and excluded property that is located in all of the municipalities. For the purposes of these forms, a municipality is considered to be a city, town, village, etc. It does not include special districts and fire districts. This section is automatically calculated and populated when you fill out a Form AV-50A for each municipality that has exempted or excluded property. Two municipalities may be entered per Form AV-50A spreadsheet tab. The LOCATED IN THE COUNTY ONLY section includes the value of exempted or excluded property that occurs only in the county and not in a municipality. These numbers must be entered directly on the Form AV-50.

**DUE DATE FOR THESE FORMS IS NOVEMBER 1 OF EACH YEAR. PLEASE SUBMIT FORMS ON TIME.**

The completed Excel workbook should be submitted to NCDOR by email to the email address specified in the memo accompanying the yearly distribution of these forms. **NCDOR is no longer accepting these forms in paper form.**

**Form AV-50:** Do not fill out the LOCATED IN A MUNICIPALITY section. This section will automatically calculate and populate from all the municipal entries on the Form AV-50A worksheets. You do need to fill in the LOCATED IN THE COUNTY ONLY section. These numbers represent the exempted, excluded, or deferred value of property that is located in the county but that is not located in a municipality.

**Form AV-50A:** Complete this form for each municipality which has exempted, excluded, or deferred property value. Two municipalities can be reported per spreadsheet. Complete as many spreadsheets as needed.

For the purposes of these forms, a municipality is considered to be a city, town, village, etc. It does not include special districts and fire districts.

Because many personal property items are often no longer listed once an exemption or exclusion is granted, limited information may be available for personal property. Please provide any information that you may have.

The following table lists the AV-50 and AV-50A line categories and the appropriate exemption, exclusion, or deferral to report on each line.

If you have any questions, call the NCDOR Property Tax Division at 919-814-1149.

01.0	Governmental (Federal, State, Local)	G. S. 105-278.1
02.0	Educational (Non-governmental)	G. S. 105-278.4 G. S. 105-278.7(f)(1)
03.0	Educational (Religious)	G. S. 105-278.5
04.0	Religious	G. S. 105-278.3
05.0	Charitable--Hospital Property	G. S. 105-278.8
06.0	Charitable--Homes for the Aged,	G. S. 105-278.6(a)(2)
07.0	Charitable--Low and Moderate	G. S. 105-278.6(a)(8)
08.0	Charitable--All Others	G. S. 105-278.6(a)(1), (3), (4), (5), (6) and (7) G. S. 105-278.7(f)(4)
09.0	Scientific, Literary, and Cultural	G. S. 105-278.7(f)(2), G. S. 105-278.7(f)(3) G. S. 105-278.7(f)(5)
10.0	All Other Exemptions	Any Exemptions Not Listed Above

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Line	Exclusion	Statute Granting Exclusion
11.0	Continuing Care Retirement Centers	G. S. 105-278.6A
12.0	Use Value (Deferred Amount for	G. S. 105-277.4
12.1	Wildlife Conservation (Deferred Amt	G.S. 105-277.15
13.0	Elderly and Disabled	G. S. 105-277.1
13.1	Disabled Veteran Exclusion	G.S. 105-277.1C
14.0	Pollution Abatement and Recycling	G. S. 105-275(8)
14.1	Builder's discount	G.S. 105-277.02
15.0	American Legion, DAV, Lodges, etc.	G. S. 105-275(17), (18) and (19)
16.0	Medical Care Commission Bonds	G. S. 131A-21
17.0	All Other Exclusions	G. S. 105-275(2), (3), (5), (5a), (6), (7), (7a), (12), (14), (20), (23), (24), (24a), (25), (29), (29a), (31e), (35), (39), (39a), (41), (42a), (43), (44), (45) G. S. 105-277.01 G.S. 105-277.10 G. S. 105-277.12, G.S. 105-277.13, G.S. 105- 277.14 G. S. 105-278

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Figure 3

## Annual Report of Tax Relief Granted by Exemption or Exclusion

[As Required by N.C.G.S. 105-282.1(d)]

Due to NCDOR by November 1 of Each Year

Henderson FY 2013-2014		LOCATED IN A MUNICIPALITY (Complete Form AV-50A For Each City or Town)			LOCATED IN THE COUNTY ONLY (Located in the County but NOT in a Municipality)			LINE TOTALS
		REAL	PERSONAL	SUBTOTAL	REAL	PERSONAL	SUBTOTAL	
See instructions for explanations of categories.								
01.0	Governmental (Federal, State, Local)	222,207,400	62,220	222,269,620	235,810,280	20,000	235,830,280	458,099,900
02.0	Educational (Non-governmental)	-	-	-	1,693,900	10,000	1,703,900	1,703,900
03.0	Educational (Religious)	6,150,200	-	6,150,200	30,270,700	-	30,270,700	36,428,900
04.0	Religious	118,301,840	930	118,302,770	101,146,730	5,000	101,151,730	219,454,500
05.0	Charitable-Hospital Property	24,600	-	24,600	29,590,200	422,742	30,012,942	30,037,542
06.0	Charitable-Homes for the Aged, Sick, and Infirm	59,000	-	59,000	-	-	-	59,000
07.0	Charitable-Low and Moderate Income Housing	11,832,031	-	11,832,031	3,837,200	-	3,837,200	15,669,231
08.0	Charitable-All others	9,484,700	389,892	9,874,592	2,746,300	-	2,746,300	12,620,892
09.0	Scientific, Literary, and Cultural	1,490,300	-	1,490,300	5,034,700	-	5,034,700	6,533,000
10.0	All Other Exemptions	31,813,320	-	31,813,320	27,539,710	-	27,539,710	59,353,030
11.0	Continuing Care Retirement Centers	-	-	-	-	-	-	-
12.0	Use Value (Delayed Amount For Current Year Only)	41,741,157	-	41,741,157	285,404,680	-	285,404,680	327,146,837
12.1	Wildlife Conservation (Delayed Amt for Current Year Only)	-	-	-	710,511	-	710,511	710,511
13.0	Elderly and Disabled	23,042,055	364,260	23,406,315	59,012,067	2,589,669	61,601,736	85,008,051
13.1	Disabled Veteran Exclusion	1,648,400	28,400	1,676,800	4,979,100	91,000	5,070,100	6,746,900
14.0	Pollution Abatement and Recycling	1,300,200	-	1,300,200	580,500	10,703	591,203	1,891,403
14.1	Builder's Deferral (Delayed Amt for Current Year Only)	-	-	-	-	-	-	-
15.0	American Legion, DAV, Lodges, etc.	6,018,400	-	6,018,400	131,100	-	131,100	6,149,500

## Appendix F: Attorney General Memorandum: State and County Boundaries

State of North Carolina

ROY COOPER Department of Justice

REPLY TO: J. Allen Jernigan

"ATTORNEY GENERAL P. O. Box 629 Environmental Division

RALEIGH Tel: (919) 716-6600

27602-0629 Fax: (919) 716-6767

-MEMORANDUM-

# **Best Practice Manual for digital Cadastral Base Mapping in North Carolina: North Carolina Secretary of State, Land Records Management**

TO: Gary Thompson  
N. C. Geodetic Survey

FROM: J. Allen Jernigan Special Deputy Attorney General

DATE: June 17,2004

SUBJECT: State and County Boundaries

This memorandum responds to your inquiry regarding the effect of official surveys of state and county boundaries on private land titles.

Question #1:

Does the official survey of the state boundary line pursuant to Chapter 141 of the North Carolina General Statutes affect private land titles when the official survey of the state line differs from the location of the state line in a deed description or private survey plat?

Answer:

The official survey of the state line should be not, in most cases, alter settled private property rights. The state boundary line is a political boundary between adjoining sovereigns. *North Carolina v. Tennessee*, 235 U.S. 1 (1914); *Coffee v. Groover*, 123 U.S. 1, 29 (1887); *Stevenson v. Fain*, 116 F. 147 (6th Cir. 1902); app. dismissed, 195 U.S. 165 (1904). An official state boundary line established and approved pursuant to Chapter 141 of the North Carolina General Statutes determines what territory lies within the State's boundaries and is subject to the State's sovereign powers and jurisdiction. See, e.g., *In re Anderson*, 94 F. 487 (W.D. N.C., 1899); *United States v. Bryne*, 291 F.3d 1056 (U.S. App. 2002). While a change in the location of the state boundary line will affect which State has jurisdiction over private property, whether it affects private land title depends on the circumstances surrounding the survey.

This is an advisory memorandum. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

In *Maryland v. West Virginia*, 217 U.S. 1 (1910), the United States Supreme Court considered a boundary dispute between those two states. It found that the boundary between Maryland and West Virginia from the headwaters of the Potomac to the Pennsylvania line



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should be the "Deakins" or "old state line" run in 1788, beginning at the Fairfax Stone. Maryland argued that the proper boundary was instead the true meridian called for in the original 1632 Charter from King Charles I to Lord Baltimore, and that the correct line was the 1859 "Michler survey," which followed the meridian in an astronomically correct north and south line. The Deakins line was somewhat irregular, and not an astronomically uniform north and south line. The Michler line diverged from the Deakins line by as much as three-fourths of a mile at the Pennsylvania border. As a matter of practice, the people of Maryland, West Virginia and Virginia had recognized and accepted the older Deakins line for many years. The 1859 survey would have affected numerous patents calling for the state line as boundary.

On these facts, the Supreme Court found that the old line, even though not astronomically correct, should not be disturbed since it had been recognized and become the basis for public and private land titles. The Court made clear that the resurvey of the line should not upset existing property rights:

For the security of rights, whether of States or individuals, long possession under a claim of title is protected. And there is no controversy in which this principle may be invoked with greater justice and propriety than a case of disputed boundary.

217 U.S. at 42-43. The Court explained:

In this case we think a right, in its nature prescriptive, has arisen, practically undisturbed for many years, not to be overthrown without doing violence to principles of established right and justice equally binding upon States and individuals. It may be true that an attempt to relocate the Deakins line will show that it is somewhat irregular, and not a uniform, astronomical north and south line; but both surveyors appointed by the States represented in this controversy were able to locate a number of points along the line, and the northern limit thereof is fixed by a mound, and was located by the commissioners who fixed the boundary between West Virginia and Pennsylvania by a monument which was erected at that point, and we think from the evidence in this record that it can be located with little difficulty by competent commissioners. 217 U.S. at 44-45. Thus the general rule seems to be that boundary disputes between States should be resolved in a manner which will least disturb settled private rights and titles. Where the parties have traditionally recognized a particular line as the State boundary, that line should continue to be honored as the boundary of private property.

The North Carolina case of *Redmond v. Stepp*, 100 N.C. 212, 6 S.E. 727 (1888) followed this approach. In that case a grant description contained the following calls: "then south 106 chains to a stake in the South Carolina boundary line; thence with the said line to the beginning." The controversy in the case centered around the location of the State boundary.

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The parties agreed that the location of the state line as described in the 1796 grant was south of the state boundary as it existed at the time of the lawsuit. The North Carolina Supreme Court held that the state line as recognized in 1796, the date of the grant, should be fixed as the boundary of the tract, rather than the present state line. The Court indicated that the proper inquiry is what lands were covered by the grant or deed when it was made, according to the intent of the parties.

Even so, changes in the location of a state line by virtue of a boundary agreement have affected private titles. For example, in the case of *Coffee v. Groover*, 123 U.S. 1 (1887), the boundary of Florida and Georgia had long been in dispute. Georgia claimed to "Watson's line," exercising political jurisdiction and making land grants up to that line. Florida, while generally acquiescing in Georgia's actions, nonetheless claimed to "McNeil's line," which was farther north than Watson's line. The two states finally ran a survey to locate the true line, which found it to be even farther north than McNeil's line. They ultimately reached a boundary line agreement which moved the state line north of the line claimed by Georgia. As a result of this compromise, some territory where Georgia had issued land grants was actually part of Florida, and competing parties claimed title to the same tracts of land, based on conflicting grants issued by Georgia and Florida.

The United States Supreme Court concluded that [t]he boundary, whether ascertained by astronomical observations, or discovery of old monuments, or mutual agreement of the parties, is to be treated as if it had always been known as the true line.

123 U.S. at 22. Because the new agreed line was considered to have always been the true line, the Court decided that Georgia had never been in rightful possession of the territory south of the agreed line. Therefore, the state had no title to convey in those lands and her grants were void. This, of course, upset the titles of people relying upon the Georgia grants. However, even where the official survey indicates an original grant may be void for having been issued outside the state line, it seems that adverse possession up to a long established and accepted boundary may be available in that circumstance to cure this defect and vest title in the current occupant of the property. See, *Maryland v. West Virginia*, 217 U.S. at 42-43.

The Court also indicated that the outcome in *Coffee v. Groover* would have been different if Georgia had ceded the territory to Florida, rather than merely correcting the boundary line in a boundary line agreement.

Grants made by the former government, being rightful when made, are not usually disturbed. ...[A] mere cession of territory only operates on the sovereignty and jurisdiction,

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including the right to the public domain, and not upon the private property of individuals which had been segregated from the public domain before the cession.

123 U.S. at 9-10. Under this rule, proper grants made by North Carolina to the lands which later became Tennessee would remain valid, since North Carolina ceded the western part of its territory to the United States in the Cession Act of 1789, out of which Tennessee was subsequently formed. See, *North Carolina v. Tennessee*, 235 U.S. 1 (1914).

In conclusion, in most circumstances the official survey of the state line should not upset settled private property rights, where it differs from a deed description or private survey plat.

Question #2:

Does the official survey of a county boundary line pursuant to Chapter 153A-18 of the NC General Statutes affect private land titles when the official survey of the county boundary line differs from the location of the county boundary line in a deed description or private survey plat?

Answer:

No. A rule similar to that discussed above applies to county boundaries. The location of county lines is a political question, and it is within the power of the General Assembly to fix and declare the location of such boundaries. *Norfolk So. Railway Co. v. Washington Co.*, 154 N.C. 333, 70 S.E. 634 (1911).

The North Carolina Supreme Court addressed the issue you raise in the case of *Dugger v. McKesson*, 100 N.C. 1, 6 S.E. 746 (1888). In that case, a grant issued in 1796 contained the following course and distance: "north 24 [degrees] east 3,098 poles by the Washington County line to a white oak." The parties disputed the location of this line. The Court held that the proper boundary was the location of the county line as it existed when the grant was made and upheld the following instruction to the jury by the trial judge:

One call is for the line of Washington County; this line of the grant must go to the Washington County line, if it can be found--the line of Washington County as it was in 1796--and whether it had been surveyed or not at the date of this grant makes no

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difference, if it was afterwards run in accordance with an act theretofore passed, ascertaining where the Washington County line was. ...

100 N.C. at 14.

As early as 1830, our Supreme Court indicated that an incorrect description of the county in which the land lies does not invalidate a deed between private parties. *Lunsford v. Boston*, 16 N.C. 183 (1830). Later cases and legislative action determined that title to property is also not affected when the General Assembly creates a new county out of an existing one. For example, in *McMillan v. Gambill*, 106 N.C. 359, 11 S.E. 273 (1890), an entry of land was made in Wilkes County in 1798 and duly surveyed. Ashe County was formed in 1800, and embraced the lands which had been surveyed according to that entry. The Court held that a grant issued for those lands in 1801 was not void. The same result obtained in *Wyman v. Taylor*, 124 N.C. 426, 32 S.E. 740 (1899). See, N.C.G.S. § 146-47. Similarly, N.C.G.S. § 146-48 recognized that many people making entries near county lines did not have accurate knowledge of where the lines were located, and validated entries made in the wrong county.

In conclusion, the official survey of the county line should not alter settled private property rights, where it differs from a deed description or private survey plat. Nothing else appearing, the county line in effect at the time of the deed should control as to the boundary of private property.

I hope this information is helpful. Please do not hesitate to call me if you have any additional questions.

cc: Dan Oakley

Grayson Kelley

Jim Gulick

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