



Writer's Extension: 2404  
Writer's Facsimile: 828-257-2767  
Writer's E-mail: [cjustus@vwlawfirm.com](mailto:cjustus@vwlawfirm.com)

October 8, 2020

**Electronically filed with RRC Staff**

Rules Review Commission  
Office of Administrative Hearings  
6714 Mail Service Center (mailing)  
Raleigh, NC 27699-6714  
[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)  
[amber.may@oah.nc.gov](mailto:amber.may@oah.nc.gov) (Amber May, Counsel for RRC)

**RE: Written Comments to North Carolina Department of  
Transportation's Proposed Permanent Rules Implementing HB 74**

To Whom It May Concern:

I am General Counsel for and represent the North Carolina Outdoor Advertising Association ("NCOAA"), which organization consists of a large percentage of the outdoor advertising or billboard companies that will be regulated by the permanent rules proposed by the North Carolina Department of Transportation ("DOT"). Thank you for this opportunity to submit comments. My client and I strongly believe that several of the proposed rules, as more fully explained below, are not "within the authority delegated to the agency by the General Assembly," which is one of the criteria for consideration by the North Carolina Rules Review Commission in G.S. §150B-21.9(a). Additionally, several of the proposed rules are not "reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency" or are not "clear and unambiguous." Moreover, due to substantial changes made to the originally published text of the rules after public comment, and other errors in process, the proposed rules were not "adopted in accordance with the required procedure of Part 2" for permanent rule-making.

I have attached hereto as Exhibit "A" and Exhibit "B" NCOAA comments that I and Thomas Bugbee, NCOAA's Executive Director, provided to the DOT during the public comment process of the permanent rule-making, which I incorporate herein by reference. My comments attached as Exhibit "A" outlined in great detail the inherent legal defects and ambiguities in the DOT's proposed rules. Before I summarize our complaint and why the Commission should object to DOT's proposed rules for noncompliance with the standards in G.S. §150B-21.9(a), it is important to understand context for the regulatory environment surrounding outdoor advertising

before and after the adoption of the regulatory reform bill at issue – House Bill 74-in 2013.

### **BILLBOARD REGULATON PRIOR TO HB 74**

The DOT regulates the erection and maintenance of outdoor advertising, including off-premise signs or billboards, within 660 feet of the right-of-way of interstates and major highways in this State. G.S. §136-129, G.S. §136-130. One impetus to State regulation is the need to comply with the federal Highway Beautification Act (“HBA”), 23 U.S.C. §131. In order to not jeopardize federal funding for highways, each state must develop and implement federal-state agreements detailing, among other things, size, lighting and spacing standards for billboards. *See Scenic America, Inc. v. United States Department of Transportation*, 836 F.3d 42, 45-46 (U.S. Ct. App., D.C. Cir. 2016).

Effective July 17, 1972, North Carolina adopted the Outdoor Advertising Control Act, G.S. §136-126 *et seq.* (“OACA”), in order to control the erection and maintenance of outdoor advertising signs along its major highways. *See Bracey Advertising Company, Inc. v. North Carolina Department of Transportation*, 35 N.C. App. 226, 241 S.E.2d 146 (1978). In G.S. §136-138 and G.S. §136-140, the General Assembly authorized the DOT to enter into an agreement with the U.S. Secretary of Transportation to satisfy the regulatory controls required by the HBA. Attached as Exhibit “C” is a copy of North Carolina’s federal-state agreement for outdoor advertising, which establishes the standards for size, spacing and lighting of signs that this State must follow to avoid jeopardizing federal funding (“FSA Standards”). The DOT has essentially promulgated these FSA Standards into the administrative code at 19A NCAC 2E .0203.

To be an eligible location for the establishment of a new billboard, the property must be either zoned commercial or industrial or be in an unzoned commercial or industrial area. G.S. §136-129(3), (4). As a result, local governments retain some authority over the establishment or erection of a billboard by their classification of commercial or industrial zones.

Many cities and counties in North Carolina where billboards were once permitted to be established, now prohibit or severely limit any new off-premise signs. In fact, most billboards are today considered in the localities where they are situated to be “nonconforming” to local zoning.

As nonconforming signs, local zoning will oftentimes prohibit structural alterations or substantial changes to the billboards, including reconstruction. *See Appalachian Poster Advertising Co. v. Zoning Board of Adjustment of the City of*

*Shelby*, 52 N.C. App. 266, 278 S.E.2d 321 (1981)(an example of this restrictive regulatory environment).

Imagine a billboard that is blown down by a hurricane or other dramatic storm event. Imagine an older wooden sign that is desired to be upgraded to a more aesthetically pleasing modern sign. Imagine a billboard that must be moved to accommodate a State or local road improvement project. These are common scenarios. In these scenarios, in order to save or enhance the location, the sign would have to be reconstructed. Many local communities have regulations that prohibit this activity. As a result, the industry has been losing its sign assets at a steady pace over the years. The latter scenario matches the set of facts in the case of *Lamar OCI South Corp. v. Stanley County Zoning Board of Adjustment*, 186 N.C. App. 44, 650 S.E.2d 37, *aff'm per curiam*, 362 N.C. 670, 669 S.E.2d 322 (2008).

The *Lamar v. Stanly County* case involved the relocation of a DOT-permitted billboard caused by a State highway widening project. Lamar moved a sign deemed nonconforming to County standards off the new State right of way. In order to save the asset and avoid a condemnation battle with the DOT over just compensation for the taking, the sign was moved within the same “site/location”, being 1/100 mile, as defined by current DOT regulations and such relocation was permitted by State law. See 19A NCAC 2E .0201(27); 19A NCAC 2E .0210.<sup>1</sup> After this happened, Stanly County claimed that since its regulations prohibited the moving of a sign nonconforming to local standards, Lamar lost its “grandfathering” protections when it relocated its billboard. More than four years of litigation ensued. Ultimately, the North Carolina Supreme Court held that Stanly County regulations, prohibiting the moving of the disputed sign in compliance with DOT regulations, were not enforceable for being in conflict with State law that permitted such activity. The *Lamar v. Stanly County* case referred to N.C. Gen. Stat. §136-131.1, which statute states that local laws cannot be used to “cause the removal” of a DOT-permitted billboard without the payment of just compensation.

Drive down any given highway in this State, and it will be obvious, that billboards take many shapes or forms of construction. There are signs with multiple wood pole supports. There are signs with multiple steel supports. There are signs with a single steel support or a monopole. There are signs with V-shape oriented faces. There are signs with back-to-back faces. There are signs with side by side faces. From the standpoint of the federal-state agreement under the HBA, signs can be upgraded so long as they continued to conform to the FSA Standards. However, because of restrictive local regulations, many billboards in this State prior to 2013 could not be modernized or upgraded through reconstruction. The wood signs could not be converted to steel; the multi-poles could not be converted to

---

<sup>1</sup> The DOT’s Proposed Rules seek to change the “site/location” definition to GPS coordinates.

monopolies. While many businesses in this State are permitted to adapt and use the most current technology, local regulations forced the billboard industry to live in the 1970s with many signs being locked into their original forms and materials.

### **AFTER ADOPTION OF HB 74 IN 2013**

HB 74 was a regulatory reform bill. I have attached pertinent sections for your convenience as Exhibit “D”. It is titled: “AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.” The clear purpose of this statute is to streamline agency rules, make them more business friendly and to eliminate rules which are “obsolete, redundant, or otherwise not needed.” (G.S. §150B-21.3A(a)(6)). We believe that included within the latter category would be rules that are either without statutory authority or rules that conflict with statutory authority.

In Section 8(b) of HB 74, the General Assembly enacted G.S. §136-131.2. It reads:

#### **§ 136-131.2 Modernization of outdoor advertising devices.**

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure.

The whole point of G.S. §136-131.2 was to preempt *local governments* in the modernization of existing billboards through “repair or reconstruction” of DOT-permitted signs. See HB 74 Legislative Staff Report, Exhibit “E” (“prohibits local governments from restricting the repair or reconstruction of outdoor advertising, without just compensation, as long as the advertising surface area is not increased.”)

Because HB 74’s enactment of G.S. §136-131.2 essentially protected billboard locations when a sign blew down, or a sign had to be moved to accommodate a highway project, or when the industry sought to modernize a location, the outcry from local governments and environmentalists was huge. WLOS reported that



“opponents of the measure said it would allow billboard companies to maintain their signs in perpetuity, even when communities wanted to cut down on outdoor advertising.” Scenic North Carolina and other environmentalist organizations lambasted the law as the “Billboards Forever” bill. *See* Scenic North Carolina press release attached as Exhibit “F”.

Since 2013, the billboard industry has communicated with the DOT on multiple occasions to ensure that DOT would not, intentionally or unintentionally, undo the policy choices of the General Assembly and interfere with the clear preemptive effect of G.S. §136-131.2. (See correspondence with DOT attached as exhibits to Exhibit “A”.)

As part of the correspondence with DOT, we pointed out, among other things, that current DOT rules which called for local approval of changes to billboards, conforming to State standards, had to be amended and stricken in keeping with G.S. §136-131.2. *See* 19A NCAC 2E .0225(b)(2) (“Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any applicable state, federal or local rules, regulations or ordinances.”)

Attached as Exhibit “G” is a written statement with attachments from Robert Sykes, President of Capital Outdoor Advertising showing an illustration of how modernization worked in the City of Salisbury in cooperation with NCDOT.

On December 4, 2019, the DOT published its Notice of Text and proposed the “Readoption without substantive changes” of various rules pertaining to the regulation of outdoor advertising (“Originally Proposed Rules”). *See* Exhibit “H”. The sole reason given for the Originally Proposed Rules was implementation of G.S. §150B-21.3A (periodic review and expiration of existing rules). These rules amended rules in place since 2000 and in many instances proposed additional substantial burdens on the industry without a clear explanation of why the changes. Ironically, HB 74 as a regulatory reform statute is clearly intended to lessen the burden on the regulated industry by eliminating rules which are redundant, obsolete, or otherwise unnecessary. The Notice of Text referred to a Fiscal Note adopted by the DOT, which is dated March 1, 2019. A copy is attached as Exhibit “I”.

In the Fiscal Note, DOT describes “modernization” of billboards recognized by the new statute, to wit: “Modernization may entail a variety of changes to the sign, such as replacing wood poles with steel ones, billboard face upgrades, changes in the number of poles, etc. . .” After analyzing estimated construction costs to the industry of upgrading or modernizing a billboard, the DOT stated that the “industry would also clearly incur some benefits from being allowed to modernize their signs. The modernization would increase the value of a sign, and therefore, the amount of

revenues collected. The response to the NCDOT survey mentioned above indicate that in some cases, depending on the firm, the location of the sign, **increased height** and visibility, the revenue could increase by as much as 100%.” (emphasis added).

The DOT goes on in the Fiscal Note to discuss the impacts of the statute on removing local government control as follows:

More signs can be repaired and reconstructed that would have been prohibited under local rules or ordinances. Many local authorities have more stringent regulations than the State regarding outdoor advertising. Before GS 136-131.2, local municipal, town, and county governments had various controls over issues with billboards being modernized.

Many types of alterations can be made to billboards through repair and reconstruction. **Any type of alteration can be made to a conforming billboard as long as the alteration adheres to the State and Federal Regulations.** Restrictions include: the square footage of the billboard cannot be increased; and the sign location cannot change. Examples of modernization include: static faces become digital; heights may be increased to the state maximum of 50’ as measured from the edge of pavement; and wood multi-pole structures become steel mono-pole structures.

A review of the above highlighted language is critical for figuring out where we should have ended up with the DOT’s rule making. The DOT regulations of outdoor advertising are required to comply with the FSA Standards, as noted above. The FSA Standards are not local standards. The State regulations also are not local standards, or at least should not be. DOT implements statutory directives at a State-wide basis without regard to the local preferences of 100 different counties and over 500 different municipalities.

It should be clear to all, and DOT even acknowledged at the time of preparing the Fiscal Note, that G.S. §136-131.2 expressly determined that local standards in zoning or other ordinances are not relevant when an existing DOT-permitted billboard was to be repaired or reconstructed. Again, the highlighted language: **“any type of alteration can be made to a conforming billboard as long as the alteration adheres to the State and Federal Regulations.”**

DOT stated in the Fiscal Note: “This rule, which is consistent with G.S. 136-131.2, prohibits local communities from being able to restrict modifications **on state conforming signs**.” (emphasis added). DOT further stated:

GS 136-131.2 addresses modernization of outdoor advertising structures. Without clarifying 19A NCAC 02E .0225, locals and industry may not understand Department expectations with modernization, which could lead to inconsistencies with regulation. This rule without modification, currently requires local approval for alterations. **While GS 136-131.2 clearly removes local approval, an unmodified 19A NCAC 02E .0225 could create unnecessary confusion.** (emphasis added).

In the Fiscal Note, the DOT endorsed the process of re-writing “19A NCAC 02E .0225 to be consistent with G.S. 136-131.2”. Unfortunately, this is not where we are. The DOT’s proposed rules before this Commission do the opposite. In multiple ways, the DOT re-inserts local government standards as a limitation on the industry’s ability to modernize its existing billboards, contrary to the clear intent of G.S. §136-131.2.

It would be a welcomed question from the Commission for a member to ask a DOT representative the following: “Where in the proposed rules do you implement G.S. §136-131.2, what section, what language?” – i.e. where does it say explicitly or implicitly that local government standards and approval are not relevant as the statute calls for?

In DOT’s explanation given for the current form of the proposed rules, DOT admits to bowing to political pressure and unabashedly refers to input from “local governing authorities and special interest groups” for DOT’s insertion in its rules of new limits to G.S. §136-131.2 that effectively gut the law, if allowed to stand, as more fully explained below. See Exhibit “J” [DOT’s explanation of changes from the Originally Proposed Rule to the latest version of 19A NCAC 2E .0225.]<sup>2</sup>

Before I summarize our specific objections, it is important to discuss the limits of DOT’s or any State agencies’ rule-making authority. An agency “may not, by its rules or order, forbid the exercise of a right expressly conferred by statute.” *State of North Carolina ex rel. Utilities Commission v. Lumbee River Electric Membership Corp.*, 275 N.C. 250, 257, 166 S.E.2d 663, 668 (1969). A corollary provision of law is that a “statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder.” *States’ Rights*

---

<sup>2</sup> Attached as Exhibit “K” is a chart compiling the identity of the givers of public comment from members of the General Assembly, local government representatives and environmentalists. It is important to note that the General Assembly commentators either voted in opposition to HB 74 or where not members of the North Carolina legislature at that time (shown by “N/A”).

*Democratic Party v. North Carolina State Board of Elections*, 229 N.C. 179, 187, 49 S.E.2d 379, 398 (1948). An agency cannot create a “liability” or “duty” where the statutory law creates none. *Motzinger v. Perryman*, 218 N.C. 15, 20-21, 9 S.E.2d 511, 514-515 (1940). Agency rules in conflict with state statutes are beyond agency authority and invalid. *Charlotte-Mecklenburg Hosp. Authority v. North Carolina Industrial Commission*, 336 N.C. 200, 223, 443 S.E.2d 716, 730 (1994); *In re North Carolina Fire Ins. Rating Bureau*, 275 N.C. 15, 34, 165 S.E.2d 207, 220 (1969); *State of North Carolina v. Whittle Communications*, 328 N.C. 456, 466, 402 S.E.2d 556, 562 (1991).

### **SUMMARY OF OBJECTIONS**

#### **A. PROPOSED 19A NCAC 02E .0225 CONFLICTS WITH THE STATE STATUTE IT PURPORTS TO IMPLEMENT, CREATES AMBIGUITIES THAT WILL MAKE IMPLEMENTATION PRACTICALLY IMPOSSIBLE, AND IS NOT REASONABLY NECESSARY TO IMPLEMENT A STATE OR FEDERAL STATUTE OR FEDERAL REGULATION.**

1. Subsection (a)(2) of proposed 19A NCAC 02E .0225 reads:

Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any applicable state, federal **or local rules, regulations, or ordinances**. (emphasis added).

Local rules, regulations or ordinance are still considered in this version relevant to the act of reconstruction despite the clear statutory directives in G.S. §136-131.2. Because the DOT does not possess authority to adopt a rule in conflict with the statute, this rule violates G.S. §150B-21.9(a)(1).

2. Subsection (a)(3) of proposed 19A NCAC 02E .0225 reads:

Conforming sign structures may be reconstructed by changing an existing multi-pole structure to a monopole structure so long as the square footage of the advertising surface is not increased.

Here, by limiting “reconstruction” to one example, the DOT conflicts with the plain meaning of G.S. §136-131.2 and thus the proposed rule violates G.S. §150B-21.9(a)(1). In its earlier Fiscal Note, the DOT acknowledges a litany of possible modernization examples. The proposed rule does not acknowledge the common occurrences where materials are changed – wood to steel; changes happen in form or shape; changes in height, etc. Moreover, subsection (a)(3) even appears to conflict with subsection (a)(2) in the instances where local governments reject going to a monopole structure.

The term “reconstruction” is not vague and does not invite DOT to roam afield in limiting its application. *State ex rel. Utilities Commission v. Edmisten*, 291 N.C. 451, 465, 232 S.E.2d 184, 192 (1977)(“When a statute is clear and unambiguous, it must be given effect and its clear meaning may not be evaded by administrative body or court under the guise of construction.”).

According to standard dictionary definitions, “reconstruction” simply means “to construct again”. Merriam-Webster’s On-line Dictionary; *See Mildrex Technologies, Inc. v. N.C. Department of Revenue*, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016)(in determining the plain meaning of undefined terms, standard, nonlegal dictionaries are to be used as a guide); *See also Appalachian Outdoor Advertising Co., Inc. v. Town of Boone Board of Adjustment*, 128 N.C. App. 137, 141, 493 S.E.2d 789, 792 (1997)(defining “reconstruct” in the context of a zoning ordinance prohibiting such action). “Construct” means “to make or form by combining or arranging parts or elements.” Merriam-Webster’s On-line Dictionary.

The regulated thing in this case is an “outdoor advertising” sign. G.S. §136-128(3). An outdoor advertising sign comes in a variety of structural forms. To reconstruct an outdoor advertising sign, to start over with its construction, does not mean to replace with exactly what you saw before. Faced with a scenario of removal and starting over, an outdoor advertising sign owner would ask: “how should I build this sign in today’s business and regulatory climates”? G.S. §136-131.2 instructs a person that local standards are preempted. That being the case, the next question that would follow would be: “What are the State standards?” The answer, of course, is found in 19A NCAC 2E .0203, which address sign size, spacing, height and lighting requirements. These State standards are established to meet the FSA Standards.

The only caveat in the HB 74 legislation is that the “square footage of the advertising surface” cannot be increased. That is the only limit to repair or reconstruction. The DOT’s proposed rules improperly add limitations that do not exist in the statute. For example, the proposed rules, as written, would limit a multi-wood pole sign from being reconstructed as a multi-steel pole sign (especially without local approval).

If an outdoor advertising sign owner was precluded from changing the characteristics of a sign by the opposition’s limited view of the term “reconstruction”, what would be the point of the caveat or exception dealing with not increasing square footage, which is a characteristic of a sign? Would not the General Assembly have also mentioned other characteristics such as increased height or altered setbacks?

The well-established rule of statutory construction is that mentioning a specific exception implies the exclusion of others. *Morrison v. Sears, Roebuck & Co.*, 319 N.C. 298, 303, 354 S.E.2d 495, 498-499 (1987)(espousing the doctrine of *expressio unius est exclusion alterius*); *Granville Farms, Inc. v. County of Granville*, 170 N.C. App. 109, 114, 612 S.E.2d 156, 160 (2005). Notably, there are no additional exceptions in the statute related to height, setback, etc. Certainly, local standards are expressly preempted.

The DOT's narrow reading here is driven by the interest groups that the General Assembly respectfully disagreed with in 2013. DOT undoubtedly reads the last sentence of G.S. §136-131.2 as limiting the scope of reconstruction, to wit: "As used in this section, reconstruction **includes** the changing of an existing multipole outdoor advertising structure to a new monopole." (emphasis added). As the DOT's Fiscal Note suggests, there are a myriad of ways to modernize an existing sign and the General Assembly's failure to list all the possible examples cannot be seen as a limitation.

Another well-established statutory construction principle is that the term "includes" "is ordinarily a word of enlargement and not of limitation. "The statutory definition of a thing as 'including' certain things does not necessarily place thereon a meaning limited to the inclusions." *North Carolina Turnpike Authority v. Pine Island, Inc.*, 265 N.C. 109, 120, 143 S.E.2d 319, 327 (1965); *Jackson v. Charlotte-Mecklenburg Hosp. Authority*, 238 N.C. App. 351, 356-357, 768 S.E.2d 23, 27 (2014)(the phrase "shall include" indicates an intent to enlarge the statutory definition, not limit it).

Although the statute is clear, the title of the statute "**Modernization of outdoor advertising devices**" is informative. See *Colonial Pipeline Co. v. Neill*, 296 N.C. 503, 508, 251 S.E.2d 457, 461 (1979)(title of statute). The term "modernization" means "the act of modernizing" and modernizing means "to make modern (as in taste, style, or usage)." Webster's On-line Dictionary. Modernization is a broad concept; however, DOT's proposed rules funnel the act of modernizing through one example only and overrides the clear meaning of the term "includes" as illustrative and not exhaustive.

3. In subsection (a)(4) of 19A NCAC 2E .0225, the DOT makes the striking policy choice based on recent public comment that signs cannot be upgraded to digital technology to change the advertising messages, to wit: "Conforming sign structures may not be changed from a static face to an automatic changing face". With the placement of the comma here, this is so even with local approval. The DOT lacks the authority to add sign characteristic limits that simply do not exist in the statute where the General Assembly has expressly identified the only exception, i.e. square footage of advertising surface area. This

level of regulation to limit modernization is a policy choice best left to the General Assembly. This rule, therefore, conflicts with G.S. §150B-21.9(a)(1). Additionally, the DOT has inserted local control as a condition to raising a sign's height to the allowable State standards of 50 feet, which, again, is in excess of their authority.

Most of the public comments from local governments and environmentalists dealt with their concerns that existing signs will be modernized to include digital technology. The easiest solution to the DOT's efforts to address their concerns while avoiding conflict with the statute is to adopt language that signs not conforming to State standards cannot be converted to automatic changeable copy signs. Writing it this way in the negative does not address local standards at all.<sup>3</sup> If local governments believe that they have zoning authority or other police power authority to regulate digital signs, then they should rely on their own independent authority, not something purportedly delegated to them by the DOT.

The OACA delegates regulatory authority to the DOT and no other agency - State or local. The DOT speaks for the State in implementing the directives of the General Assembly. The DOT is without authority to delegate control over the repair or reconstruction of billboards to local governments through rule making. *See Kingston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 741, 71 S.E.2d 21, 24 (1952) (regulatory agency exercises nondelegable power to "fill in the details" within the general scope and expressed purpose of the statute prescribing the standards); *Lake Isabella Development, Inc. v. Village of Lake Isabella*, 259 Mich. App. 393, 407-408, 675 N.W.2d 40, 48-49 (2003)(State Department of Environmental Quality has exclusive jurisdiction over authorizing new sewerage systems and its conditioning of a State permit on local government discretionary approval is unauthorized).

Moreover, G.S. §150B-19 states in pertinent part that an agency may not adopt a rule that does one or more of the following: "(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so." With the proposed rules, as written, the DOT implements local standards as a condition of State approval in violation of G.S. § 150B-19(1). *See County of Wake v. North Carolina Department of Environment & Natural Resources*, 155 N.C. App. 225, 250, 573 S.E.2d 572, 589 (2002)(DENR could not reject State landfill permit based on noncompliance with local requirements since enabling statute did not authorize that condition or implement that locally focused law).

The title of HB 74 is also informative: "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB

---

<sup>3</sup> This example of language style is also not directly permissive such as "conforming signs are permitted to be reconstructed to automatic changeable copy."

CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.” By inserting local control as gatekeepers in order to modernize an existing sign, the regulatory process is far from streamlined and far from eliminating unnecessary regulation.

4. In subsection (a)(5) of 19A NCAC 2E .0225, the DOT mandates written notice be given any time a “conforming sign” is “altered”. The problems with this rule change are several-fold:

- a. The term “alteration” is not defined and by its very nature is vague. Since it is a term different than “reconstruction”, it must include something else besides possibly “reconstruction”. As stated in the written statement of Michael Mielke attached hereto as Exhibit “L”, and applying common sense, examples of “altering” a sign are limitless, and can include innocuous acts of repair and maintenance and changing components of structure form. In subsection (c) of 19A NCAC 2E .0225, “repair” appears to be an exception to prohibited alterations, but it is not clear whether acts of repair would be allowed alterations that still require DOT notification and the proposed fee.<sup>4</sup> Due to its vagueness, this rule does not comply with G.S. §150B-21.9(a)(2).
- b. G.S. §150B-21.2(a) compels an agency to comply with the requirements of G.S. §150B-19.1 before adopting a permanent rule. They include:
  - An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. (150B-19.1(a)(2)). In light of the historical course of conduct, where no permit or notification was required to alter a billboard, the DOT has significantly added to the regulatory burdens.
  - Rules shall be designed to achieve the regulatory objectives in a cost-effective and timely manner. (150B-19.1(a)(6)). In its Fiscal Note, the DOT analyzed the benefits that would accrue to the industry offset by proposed new permitting fees. This is before the DOT accepted public comment and changed the Originally Proposed Rules to add local control that would effectively nullify the benefits of the statute. The Fiscal Note no longer hits the target.

---

<sup>4</sup> For decades, the DOT has not required any notice prior to any sign alteration; no permit; no fee. See Correspondence to DOT included as part of Exhibit “A”.



- c. In its explanation for making changes to the Originally Proposed Rules (Exhibit “J”), the DOT appeared to accept some notification process rather than a new permitting process whenever a sign was “reconstructed” (albeit now expanded to include all “alterations”). However, the proposed rule references the “issuance” of an alteration permit addendum, which seems to suggest that DOT permission is required for any “alteration”. Due to its vagueness, this rule does not comply with G.S. §150B-21.9(a)(2).
- d. The proposed fee for the alteration permit addendum does not appear to be authorized by statute. See G.S. §150B-19(5)(a statute must specifically authorize the charging of a fee); G.S. §12-3.1(a) (Only the General Assembly has the power to authorize an agency to establish or increase a fee for the rendering of a service to the public). G.S. §136-133 speaks to the initial fee for erecting a sign and an annual renewal fee. Even if G.S. §136-133 somehow applied, when added to the DOT’s fees for initially erecting a sign and its renewal permit, the DOT exceeds the cap on fees in G.S. §136-133 (cap is \$120 for initial fee and \$60 fee for renewal).

5. Subsection (c) of 19A NCAC 02E .0225 states that “**nonconforming signs** shall not be altered or reconstructed.” The problem with this rule is that the DOT failed to incorporate the clear message in G.S. §136-131.2 that local standards cannot be applied to regulate the outcome of repairs or reconstruction. The DOT acknowledges in its Fiscal Note that signs not conforming to State standards cannot be reconstructed, which the industry abides by. However, rather than clarifying this point in the rules, DOT uses the phrase “nonconforming signs” in such a way that billboards deemed nonconforming by local ordinances only are not allowed to be altered or reconstructed either. As stated earlier, most of the existing billboards in North Carolina are nonconforming under local ordinances. It would effectively gut the reconstruction preemption rights in G.S. §136-131.2 – i.e. a sign owner does not have to comply with local standards – by the DOT’s back dooring of local standards into the meaning of “nonconforming signs”.<sup>5</sup>

---

<sup>5</sup> Federal regulations implementing the HBA address “nonconforming signs” but only in relation to State law or standards and not local law or standards. 23 CFR 750.707(b); 23 CFR 705.703(j)(“State law means a State constitutional provision or statute, or an ordinance, rule or regulation, enacted or adopted by a State.”). In the OACA, the General Assembly currently defines “State law” to include the State and its political subdivisions. G.S. §136-128(6). However, the term “State law” is applied in only 2 other areas of the statute – in the definition of “nonconforming signs” and in the local authority to zone property commercial or industrial. G.S. §136-128(2a) and §136-129(4). The statutory term “nonconforming sign” is also used in only 2 places – in the requirement of just compensation in G.S. §136-131 and as a fee-in-lieu option remedy for vegetation removal in G.S. §136-

In summary, the proposed rules in 19A NCAC 2E .0225 do not satisfy G.S. §150B-21.9(a)(1), (a)(2) or (a)(3).

**B. PROPOSED 19A NCAC 2E .0204 IS CONTRARY TO STATE LAW, IS UNDULY VAGUE AND IS NOT REASONABLY NECESSARY TO IMPLEMENT A STATE OR FEDERAL STATUTE OR FEDERAL REGULATION.**

G.S. §136-131.1 and G.S. §136-131.2 preempt local control over any regulatory action that would cause the removal of an existing billboard that is conforming to State standards and all local efforts of regulation of the repair and reconstruction of outdoor advertising signs. G.S. §136-130 delegates only to the DOT authority to regulate the erection and maintenance of billboards. This proposed rule, allowing the DOT Chief Engineer the discretion to accept local standards in lieu of State standards, cites to G.S. §136-130 and no authority can be found there to purportedly allow an employee or officer of DOT to unilaterally delegate regulatory authority to a requesting local government unit. Moreover, there is no state or federal statute creating the impetus for this rule. G.S. §150B-19(1) is also triggered by the DOT implementing or interpreting local law without specific statutory authorization to do so.

This proposed rule is unclear and ambiguous for it assigns no standards for the exercise of judgment for establishing local “effective control”, and fails to account for how a local government could ever exercise effective control when G.S. §§136-131.1 and 136-131.2 limit or preclude the exercise of their typical regulatory authority.

In summary, proposed 19A NCAC 2E .0204 does not satisfy G.S. §150B-21.9(a)(1), (a)(2) or (a)(3).

**C. PROPOSED 19A NCAC 2E .0206(a)(5) IS CONTRARY TO STATE LAW AND IS NOT REASONABLY NECESSARY TO IMPLEMENT A STATE OR FEDERAL STATUTE OR FEDERAL REGULATION.**

In proposed 19A NCAC 2E .0206(a)(5), the DOT conditions the issuance of a State outdoor advertising permit on local approval (e.g. sign or zoning permit).

---

133.1(d). The DOT has been aware of the need to clarify its use of terms for more than five (5) years. If the locals cannot directly regulate the repair or reconstruction of a billboard, how then can the DOT indirectly allow them to control this through regulation? The answer is the DOT lacks the authority to alter G.S. 136-131.2 which preempts local government ordinances with one exception as to the square footage of a sign.

Local government authority must exist independently of the DOT's exercise of authority, and the DOT cannot implement or carry out local rules in the absence of a statutory directive. G.S. §150B-19(1). The DOT lacks the authority to condition its exercise of delegated authority on the discretion of any other agency – State or local; therefore, G.S. §150B-21.9(a)(1) or (a)(3) support the Commission's objection.

**D. PROPOSED 19A NCAC 2E .0207 ESTABLISHING A NEW FEE FOR ALTERATION ADDENDUMS IS CONTRARY TO THE STATUTORY LIMITATIONS ON THE IMPOSITION OF A FEE.**

Subsection (a) of 19A NCAC 2E .0207 adds a fee for “each alteration permit addendum”. In addition to the vagueness of what act triggers the need for an “alteration permit addendum” as mentioned above on page 11, there is no statutory authority for a new regulatory fee in this instance as stated on page 12.

HB 74 mentions no fee. Ironically, HB 74 was by its clear intent to lessen regulatory burdens. Here, we have a proposed fee every time a sign is “altered” even though alterations of signs have occurred since the beginning of the State's OACA in 1972 and no fee has been needed or required since then for any such activities, as stated repeatedly in this letter, nor has the DOT even required its involvement or pre-knowledge anytime an existing sign is repaired, reconstructed or otherwise “altered”.

In summary, proposed 19A NCAC 2E .0207's new fee does not satisfy G.S. §150B-21.9(a)(1), (a)(2) or (a)(3).

**E. PROPOSED 19A NCAC 2E .0201 CONTAINS SEVERAL AMBIGUITIES AND ADOPTS A DEFINITION FOR SIGN LOCATION THAT CONFLICTS WITH THE OACA.**

1. The proposed definition of “Abandoned Sign” in subsection (1) of Section .0201 is vague.

The current definition of “Abandoned Sign” that has been in place since at least 2000 puts the qualifying phrase “for a period of 12 months” at the beginning of a list of acts or omissions (e.g. a sign without a message; a sign that contains obsolete advertising matter or a sign that is significantly damaged). The proposed rule moves this qualifying phrase to the end after “or is significantly damaged”. According to the doctrine of last antecedent, the 12-month period would only apply to the immediately preceding words and not to the other clauses - a sign without a message or containing obsolete content. Therefore, a sign without a message for merely a second would instantaneously be considered “abandoned” under the newly

proposed rule. This vague definition, as written, does not satisfy G.S. §150B-21.9(a)(2).

2. The proposed definition of “Conforming Sign” in subsection (5) is vague and lacks statutory authority.

The proposed definition of Conforming Sign refers to G.S. §136-11, which has been repealed. Moreover, as stated above in Objection Section C, the proposed rules require a local sign or zoning permit to issue a State permit for the erection of a new sign. Legally, a “Conforming Sign” should be one that is lawfully erected and that continues to meet the State standards for erection of a new sign.

3. The proposed definition of “Nonconforming Sign” in subsection (16) is vague. As mentioned above in 2., the proposed rule states that nonconformity is judged by not meeting “all current standards for erecting a new sign at the site”, which appears to incorporate local standards as stated in Objection Section C. Legally, a “Nonconforming Sign” should be one that was lawfully erected and that fails to meet the State standards for erection of a new sign.

4. The proposed definition of “Sign Location” in subsection (26) conflicts with State law and is otherwise vague.

Since 2000 at least, the definition of “sign location/site” in the DOT rules encompasses an area measured by the “closest 1/100<sup>th</sup> of a mile.” 19A NCAC 2E .0201(27). DOT has applied this standard to create a box – 26 feet in either direction of the sign and within 660 feet of the State right of way. At regular intervals, outdoor advertising signs are displaced as a result of State highway projects. In the past, the above definition allowed billboards to be moved on the same site and within the “DOT-permitted box” without regard to local standards. This reality can be seen in the facts of the above-mentioned *Lamar v. Stanly County* case.

The proposed definition change is to set sign location by latitude and longitude as determined by recreational grade global position system (GPS) equipment. In the proposed rules, as written, any time a sign is moved for a myriad of reasons (e.g. at landowner’s request; to accommodate a State or local highway project; to reconstruct) whether it conforms to State standards or not, a **new DOT permit** will have to be obtained, and currently as stated above in Objection Section C, an act that will trigger the need for local permission.

Because signs that are reconstructed are not put back into the exact same foundation hole, signs will physically move with any reconstruction. See Exhibit “L” Letter from Michael Mielke. This location change, together with the DOT rule

mandating a local permit with any new State permit, eviscerates the right of reconstruction without regard to local standards in G.S. §136-131.1 or G.S. §136-131.2 by making it effectively impossible to take advantage of either statute.

The explanation for this rule change has been some vague reference to what federal administrators desire or require. (See Exhibit “J”). G.S. §150B-19.1(c)(3) and (g) clearly state that if a State agency is proposing a rule “required by or necessary for compliance with federal law” the agency must prepare a certification following the substantive standards of subsection (g) and post same no later than the publication date of the notice of text. This was not done.<sup>6</sup>

As explained by Ernie Drake, a North Carolina licensed surveyor, in his written statement attached as Exhibit “M”, a “recreational grade” GPS equipment is grossly unreliable and creates ambiguity in the measuring. If the DOT intended to lock in a sign to the exact geographical positioning on this Earth, the use of recreational grade GPS standards will not accomplish this. If the DOT did intend to so lock in a sign, then “reconstruction” becomes a nullity if new permitting is required that uses local approval as a condition.

Bear in mind that most of my client’s billboards are conforming to State standards set forth in 19A NCAC 2E .0203 implementing the federal-state agreement for North Carolina. The federal highway administrators are not concerned with the moving of signs that conform to FSA Standards.

In summary, proposed 19A NCAC 2E .0201 does not satisfy G.S. §150B-21.9(a)(1), (a)(2) or (a)(3).

## **F. DOT FAILED TO COMPLY WITH THE PROCEDURES FOR PERMANENT RULE MAKING.**

After publishing the Originally Proposed Rules, DOT made substantial changes based on the input of local governments and environmentalists to add local approval into proposed 19A NCAC 2E .0225 for reconstruction of billboards and prohibiting billboards using digital technology regardless of local government permission. In the Fiscal Note, the DOT stated this about digital technology: “NCDOT considered excluding digital faces as part of modernization. NCDOT chose not to make this exclusion since the state already allows digital billboards and that industry should be allowed to accommodate for technology enhancements.” With

---

<sup>6</sup> The FSA Standards do not restrict the moving or relocation of a sign conforming to the FSA Standards or otherwise in conformity with State standards.

the current version of the proposed rules, the DOT has done a 180-degree flip to ban the use of digital. This was clearly not anticipated and is an overreach.

These changes to the Originally Proposed Rules require the DOT to jump over different procedures as set forth in G.S. §150B-21.2(g). That has not happened.

Moreover, G.S. §150B-19.1 is incorporated into G.S. §150B-21.2(a), and for the reasons stated in Objection Section A 4 on page 11, the DOT did not comply with §150B-19.1.

Finally, G.S. §150B-21.4 and G.S. §150B-21.2(a)(2) require a fiscal analysis whenever a proposed rule would trigger the expenditure or distribution of funds subject to the State Budget Act. As noted above, if the billboard owner, when facing a State highway project, is precluded from moving a sign back off a new right-of-way because DOT has set up in the proposed rules local approval as a pre-condition to the move, then more and more signs will have to be condemned rather than relocated on the same site, which is currently available as a possible option. This will clearly trigger the expenditure of a greater amount of State funds in condemnation battles and DOT has performed no fiscal analysis or note on this likely consequence. The above statutes also require a fiscal note when there is substantial economic impact on the regulated industry. The existing Fiscal Note does not address the lost opportunity costs of having modernization restricted as proposed by DOT, including the prohibition on digital technology upgrades. The existing Fiscal Note discusses the benefits of modernization as contemplated by the statute – BUT not the benefits to or impacts on the industry for the DOT restricting modernization in the ways discussed above in its current version of the proposed rules. See G.S. §150B-21.4(b2)(3)(a) (a fiscal note must contain “a description of the purpose and benefits of the proposed rule change”).

Essentially, the DOT’s existing Fiscal Note paints a rosy picture for the billboard industry based on a number of assumptions of the benefits of implementing G.S. § 136-131.2 back in March of 2019 (with an older draft of the rules) that now no longer exist due to DOT carrying out the wishes and goals of the very same special interest groups which the Legislature ultimately did not champion in 2013. With regulatory reform, the 2013 Legislature made policy choices in favor of businesses – the outdoor advertising industry, its small business advertisers and the viewing consumers and other people who benefit from the information communicated. The DOT has plainly exceeded its authority in trying to undo the rights inherent in the statute.

The DOT’s 2019 Fiscal Note fails to address the substantial changes to the regulated outdoor advertising industry. It is based on the benefits of the statute with an older draft set of rules from 2019 in mind, rather than the impacts on the

industry from the currently proposed rules. As a result, we respectfully request the Commission to ask the Office of State Budget and Management for a determination pursuant to G.S. §150B-21.9(a) of fiscal note compliance.

### **CONCLUSION**

Based on the above, and the administrative record, the undersigned respectfully requests that the Commission object to the above identified DOT proposed rules.

Thank you for your consideration of this very important topic. We look forward to answering any questions that you may have at the hearing scheduled for next week.

Sincerely,

**VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.**

*Craig D. Justus*

(Electronically Signed)

Craig D. Justus

CDJ/ca

Enclosures

cc: Client

Helen Landi – via email

# Exhibit A





February 17, 2020

**Via email and mail**

North Carolina Department of Transportation  
c/o Helen Landi  
NCDOT APA Coordinator  
1501 Mail Service Center  
Raleigh, NC 27699-1501  
[hlandi@ncdot.gov](mailto:hlandi@ncdot.gov)

**Re: Proposed DOT Rulemaking (2020) – Public Comment**

To Whom It May Concern:

I am the General Counsel for and represent the North Carolina Outdoor Advertising Association (hereinafter “NCOAA”). The NCOAA is the industry association for outdoor advertising businesses in the State of North Carolina. Our membership comprises more than 90% of outdoor advertising owners and operators in this State. The purpose of this letter is to set out in writing several comments to the North Carolina Department of Transportation (hereinafter “DOT”)’s proposed rules, as described in the fiscal note, as being related to the “Regulatory Reform Act, Specifically the Section on Outdoor Advertising (ODA) Modernization of outdoor advertising devices” (House Bill 74)(hereinafter “2020 Proposed Rules”). Thank you for this opportunity to comment.

Before I describe the troubling consequences of the 2020 Proposed Rules, it is important to denote the purposes of HB 74 by examining its title. It is called: “AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.” The purpose of this statute is to streamline agency rules, make them more business friendly and to eliminate rules which are “obsolete, redundant, or otherwise not needed.” (G.S. §150B-21.3A(a)(6)). We believe that included within the latter category would be rules that are either without statutory authority or rules that conflict with statutory authority.

In a nutshell, the 2020 Proposed Rules accomplish the opposite effect of the clear purpose behind HB 74. In several instances, they substantially add to the regulatory processes applicable to outdoor advertising, negatively alter the financial and operational burdens on the regulated industry, and dramatically increase the costs to both the regulatees and the State if left to deal with the consequences of the sweeping rule changes. Moreover, the 2020 Proposed Rules directly subvert the goals of the modernization provisions of HB 74 and plainly conflict with those statutory changes, as hereinafter explained.

We understand that DOT has given two reasons for the 2020 Proposed Rules: (1) to “Comply with Session Law” dealing with modernization of outdoor advertising devices (G.S. §136-131.2); and (2) The effect of G.S. §150B-21.3A and its requirement for the agency to periodically review its rules and readopt “necessary rules” no later than August 31, 2020.<sup>1</sup>

It is important to understand what the statutory change related to modernization did and conversely what it did not.

G.S. §136-131.2 (HB 74, Sec. 8(b)) provides:

**§ 136-131.2 Modernization of outdoor advertising devices.**

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure.

The whole point of G.S. §136-131.2 was to preempt *local governments* in the “repair or reconstruction” of existing DOT-permitted signs. It did not change DOT’s role in any way. It was meant to streamline the process as indicated in the title of HB 74; to eliminate one governmental player from the regulatory landscape. This statute was not an invitation for the DOT to materially increase the regulatory burdens placed on the industry, which, unfortunately, the 2020 Proposed Rules, if adopted, would do. In fact, as currently constituted, the 2020 Proposed Rules conflict with this preemptive goal by placing local governments squarely into the

---

<sup>1</sup> As extended via a letter from the North Carolina Rules Review Commission dated April 19, 2019 per its authority in G.S. §150B-21.3A(d).

decision-making rubric when most of the billboards are to be repaired or reconstructed.

As for second reason given for the 2020 Proposed Rules, rather than eliminating rules as a result of the mandated goal to implement regulatory reform, the DOT has instead added unnecessary rules – those that are “obsolete, redundant, or otherwise not needed.”

According to DOT’s website, the 2020 Proposed Rules are deemed “necessary without substantive changes” and recommended for re-adoption. Based on the primary goal of regulatory reform in HB 74, a “substantive change” surely is one which materially increases the regulatory burdens placed on the regulated industry. In several instances, the 2020 Proposed Rules amend the current regulations in substantive ways harmful to the outdoor advertising industry.

Here are our initial public comments<sup>2</sup>:

**1. THE 2020 PROPOSED RULES CONFLICT WITH THE MODERNIZATION STATUTE OR ARE OTHERWISE IN EXCESS OF STATUTORY AUTHORITY.**

Clearly, the objective of G.S. §136-131.2 as enacted by HB 74 was to preempt local regulation in the field of repair or reconstruction of existing DOT-permitted outdoor advertising signs. This statute follows the preemption holding established by the North Carolina case of *Lamar v. Stanley County*, 186 N.C. App. 44 (N.C. Ct. App. 2007), *affirmed per curiam*, 362 N.C. 670 (N.C. Supr. Ct. 2008), where it was determined that local governments could not prohibit the relocation of DOT-permitted signs within the same “sign location/site” as defined in the DOT rules.

The 2020 Proposed Rules conflict with HB 74 and particularly G.S. §136-131.2 by:

- a. Requiring a new DOT permit (19A NCAC 02E .0225(b)(2)) anytime an existing billboard is “altered”. The act of altering billboards by increasing height, converting to steel from wood, or reconstructing to a monopole from multiple poles is not new. Like any structure, repairs and improvements are occasionally done for a myriad of reasons, including promoting attractiveness and insuring safety. Since the regulation of billboards in the early 1970s, there has never been the

---

<sup>2</sup> The NCOAA reserves the right to introduce additional comments as the 2020 Proposed Rules proceed through the rule-making process.

requirement to obtain a DOT permit and pay a fee every time the components of an existing billboard are changed. This is so regardless of whether a sign being altered conforms to DOT standards or local standards.<sup>3</sup> After four decades, the 2020 Proposed Rules change this. Why now? Nothing in HB 74 or G.S. §136-131.2 suggests that the DOT should add to the regulatory burden, especially where history shows that a new “alteration” permit has never been necessary to meet the public interest. The regulatory reform statutes are a signal to DOT to streamline and reduce burdens, not add to them. G.S. §136-131.2 focuses on mitigating local control; there is no indication that the General Assembly authorized a whole new permitting scheme from DOT.

- b. Sec. .0225(b)(2) of the 2020 Proposed Rules refers to an OA-1A form for a new alteration permit. There is no rule implementing the particulars of that form. What are the standards to apply in order to receive permission to alter a sign? The 2020 Proposed Rules are ambiguous. Section .0206 deals with the erection of a new billboard, which states that a local permit is to be included as part of an OA-1 application for a State permit. That application requires a local zoning permit to be attached, which effectively brings local decision makers into play. It is not clear what DOT requires for the OA-1A form. If local approval is required, then it would expressly conflict with G.S. §136-131.2.
- c. The North Carolina Outdoor Advertising Control Act, G.S. §136-126 *et seq.* (hereinafter “OACA”), expressly authorizes DOT to require a permit for the erection and subsequent maintenance of a sign.<sup>4</sup> See G.S. §§136-130, 136-133. There is no statutory authority for a permit anytime an existing sign is “altered”. The term “erect” in the OACA means “to construct, build, raise, assemble . . . or in any other way bring into being or establish.” G.S. §136-128(1). Altering a sign that is

---

<sup>3</sup> Signs not conforming to DOT standards must abide by the 50% rule when repaired. See 19A NCAC .02E. .0225(f). The sign owner may request a “review” by DOT; however, even this notification is not mandatory. No permit was ever required in that process.

<sup>4</sup> Unlike modernization, the act of “maintenance” means “to hold or keep in an existing state or condition.” *Friends of Hatteras Island Nat. Historic Maritime Forest*, 117 N.C. App. 556, 570, 452 S.E.2d 337, 346 (1995)(citing Black’s Law Dictionary 859 (5<sup>th</sup> ed. 1979)). The OACA also authorizes the DOT to request a permit if a State-controlled route is added to an area where an existing billboard is being maintained.

already existing would not qualify under that definition. Moreover, the term “alteration” is not defined. Would changing out one pole or swapping out face panels be an “alteration” necessitating a new permit and fee?

- d. G.S. §150B-19(5) prohibits an agency from establishing a new fee without statutory authority. There is no such authority for the new alteration permit fee. See G.S. §136-133 (setting forth fees for the initial permit and annual renewal).
- e. In several instances, the 2020 Proposed Rules employ the term “nonconforming” (19A NCAC 2E .0201(16)) in such a way as to effectively eliminate the repair or reconstruction of a billboard as authorized by G.S. §136-131.2, whenever local rules prohibit same even if the sign complies with DOT standards. See 19A NCAC .02E .0210(8), .0225(b). “Nonconforming” signs, as defined, would include those signs not meeting local standards. See G.S. 136-28(2a), (6). The whole point of that section was to preempt local rules because most billboards in this State have been rendered nonconforming to local standards. To promote jobs and allow for signs to be modernized, the General Assembly made the policy choice to allow those signs to be repaired or upgraded despite local regulations. The 2020 Proposed Rules, as constituted, deny outdoor advertisers the exercise of the rights given by HB 74.

Over the years, NCOAA, by and through counsel, has communicated with DOT regarding the consequences of rule-making that would eliminate the fruits of G.S. §136-131.2 or that would add to the industry’s burden by implementing a new permitting scheme for sign “alterations”, which is not needed. The proof is in the history of never needing a permit for “alterations”. Why is one now needed? Examples of communications are attached as Exhibits “1-5”.<sup>5</sup> In light of these communications going back to 2013 warning of the very problems exhibited by the 2020 Proposed Rules, why does DOT continue to stay the course?

As the above communications going back to 2013 show, we have heard the argument from DOT that the State statute’s definitions of “nonconforming” and “State law” create some impetus to reject the clear preemption point of G.S. §136-131.2. It is important to understand that the term “nonconforming” in the OACA is found only in two (2) places -- G.S. §136-131 dealing with DOT removal of signs and §136-133.1(d) for compensation related to removing existing trees. This term is not used in G.S. §136-131.2. or in any OACA provision addressing permitting. As we

---

<sup>5</sup> The exhibits referenced in the Exhibit 5 letter are omitted due to redundancy.

have stated in the letters and in meetings with the DOT, new terms can be easily employed to implement modernization such as “signs not conforming to State standards”. Meaning, billboards that don’t meet the federal floor in the Highway Beautification Act and as set forth in the agreement between the State and the federal government cannot be “modernized” or substantially altered (measured, in part, by the historical 50% percent rule in Sec. .0225).

Over the years, we have also suggested a process for an addendum to the historical DOT permit, not a new permit that brings into play conflicting standards and exacts new fees.

**2. THE 2020 PROPOSED RULES CHANGING THE DEFINITION OF “SIGN LOCATION” WILL CAUSE SUBSTANTIAL FINANCIAL AND OPERATIONAL BURDENS ON THE INDUSTRY AND SUBJECT THE STATE BUDGET TO MATERIAL INCREASES IN PAYING OUT JUST COMPENSATION FOR HIGHWAY PROJECT TAKINGS.**

Since 2000 at least, the definition of “sign location/site” in the DOT rules encompasses an area measured by the “closest 1/100<sup>th</sup> of a mile.” 19A NCAC .02E.0200(27). At regular intervals, outdoor advertising signs are displaced as a result of State highway projects. In the past, the above definition allowed billboards to be moved on the same site without regard to local standards. This reality can be seen in the facts of the above-mentioned *Lamar v. Stanly County* case.

The first step that an outdoor advertiser normally takes when faced with forced removal as a result of a State highway project is to determine whether a sign can be moved within the same “sign location/site” boundaries. If so, this eliminates in most cases the need to worry about just compensation from the State. The DOT’s Secretary of Transportation has acknowledged in the past DOT’s practice to allow relocation on the same site when caused by a highway project. See Secretary Opinion attached hereto as Exhibit “6”.

The 2020 Proposed Rules seek to substantially change the definition of “sign location/site” to the exact GPS coordinates of the sign, thus eliminating any option to avoid a drawn-out fight for just compensation. Meaning, now local rules can prevent relocation on the same site. The State will be paying substantially more in right of way acquisition as a result of the stringent sign rules enacted for the aesthetic programs of local government. It is clear from the fiscal notes that neither the DOT or the Office of State Budget and Management analyzed the fiscal impacts on the regulatees and the State from this rule change. There is no explanation give for the change, which is substantive, despite the characterization to the contrary. In 2017, the North Carolina Supreme Court in the case of *DOT v. Adams Outdoor*

*Advertising* affirmed the right of owners of outdoor advertising signs to receive just compensation from governmental takings. Just compensation is based on fair market value. At times, depending on a myriad of factors such as location, fair market value in the industry may mean hundreds of thousands of dollars for one billboard. Eliminating the option to move the sign on the same site means the State will have to pay a lot more.

Currently, and for decades, a sign could be moved on the same site without the need for a new permit or the payment of new fees. Signs are sometimes moved to accommodate a landowner's development needs. Anytime a sign is reconstructed it is technically moved - not put back into the same holes containing the concrete footings. The 2020 Proposed Rules alter this without an explanation of the exigency driving the change.

**3. 19A NCAC 02E .0202 -AGREEMENT - APPEARS TO BE OBSOLETE AND UNNECESSARY.**

In Section .0202 of the 2020 Proposed Rules, the second sentence states that in the event that federal regulations are more restrictive than DOT rules related to outdoor advertising, the federal rules will be expressly incorporated by reference, and presumably enforced. This provision is not authorized by the OACA and, more specifically, G.S. §136-138, which expressly covers the subject matter of agreements with the federal government without mention of federal regulations being controlling. G.S. §150B-19(1) plainly directs the agency not to adopt a rule that "implements or interprets a law unless that law or another law specifically authorizes the agency to do so." The federal-state agreement related to the control of outdoor advertising sets the "floor" for regulations in this State. Nothing therein suggests that the Federal Highway Administrator and/or the federal DOT can change that agreement unilaterally and impose stricter standards.

**4. 19 NCAC 02E .0204 - LOCAL ZONING AUTHORITIES - APPEARS TO BE OBSOLETE AND UNNECESSARY.**

HB 74 for outdoor advertising is codified, in part, in G.S. §136-131.2 and provides that no municipality or county can "regulate or prohibit the repair or reconstruction of any outdoor advertising from which there is in effect a valid permit issued by the Department of Transportation." Obviously, the term "regulate" is very broad and would include any regulatory efforts by the local governments to impose its set of standards on a billboard's modernization. Moreover, the only statutory limitation in the new law is that the "square footage of the advertising surface" cannot be increased. The well-established rule of statutory construction is that mentioning a specific exception implies the exclusion of others.



*Morrison v. Sears, Roebuck & Co.*, 319 N.C. 298, 303, 354 S.E.2d 495, 498-499 (1987)(espousing the doctrine of *expressio unius est exclusion alterius*); *Granville Farms, Inc. v. County of Granville*, 170 N.C. App. 109, 114, 612 S.E.2d 156, 160 (2005). Notably, there are no additional exceptions in the statute addressing a sign's conformity to local standards or mentioning development restrictions related to height, setback, etc.

The clear intent of HB 74 is to streamline the regulation of existing outdoor advertising signs along the interstates and primary highways of this State. Modernization efforts are not to be measured by or judged according to local standards, except to the extent of increases in advertising square footage.

In addition to HB 74, G.S. §136-131.1 provides that a local government, in the exercise of its regulatory authority, cannot cause the removal of outdoor advertising for which there is in effect a DOT permit.

Section .0204 of the 2020 Proposed Rules states that DOT can delegate its regulatory authority to local governments. There is nothing in the OACA that suggests that local governments can be delegated through administrative action any authority to administer that statutory framework and any regulations promulgated pursuant thereto. The statute that the rule references as authority, G.S. §136-130, expressly and exclusively delegates rule making authority to the DOT only.

G.S. §150B-19(1) prohibits the DOT from adopting a rule that "implements or interprets a law unless that law or another law specifically authorizes the agency to do so." There is no statute that authorizes the DOT to insert local authority into the process of permitting decisions which are assigned exclusively to the DOT in the OACA. See *County of Wake v. DENR*, 155 N.C. App. 225, 249-250, 573 S.E.2d 572, 589 (2002)(in the absence of specific statute authorizing DENR to implement local government duties for landfills, said agency could not incorporate such local standard as part of its permitting).

**5. 19 NCAC 02E .0206 APPLICATIONS REQUIRING A LOCAL PERMIT APPEARS TO BE OBSOLETE AND UNNECESSARY.**

There is no statutory authority to require a local permit as a prerequisite to a State permit, as Section .0206 calls for. As noted throughout this letter, the proposed changes to "sign location/site" and to require an "alteration permit", which will then purportedly pull in local ordinances to many activities previously preempted by State law, conflict with the OACA and causes substantial hardship to the industry.



## CONCLUSION

In summary, the outdoor advertising modernization section of HB 74 is not a legitimate basis for the 2020 Proposed Rules and is certainly not an invitation to make the sweeping changes that the DOT has proposed. The 2020 Proposed Rules do not streamline the regulatory burdens.

Administrative agencies such as DOT only have regulatory authority that is conferred by statute. *In re: Appeal of Arcadia Dairy Farms, Inc.*, 289 N.C. 456, 464, 223 S.E.2d 323, 328 (1976). Our Supreme Court has stated:

Administrative rules and regulations, to be valid, must be within the authority conferred upon the administrative agency. The power to make regulations is not the power to legislate in the true sense, and under the guise of regulation legislation may not be enacted. The statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder.

*States' Rights Democratic Party v. North Carolina State Board of Elections*, 229 N.C. 179, 187, 49 S.E.2d 379, 384 (1948). Clearly important to the matter at hand, an agency "may not, but its rules or order, forbid the exercise of a right expressly conferred by statute." *State of North Carolina ex. rel. Utilities Commission v. Lumbee River Electric Membership Corp.*, 275 N.C. 250, 257, 166 S.E.2d 663, 668 (1969).

As highlighted above, the 2020 Proposed Rules in several instances:

1. Substantively change existing law;
2. Are not expressly authorized by federal or State law;
3. Conflict with state statutes;
4. Fail to reduce the burden on the industry who is tasked with complying with the rules;
5. Are not clear and unambiguous; and
6. Are not reasonably necessary to implement or interpret an enactment of the General Assembly or federal law.

By the 2020 Proposed Rules, the DOT effectively forbids the exercise of the outdoor advertiser's right to modernize its sign without regard to local standards.

At the end of the day, each agency, including the DOT, is required to conduct an “annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles” of regulatory reform as espoused in HB 74 and G.S. §150B-19.1. We are hopeful that these comments will spurn meaningful dialogue on outdoor advertising rules that satisfy the goals of HB 74 and other statutorily mandated regulatory reform principles.

Sincerely,

**VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.**

*Craig D. Justus*

(Electronically Signed)

Craig Justus

CDJ/ca

Enclosures

cc. Ebony Pittman, Esq.  
TJ Bugbee, Executive Director, NCOAA  
Jeanine Dodson, President, NCOAA

4819-0170-9492, v. 1



31

boundaries. HB 74 specifically recognizes that local standards are irrelevant to the repair and reconstruction of a DOT-permitted sign. Your request for a "new permit" creates conflict where conflict is not necessary.

Two, HB 74 recognizes that the acts of "repair" and "reconstruction" involve an existing sign already permitted by DOT. Section .0225 of the DOT rules also recognizes that existing DOT-permitted signs may be repaired or reconstructed. There is no mention of permits in that section, and as stated above, no permits have been required for such actions. One can see the absence of permitting requirements for reconstruction even more clearly upon reading Section .0210. This section, of course, deals with the situation of what constitutes valid actions under an existing DOT permit. Stated another way, what are the scenarios where a DOT permit may be revoked? Here are some actions that may be taken without causing the revocation of a permit:

1. Moving a sign, even a nonconforming one on the same "site" (.0210(16)); and
2. Altering a conforming sign so long as it does not "fails to comply with the provisions of the Outdoor Advertising Control act or the" DOT rules (.0210(7)).

Looking at the above two subsections of .0210, it is plain that a conforming sign such as the Hickory Sign may be moved within the same location without needing a new permit. The Hickory Sign may also be altered in conformity with the DOT rules. DOT Permit No. US 070018005 sets forth the maximum standards (following DOT rules) of what is allowed at the site in question. For the Hickory Sign, its relocation does not trigger a new permit. For the Hickory Sign, the DOT does not normally care what type of support structure or materials is put on a sign conforming to DOT standards. Because the existing sign has digital components, there should be no issue regarding digital displays on the reconstructed sign. The existing DOT permit already authorizes the reconstruction in question. If reconstruction of a sign conforming to DOT standards was a cause for a new permit, then doing so without such authorization would presumably trigger the revocation of the existing permit. That is not mentioned as a specific excuse for revocation in Section .0210.

Although the amount of money may matter overtime, \$120 is not what we are concerned with at this stage. We are concerned with the request to "start over", to begin a new application process where local information is being requested (contrary to HB 74) and where the possibility of delays and controversy looms. This should not be the case, especially in light of the clear signals from the General Assembly regarding regulatory reform.

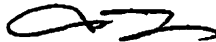
Roy T. Grasse  
December 23, 2013  
Page 3

Here, the Hickory Sign, a sign conforming to DOT standards, is intended to be reconstructed in such a way as to continue to be conforming to DOT standards. By letter dated December 16, 2013, my client notified the DOT of the reconstruction in accordance with the process I outlined in my October 4, 2013 letter. Since then, my clients have been told that the DOT is working on a new "conversion" form to memorialize reconstruction activities under HB 74. This seemed to us to be more of an addendum to the existing permit, rather than a totally new permit. I am hoping that the information we received last week is simply a reaction to the fact that such "conversion" form is not yet ready. In any event, a new permit for an activity already authorized by DOT rules should not be the answer in the interim.

Please re-visit this issue and contact me at your earliest convenience. In our jurisprudence, having a DOT permit in hand for an existing sign is very important to my clients. Reconstruction activities in conformity with DOT standards should not trigger "starting over."

I look forward to discussing the matter with you in the very near future.

Sincerely,  
VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.



Craig Justus

cc: Client - via email  
Mason Thompson  
Ebony Pittman, Esq.

DMS:4815-9841-4359v1|4100-4100-0038|12/23/2013



THE  
VAN WINKLE  
LAW FIRM

Writer's Extension: 2404  
Writer's Facsimile: 828-257-2773  
Writer's E-mail: [cjustus@vwlawfirm.com](mailto:cjustus@vwlawfirm.com)

August 22, 2014

Via email and mail

Richard E. Greene, Jr.  
NCDOT - Division of Highways  
1536 Mail Service Center  
Raleigh, NC 27699-1536

**RE: House Bill 74 and Rule Making**

Dear Mr. Greene:

As you know, I represent the North Carolina Outdoor Advertising Association ("NCOAA"), which organization consists of a large proportion of the outdoor advertising/billboard companies in this State. As you also know, the North Carolina General Assembly passed House Bill 74, entitled "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS." ("HB 74"). For my client and its members, HB 74 is an extremely important new law that, as the above title indicates, stimulates job creation and eliminates unnecessary regulation in the field of outdoor advertising.

A key part of HB 74, which became effective August 23, 2013, was enacting a new statute dealing with the "modernization" of outdoor advertising signs, which provisions were codified in N.C. Gen. Stat. 136-131.2. It reads:

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure.

THE VAN WINKLE LAW FIRM, P.C. 1000 ... Box 7376 Asheville, NC 28706 ... 828-257-2773  
322 South Main Street Hendersonville, NC 28752 ... (828) 697-6196  
[www.vwlawfirm.com](http://www.vwlawfirm.com)





Richard E. Greene, Jr.  
August 22, 2014  
Page 2

In a nutshell, one of HB 74's ways of streamlining the regulatory process was to eliminate local government standards as an obstacle to repairing or reconstructing DOT-permitted signs along interstates and federal aid primary highways.

Early on, we notified Jon Nance, your predecessor, of the clear implication of reading HB 74 together with existing preemption case law, which was that local government rules, regulations and/or policies are irrelevant to the maintenance, repair and/or reconstruction of DOT-permitted outdoor advertising signs. A copy of my October 4, 2013 letter to Jon Nance is attached hereto as Exhibit "A".

As you should see, there should be no local control over DOT-permitted locations. Unfortunately at a February 6, 2014 meeting in Raleigh with Jon Nance and several Department officials and staff attorneys, it was reported to us that DOT was going to keep in place its obsolete provisions that local regulatory standards can control the repair and/or reconstruction of DOT-permitted locations. It was made known to us at that time that this position was being pressed by the Governor, as Chief Executive Officer. Governor McCrory is not a fan of the outdoor advertising industry.

On March 7, 2014, Paul Hickman and Cameron Henley, on behalf of the NCOAA, met with Secretary Tata to discuss the rules process for the modernization piece of HB 74. Secretary Tata indicated that he clearly understood that DOT rules would have to be changed to eliminate local control as a consequence of HB 74 and he directed staff to make sure to properly handle the matter. As a follow up to that meeting, Paul Hickman delivered an email to Secretary Tata with several attachments, some of which contained our comments to proposed draft rules. A copy of this email with the comments are attached as Exhibit "B". Unfortunately, we are afraid that Secretary Tata's opinion may have been later compromised.

I understand that proposed rules implementing HB 74 are to be filed any day. It is important that DOT does not stay the course of ignoring clear legislative will by keeping in place in its rules local regulatory control. We believe that such position is clearly erroneous, is an effort to legislate policy and would lack substantial justification, entitling my folks to attorney's fees under N.C. Gen. Stat. 6-19.1 in the subsequent litigation to contest such action.

We received this week from Don Smith proposed SVR rules purporting to implement HB 74's new ramp cut allowances. One thing we did agree on with Jon Nance at the February meeting in Raleigh was separating the SVR rules from the rules dealing with modernization. We also supported the draft SVR rules then in place. Unfortunately, we noticed that local control has in some places been inserted in the

Richard E. Greene, Jr.  
August 22, 2014  
Page 3

most recent version contrary to our understanding. There should be no local control in any of the rules. This must be immediately addressed.

If you have any questions, please do not hesitate to let us know. We would love to have a meeting with you and others prior to filing the proposed rules. Thank you for your time in reading this letter. If for any reason, you believe that something stated in here is materially inaccurate, please let me know as soon as possible.

Sincerely,  
VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.  
*Craig D. Justus*  
(Signed Electronically)  
Craig D. Justus

CDJ/ca

cc: Client - via email  
Roy T. Grasse - via email - [rgrasse@ncdot.gov](mailto:rgrasse@ncdot.gov)  
Don Smith - via email - [donsmith@ncdot.gov](mailto:donsmith@ncdot.gov)  
Scott Slusser - via mail - [sslusser@ncdoj.gov](mailto:sslusser@ncdoj.gov)

DMS:4860-6660-7517v1|32763-32763-0007|8/21/2014





THE  
VAN WINKLE  
LAW FIRM

Writer's Extension: 2404  
Writer's Facsimile: 828-257-2773  
Writer's E-mail: [cjustus@vwlawfirm.com](mailto:cjustus@vwlawfirm.com)

October 4, 2013

Via email and federal express

Roy T. Grasse, Outdoor Advertising  
Coordinator  
NC Department of Transportation  
4809 Beryl Road  
Raleigh, NC 27606-1408  
[rgrasse@ncdot.gov](mailto:rgrasse@ncdot.gov)

Jon G. Nance, Chief Engineer  
NC Department of Transportation  
Division of Highways  
1536 Mail Service Center  
Raleigh, NC 27699-1536  
[jnance@ncdot.gov](mailto:jnance@ncdot.gov)

RE: House Bill 74

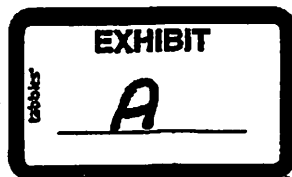
Dear Roy and Jon:

As you know, I represent the North Carolina Outdoor Advertising Association ("NCOAA"), which organization consists of a large proportion of the outdoor advertising/billboard companies in this State. As you also know, the North Carolina General Assembly recently passed House Bill 74, entitled "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION, TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS." ("HB 74"). For my client and its members, HB 74 is an extremely important new law that, as the above title indicates, stimulates job creation and eliminates unnecessary regulation in the field of outdoor advertising.

I am writing this letter to both of you due to the fact that, at times, your roles overlap, especially in the area of selective vegetation removal by outdoor advertising folks within the State right of way. A misstep in selective removal may affect an outdoor advertising permit (as outlined in SB 183).

For your convenience in reading this letter, I have attached the two pages of HB 74 dealing with outdoor advertising.

Regarding the addition of subsection (a1) to G.S. 136-133.1, I understand that the North Carolina Department of Transportation ("DOT") intends to go through rule-making before any "ramp cuts" outside the previously defined cut zone will be approved pursuant to this new provision. We are not clear why rule-making is necessary. Even if so, it appears to be very minor adjustments of clarification.



**COPY**

Unlike SB 183, the General Assembly did not direct the agency to prepare rules. As you know after SB 183 became law, DOT went through an extensive process to create new temporary and then permanent rules, principally 19A NCAC 02E .0608-.0611 ("Current SVR Rules"). I will address each, to wit:

.0608 of the Current SVR Rules does not require any changes. It refers to G.S. 136-133.1(c) for defining a "site plan", which statutory section is clear as to what is required even for the "ramp cuts".

.0609 does not require any changes. It refers to G.S. 136-133.2 that mentions "required documentation" without further explanation. Because this term is not defined, it appears that any additional clarification that you may need associated with the "ramp cuts", could be accomplished by internal paper work that does not rise to the level of rule-making.

.0610, arguably, may need to be tweaked. Subsection one refers to G.S. 136-133.1(b)'s definition of "selected vegetation" by reference to point A to point D and from Point B to point E. I can see where new G.S. 136-133.1(a1) may be included here for clarification. Subsection eight refers to the marking of the "proper permitted cutting distances according to G.S. 136-133.1(a)(1)-(6)." Again, I see the possibility for clarification by adding the new ramp cut substitution. I don't see the necessity of changing any other subsections of this rule. Significantly, subsection ten is already written to account for the three compensatory options when "existing trees are requested to be removed" without regard to where.

.0611 does not require any changes.

It appears that Section 2 of Executive Order No. 23 may solve the "marking" of the cut zone points that I indicated above for .0610. In any event, if the DOT feels that rule making is needed, then we will work with you to make it happen in a productive and expeditious manner. The OAH rule-making statutes only mandate a minimum of one (1) public hearing. DOT held several hearings for the extensive re-write associated with SB 183. The minor tweaking that we see should not trigger more than one hearing.<sup>1</sup> In any event, there is no reason why these minor revisions could not be in

---

<sup>1</sup> HB 74's provision about "ramp cuts" was merely a clarification of DOT authority that already existed in former G.S. 136-93. It also trumpets the "right to be clearly viewed." There is no need for material, substantive changes to the current rules. The issues raised in Executive Order No. 23 are already covered by either existing rules (.0610(10) handles the last sentence of Section

effect by January 1, 2014. As I will stress throughout this letter, if rule changes are being made, it is only reasonable, as before with SB 183, that the affected industry be privy to the thought process early on, rather than as a fait accompli and only after the rules are submitted to OAH. A public agency and the affected industry should be working partners in the process. I believe the recent changes to the statutes emphasize the importance of understanding a rule's fiscal impact and other effect on an industry up front and there is no better resource for such knowledge than the industry itself.

As for the modernization provisions in HB 74 with new G.S. 136-131.2, there is no requirement for rule changes in order to implement these statutory rights. This statute generally codifies the law established by the North Carolina Supreme Court's ruling in *Lamar v. Stanly County*, 2008 N.C. LEXIS 987 (N.C., Dec. 12, 2008) that local governments are preempted from using their regulations to prevent the maintenance and/or repairs of billboards permitted by the DOT. G.S. 136-131.2 expands this principle to also apply to "reconstruction" activities, including, but not limited to, the changing of a multi-pole structure to a monopole.<sup>2</sup> As you undoubtedly know, it is clear jurisprudence in our State that an agency "may not, but its rules or order, forbid the exercise of a right expressly conferred by statute." *State of North Carolina ex. rel. Utilities Comm. v. Lumbee River Electric Membership Corp.*, 275 N.C. 250, 257, 166 S.E.2d 663, 668 (1969). Stated another way, "a statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder." *States' Rights Democratic Party v. North Carolina State Bd. of Elections*, 229 N.C. 179, 187, 49 S.E.2d 379, 398 (1948). Moreover, an agency cannot create a "liability" or "duty" where the statutory law creates none. *Motzinger v. Perryman*, 218 N.C. 15, 20-21, 9 S.E.2d 511, 514-515 (1940); *Kinston Tobacco Bd. of Trade, Inc. v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 741, 71 S.E.2d 21, 24 (1952).

HB 74 is a clear statement that local government rules, regulations and/or policies are irrelevant to the administration of law related to outdoor advertising signs once permitted by DOT. The role that local governments play for a DOT-permitted billboard is now no different than a private citizen. Meaning, a local government may now only oppose changes to a DOT-permitted outdoor advertising use via repairs or reconstruction in two ways: (1) Appealing a DOT ruling but only to the extent they can

---

2 referencing "existing trees"; 0609(b)(4) referenced in Section 3 is not specific to location) or by statute (Section 4's reference to local comments is covered by G.S. 136-93(d)). Section 1 of the Executive Order is not authorized by statute. Neither the new subsection (a1) nor SB 183 limits cutting to "one-time". Obviously, any permissible cut area is subject to continual vegetation removal over time as part of maintenance of the initial cut.

<sup>3</sup> I believe that it could be reasonably argued that it merely clarified the allowances in G.S. 136-133.1 that already stated that a local government could not use their regulations to cause the removal of a DOT-permitted sign.

establish standing; or (2) Giving comment. Obviously, unlike private actors, a third way would be for the local government to condemn the outdoor advertising business and pay just compensation.

I state the above to emphasize that, as a result of HB 74 especially, DOT in administering its rules should not be placing any type of significance to the policies, positions, rules or regulations of a county or city who might be opposed to something my clients are doing related to a DOT-permitted sign. This fact should be well-received by DOT since it greatly simplifies your folks' work-life by mitigating against Roy, a District Engineer or some DOT-contractor having to wade through pages of local laws.

DOT rules do not require a new permit for the repair or reconstruction of a DOT-permitted billboard. New permits have only been requested if the "site location" as defined in the rules changes. I understand that DOT requests notice of updates to a sign such as changing from wooden poles to a steel monopole in order to simply track the current condition of the structure.

I have been told on numerous occasions by various DOT officials that the terms "nonconforming" and "conforming" in the DOT rules are interpreted to mean conformity when viewed in relation to the standards as to size, height, spacing and location set by DOT, not by any local government. New G.S. 136-131.2 supports this approach. However, clarification in the rules may be warranted, especially in the areas where the terms "nonconforming" and "conforming" are referenced. But I want to emphasize that a rule, whether existing or proposed, cannot defeat the "exercise of a right" provided by statute. Meaning, the statute trumps any conflicting rules and requires nothing further to be self-executing. In this case, repair and reconstruction rights in G.S. 136-131.2 are not dependent on any DOT rule revisions.

Based on the above, we feel the proper approach in the instance of any repair or reconstruction of a DOT-permitted sign on the same "site location" is to notify the Outdoor Advertising Coordinator in writing of any "updates" to changes to a DOT-permitted billboard only if they are material (i.e. going from wood to steel, multi-pole to monopole). As Roy has recently acknowledged, no notice is warranted anytime a sign that is deemed "conforming" to DOT standards is repaired.

Of course, we will remain cooperative if a local government reasonably requests a building permit for the limited purpose of inspecting the condition of any footing changes; provided, however, it is clear that this is not intended to open the door to the local officials to "regulate" or "prohibit" the repair and/reconstruction as stated in G.S. 136-133.2. Local rules conflicting with DOT standards such as height are of no effect.

G.S. 136-133.2's only caveat is not increasing the "square footage of [a sign's] advertising surface area."

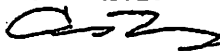
Please understand that my client, and to my knowledge, many of its members acknowledge that repairs and/or reconstruction may be materially limited or restricted if the status of the sign is "nonconforming to DOT standards as to size, height, spacing and location". The approach that we advocate regarding written notice to the Outdoor Advertising Coordinator is for signs "conforming to DOT standards as to size, height, spacing and location." We understand that some changes to signs "nonconforming to DOT standards as to size, height, spacing and location" may require specific written authorization from DOT. Of course, if a sign is considered "nonconforming to DOT standards", for example due to "double-stacking" or "spacing", and those issues are cured as part of reconstruction, then such activity should not be opposed by DOT.

My client and its members are obviously excited about the opportunities to "modernize" its existing signs from both a standpoint of economics and aesthetics. We believe that HB 74 truly advances regulatory reform. If the DOT believes that rule changes at any time are warranted, especially those that might relate in any way to HB 74, please advise immediately and, as mentioned above for the "ramp cuts", please include us in the process early on.

Thank you for your time in reading this letter. If for any reason, you believe that something stated in here is materially inaccurate, please let me know as soon as possible. We want to make the transition from HB 74 as smooth as possible for DOT and our industry.

I look forward to continuing our working relationship with you both.

Sincerely,  
VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.



Craig D. Justus

CDJ  
Enclosure

cc: Client - via email  
Elizabeth Strickland, Esq. - via email  
Phyllis Tranchese, Esq. - via email

recognized by a college or university and those that are not."

SECTION 6.(c) Part 3 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

**"§ 116-40.11. Disciplinary proceedings; right to counsel for students and organizations.**

(a) Any student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the student's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student shall not have the right to be represented by a licensed attorney or nonattorney advocate in either of the following circumstances:

(1) If the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.

(2) For any allegation of "academic dishonesty" as defined by the constituent institution.

(b) Any student organization officially recognized by a constituent institution that is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the organization's expense, by a licensed attorney or nonattorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. However, a student organization shall not have the right to be represented by a licensed attorney or nonattorney advocate if the constituent institution has implemented a "Student Honor Court" which is fully staffed by students to address such violations.

(c) Nothing in this section shall be construed to create a right to be represented at a disciplinary proceeding at public expense."

SECTION 6.(d) Each constituent institution shall track the number and type of disciplinary proceedings impacted by this section, as well as the number of cases in which a student or student organization is represented by an attorney or nonattorney advocate. The constituent institutions shall report their findings to the Board of Governors of The University of North Carolina, and the Board of Governors shall submit a combined report to the Joint Legislative Education Oversight Committee and the House and Senate Education Appropriations Subcommittees by May 1, 2014.

SECTION 6.(e) Subsection (c) of this section is effective when it becomes law and applies to all allegations of violations beginning on or after that date.

#### AMEND PRIVATE CLUB DEFINITION

SECTION 7. G.S. 130A-247 reads as rewritten:

**"§ 130A-247. Definitions.**

The following definitions shall apply throughout this Part:

(2) "Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in ~~G.S. 105-130.2(1)~~ G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).

...."

#### OUTDOOR ADVERTISING AMENDMENTS

SECTION 8.(a) G.S. 136-133.1 reads as rewritten:

**"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

(a1) Notwithstanding any law to the contrary, in order to promote the outdoor advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of Transportation, at the request of a selective vegetation removal permittee, may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone defined in subsection (a) of this section along acceleration or deceleration ramps so long as the view to the outdoor advertising sign will be improved and the total aggregate area of cutting or removal does not exceed the maximum allowed in subsection (a) of this section.

...

(f) Tree branches within a highway right-of-way that encroach into the zone created by points A, C, and ~~DB~~, D, and E may be cut or pruned. Except as provided in subsection (g) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

...."

SECTION 8.(b) Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-131.2. Modernization of outdoor advertising devices.**

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure."

**DISPOSITION OF DMH/DD/SAS RECORDS**

SECTION 9. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual to provide that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless a longer period is required by federal law. At the termination of that time period, records may be destroyed or transferred to a State agency or contractor identified by the Department of Health and Human Services.

**STUDY OCCUPATIONAL LICENSING BOARD AGENCY**

SECTION 10.(a) The Joint Legislative Program Evaluation Oversight Committee shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General Assembly a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. For purposes of this act, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation Division shall include the following within this study:

- (1) Consideration of the feasibility of establishing a single State agency to oversee the administration of all or some of the occupational licensing boards.
- (2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards while allowing the boards to continue performing the regulatory functions.
- (3) Whether the total number of boards should be reduced by combining and/or eliminating some boards.

SECTION 10.(b) The Program Evaluation Division shall submit its findings and recommendations from Section 10(a) of this act to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

**PROHIBIT TRANSPORTATION IMPACT MITIGATION ORDINANCES**

SECTION 10.1.(a) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

**"§ 160A-204. Transportation impact mitigation ordinances prohibited.**

No city may enact or enforce an ordinance, rule, or regulation that requires an employer to assume financial, legal, or other responsibility for the mitigation of the impact of his or her employees' commute or transportation to or from the employer's workplace, which may result in the employer being subject to a fine, fee, or other monetary, legal, or negative consequences."

SECTION 10.1.(b) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

**"§ 153A-145.1. Transportation impact mitigation ordinances prohibited.**

No county may enact or enforce an ordinance, rule, or regulation that requires an employer to

## Cynthia Arrowood

---

**From:** Paul Hickman <Paul.Hickman@fairwayoutdoor.com>  
**Sent:** Thursday, August 21, 2014 3:40 PM  
**To:** Craig Justus  
**Subject:** FW: HB 74 Rules Interpretation for Outdoor Advertising - Email 1 of 4  
**Attachments:** 19a ncac 02e 0206.3.14.14 (with ncoaa comments).doc; 19a ncac 02e 0226.3.14.14 (with ncoaa comments).doc; 19a ncac 02e 0201.3.14.14 (with NCOAA comments).doc; 19a ncac 02e 0204.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0207.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0225.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0224.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0210.3.12.14 (with ncoaa comments).doc; 19a ncac 02e 0203.3.12.14 (with ncoaa comments).doc; 19A NCAC 02E 0204 (3).pdf; 19A NCAC 02E 0225 (3).pdf; NcdotOdaEmployeeFlowChart31414.docx

Paul Hickman | General Manager | 919.755.1900 | FAIRWAY

**From:** Paul Hickman  
**Sent:** Friday, March 14, 2014 12:34 PM  
**To:** 'ajtata@ncdot.gov'; 'srblake@ncdot.gov'; 'mholder@ncdot.gov'; 'ambell1@ncdot.gov'; 'vstanley@ncdot.gov'  
**Cc:** Cameron Henley ; Craig Justus  
**Subject:** HB 74 Rules Interpretation for Outdoor Advertising - Email 1 of 4

Secretary Tata, Ms. Blake & Mr. Holder,

Cameron Henley & I want to thank you again for meeting with us last Friday to discuss the outdoor advertising (ODA) rules process for the modernization piece of HB 74. We will be sending four emails today to provide all the information we discussed. We thought it would be more efficient if we went ahead and did a revision to the rules that would be fair and workable for the department & the industry that HB 74 applies too since this law was signed almost seven months ago.

This email contains 12 attachments, the first 9 attachments are the revised set of rules done by the NC Outdoor Advertising Association (NCOAA) General Council Craig Justus and would allow this process to move forward and be completed in a timely manner. The 10<sup>th</sup> & 11<sup>th</sup> attachment show the differences between January and February DOT drafts. Please note that the highlighted words are words that were taken out in January but put back in, in February, and the orange text is text that was added in February. The last attachment is an employee flow chart of NCDOT employees that the ODA industry works or meets with, we have highlighted in yellow those primary employees we communicate with.

The second email will be the January 6<sup>th</sup> set of rules for modernization, the third email will be the February 6<sup>th</sup> set of rules for modernization and the final email will be the selective vegetation removal (SVR) set of rules for HB 74 as well as my letter of response to Jon Nance & Don Smith this past Monday that will hopefully allow us to move this part of the rules covering SVR forward as well.

We thank you for reviewing the interpretation of HB 74 and after you have had a chance to review these emails and discuss internally the NCOAA would like to have an opportunity to meet with you again Secretary to follow up on our first meeting and discussion. Please advise us at your earliest convenience when we could meet again.

Paul Hickman | General Manager | 919.755.1900 | FAIRWAY





1 19A NCAC 02E .0201 is proposed for amendment as follows:

3 **SECTION .0200 – OUTDOOR ADVERTISING**

5 **19A NCAC 02E .0201 DEFINITIONS FOR OUTDOOR ADVERTISING REGULATION CONTROL**

6 In addition to the definitions set forth in G.S. 136-128, the following definitions shall apply for purposes of outdoor  
7 advertising control:

- 8 (1) Abandoned Sign: A sign that is not being maintained as required by the rules in this Section. The  
9 absence of a valid lease is one indication of an abandoned sign. An outdoor advertising sign structure  
10 shall be considered to be abandoned if for a period of 12 months the sign has been without a message,  
11 contains obsolete advertising matter, or is significantly damaged or dilapidated.
- 12 (2) Automatic Changeable Facing Sign: A sign, display, or device which changes the message or copy on  
13 the sign facing automatically, electronically by movement or rotation of panels or slats.
- 14 (3) Blank Sign: A sign structure on which all faces contain no message, or which contains only a  
15 telephone number advertising its availability.
- 16 (4) Comprehensive Zoning: Zoning by local zoning authorities of each parcel of land under the  
17 jurisdiction of the local zoning authority placed in a zoning classification pursuant to a comprehensive  
18 plan, or reserved for future classification.
- 19 (a) A comprehensive plan means a development plan which guides decisions by the local zoning  
20 authority relating to zoning and the growth and development of the area.
- 21 (b) Even if comprehensively enacted, the following criteria shall determine whether such zoning  
22 is enacted primarily to permit outdoor advertising:
- 23 (i) If the zoning would constitute spot zoning, which means that it is designed  
24 primarily for the purpose of permitting outdoor advertising signs and in an area  
25 which would not normally permit outdoor advertising. Zoning shall not be  
26 considered "primarily for the public of permitting outdoor advertising signs" if the  
27 zoning would permit more than one principal commercial or industrial use, other  
28 than outdoor advertising, and the size of the land being zoned can practically  
29 support any one of the commercial or industrial uses; or, The zoning classification  
30 provides for limited commercial or industrial activity only incidental to other  
31 primary land uses;
- 32 (ii) The commercial or industrial activities are permitted only by variance or special  
33 exceptions; ~~or~~
- 34 (iii) ~~The zoning constitutes spot or strip zoning. "Spot zoning" or "strip zoning" is~~  
35 ~~zoning designed primarily for the purpose of permitting outdoor advertising signs~~  
36 ~~in an area which would not normally permit outdoor advertising.~~

Commented [A1]: These changes are consistent with SB 183 and codified in G.S. 136-133.5(e)

(5) Sign Conforming to NCDOT Standards~~Sign~~: A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current legal requirements promulgated and enforced by the Department in terms of commercial or industrial area, size, height, lighting or spacing ~~for erecting~~ a new sign at that site. Local rules or standards are not applicable to determining whether a sign is conforming for purposes of this Section.

**Commented [A2]:** These are the “categories” of development standards that DOT has adopted.

(6) Controlled Access Highway: A highway on which entrance and exit accesses are permitted only at designated points.

**Commented [A3]:** This is consistent with HB 74.

(7) Department or NCDOT: The North Carolina Department of Transportation, an agency of the State of North Carolina.

(87) Regulated ~~Controlled~~ Route: Any interstate or federal-aid primary highway as it existed on June 1, 1991, and any highway which is or becomes a part of the National Highway System (NHS).

(98) Destroyed Sign: A sign no longer in existence due to factors other than vandalism or other criminal or tortious acts. An example of a destroyed sign includes a sign which has been blown down by the wind and sustains damage in excess of 50 percent as determined by the criteria in 19A NCAC 02E .0225(f).

(109) Dilapidated Sign: A sign which is shabby, neglected, or in disrepair, or which fails to be in the same form as originally constructed, or which fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include, but are not limited to, structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or a sign which is blocked by overgrown vegetation outside the highway right of way.

(119) Directional Sign: A sign which contains directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Directional and other official signs and notices include, but are not limited to, public utility signs, service club and religious notices, or public service signs.

(a) Public Service Sign: A sign located on a school bus stop shelter which meets all the following requirements:

- (i) identifies the donor, sponsor or contributor of said shelter;
- (ii) is located on a school bus shelter which is authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved;
- (iii) contains only safety slogans or messages which shall occupy not less than 60 percent of the area of the sign;
- (iv) does not exceed 32 square feet in area; and
- (v) contains not more than one sign facing in any one direction.

(b) Public Utility Sign: A warning sign, informational sign, notice or other marker customarily erected and maintained by publicly or privately owned utilities, which are essential to their operations.

(c) Service Club and Religious Notices: Any sign or notice authorized by law which relates to meetings of nonprofit service clubs, charitable associations, or religious services. These signs shall not exceed eight square feet in area.

(124) Discontinued Sign: A sign no longer in existence. A discontinued sign includes a sign of which any part of a sign face, not including border or trim, is missing more than 180 days. In some cases, a sign may be both discontinued and dilapidated.

**Commented [A4]:** Clarifies that DOT is talking only about the substantive parts of the sign face.

(132) Fully Controlled Access Highway Freeway: A divided arterial highway for through traffic with full control of access.

(143) Highway: A highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System. A highway shall be a part of the National Highway System on the date the location of the highway has been approved finally by the appropriate federal authorities.

(154) Lease: An agreement, in writing, by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a valid contract under North Carolina laws.

(165) Main Traveled Way or Traveled Way: Part of a highway on which through traffic is carried, exclusive of paved shoulders. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a traveled way. It does not include frontage roads, turning roadways, or parking areas.

(176) ~~Sign Not Conforming to NCDOT Standards~~Nonconforming Sign: A sign which was lawfully erected but which does not comply with all legal requirements promulgated and enforced by the Department with the provisions of State law or rules and passed at a later date or which later fails to comply with Outdoor Advertising Control Act or NCDOT State law or rules due to changed conditions. Also includes a sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or National Highway System in a zoned or unzoned commercial or industrial area which does not meet all current standards promulgated and enforced by the Department in terms of commercial or industrial zoning, size, height, lighting and spacing for erecting a new sign at that site. For purposes of the outdoor advertising rules, nonconforming signs also include those signs which have become nonconforming pursuant to 19A NCAC 02E .1002(d) on scenic byways which were part of the interstate or federal-aid primary highway system as of June 1, 1991, or which are or

become a part of the National Highway System. Local rules or standards are not applicable to determining whether a sign is not conforming for purposes of this Section.

Commented [A5]: This is consistent with HB 74.

(187) Official Sign/Notice: A sign or notice erected and maintained by public officers or public agencies within their territorial or zoning jurisdictions and pursuant to and in accordance with federal, state, or local law for the purpose of carrying out an official duty or responsibility. Official signs and notices include, but are not limited to, historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies.

(198) On-premise/On-property Sign: A sign which advertises the sale or lease of property upon which it is located or which advertises an activity conducted or product for sale on the property upon which it is located. An on-premise sign may not be converted to a permitted outdoor advertising sign unless it meets all rules in effect at the time of the conversion request. An on-premise sign must be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include, but are not limited to:

- (a) Tracts of land separated by a federal, state, city, or public access maintained road;
- (b) Tracts of land not under common ownership; or
- (c) Tracts of land held in different estates or interests.

(2019) Parkland: Any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(210) Permit Holder: A permit holder shall be the sign owner, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the permit holder is a person or entity other than the actual owner of the sign. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.

(221) Salvageable Sign Components: Components of the original sign structure prior to the damage that can be repaired or replaced on site by the use of labor only. If any materials, other than nuts, bolts, nails or similar hardware, are required in order to repair a component, the component is not considered to be salvageable.

(232) Scenic Area: Any area of particular beauty or historical significance as determined by the federal, state, or local official having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of beauty.

(243) Scenic Byway: A scenic highway or scenic byway designated by the Board of Transportation, regardless of whether the route so designated was part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System.

- (254) Sign: Any outdoor sign, sign structure, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other object which is designed, intended, or used to advertise or inform. A sign includes any of the parts or material of the structure, such as beams, poles, posts, and stringers, the only eventual purpose of which is to ultimately display a message or other information for public view. For purposes of these rules, the term "sign" and its definition shall be interchangeable with the following terms: outdoor advertising, outdoor advertising sign, outdoor advertising structure, outdoor advertising sign structure, sign structure, and structure.
- (25) Sign Conforming by Virtue of the "Grandfather Clause:" A sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or NHS in a zoned or unzoned commercial or industrial area which does not meet all current standards for erecting a new sign at that site.
- (26) (265) Sign Face: The part of the sign, including trim and background, which contains the message or informative contents. For purposes of measuring the maximum area or height of a sign, embellishments or extended advertising shall be excluded.
- (27) (276) Sign Location/Site: A sign location or site for purposes of these rules shall be measured to the closest 1/100<sup>th</sup> of a mile in conformance with Department of Transportation methods of measurement for all state roads. ~~measured to the closest 1/100th of a mile, in conformance with Department of Transportation methods of measurement for all state roads. the latitude and longitude as determined by recreational-grade global position system (GPS) equipment.~~ The location or site shall be determined and listed on each outdoor advertising permit application by DOT personnel.
- (28) (287) Sign Owner: A sign owner shall be the permit holder of record, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the sign owner is a person or entity other than the actual holder of the permit. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.
- (29) (298) Significantly Damaged Sign: A sign which has been damaged or partially destroyed due to factors other than vandalism or other criminal or tortious acts to such extent that the damage to the sign is greater than fifty percent as determined by the criteria in 19A NCAC 02E .0225(f).
- (30) (3029) Unzoned Commercial or Industrial Area: An area which is not zoned by state or local law, regulation, or ordinance, and which is within 660 feet of the nearest edge of the right of way of the interstate or federal-aid primary system or NHS, in which there is at least one commercial or industrial activity that meets all requirements specified in 19A NCAC 02E .0203(5).

Formatted: Superscript

Commented [A6]: This proposed change is not triggered by H 74. This definition has been in place for over a decade and there is no discernible reason to change it.

1        ~~(34)~~ (319)        Zoned Commercial or Industrial Area: An area which is zoned for business, industry,  
2        commerce, or trade pursuant to a state or local zoning ordinance or regulation. Local zoning  
3        action must be taken pursuant to the state's zoning enabling statute or constitutional authority  
4        in accordance therewith. Zoning which is not part of comprehensive zoning or which is  
5        created primarily to permit outdoor advertising structures as defined in G.S. 136-133.5(e)  
6        shall not be recognized as valid zoning for purposes of the Outdoor Advertising Control Act  
7        and the rules promulgated thereunder, unless the land is developed for commercial or  
8        industrial activity as defined under 19A NCAC 02E .0203(5).  
9

10    *History Note:*    *Authority G.S. 136-130;*  
11        *Eff. July 1, 1978;*  
12        *Amended Eff. MONTH 1, 2014; August 1, 2000; December 1, 1993; March 1, 1993; December 1,*  
13        *1990; January 1, 1984.*  
14

1 19A NCAC 02E .0203 is proposed for amendment as follows:

2  
3 **19A NCAC 02E .0203 OUTDOOR ADVERTISING ON ~~CONTROLLED~~ REGULATED ROUTES**

4 The following standards shall apply to the erection and maintenance of outdoor advertising signs in all zoned and  
5 unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of the controlled  
6 route. The standards shall not apply to those signs enumerated in G.S. 136-129(1), (2), (2a) and (3), which are  
7 directional and other official signs and notices, signs advertising the sale or lease of property upon which they are  
8 located, signs advertising the sale of crops at roadside stands, and signs which advertise activities conducted on the  
9 property upon which they are located.

10 (1) Configuration and Size of Signs:

- 11 (a) The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30  
12 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base  
13 or apron, embellishments, extended advertising space, supports, and other structural  
14 members.
- 15 (b) The area shall be calculated by measuring the outside dimensions of face, excluding any  
16 apron, embellishments, or extended advertising space.
- 17 (c) The maximum size limitations shall apply to each side of a sign structure; the signs may be  
18 placed back-to-back, side-by-side; or in V-type construction with not more than two displays  
19 to each facing, and such sign structure shall be considered as one sign.
- 20 (d) Side-by-side signs shall be structurally tied together to be considered as one sign structure.
- 21 (e) V-type and back-to-back signs shall not be considered as one sign if located more than 15  
22 feet apart at their nearest points.
- 23 (f) The height of any portion of the sign structure, excluding cutouts or embellishments, as  
24 measured vertically from the adjacent edge of pavement of the main traveled way shall not  
25 exceed 50 feet.
- 26 (g) Double-decking of sign faces so that one is on top of the other is prohibited.

27 (2) Spacing of Signs:

- 28 (a) Signs may not be located in a manner to obscure, or otherwise physically interfere with the  
29 effectiveness of any official traffic sign, signal, or device, or to obstruct or physically  
30 interfere with the driver's view of approaching, merging, or intersecting traffic.
- 31 (b) ~~Controlled~~ Regulated Routes with Fully Controlled Access (~~Freeways~~):
- 32 (i) No two structures shall be spaced less than 500 feet apart.
- 33 (ii) Outside the corporate limits of towns and cities, no structure may be located within  
34 500 feet of an interchange, collector distributor, ~~intersection at grade~~, safety rest  
35 area or information center regardless of whether the main traveled way is within or  
36 outside the town or city limits. The 500 feet spacing shall be measured from the  
37 point at which the pavement widens and the direction of measurement shall be

1 along the edge of pavement away from the interchange, collector distributor,  
2 ~~intersection at grade~~,—safety rest area or information center. In those  
3 interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant  
4 without a ramp shall be measured along the outside edge of main traveled way for  
5 ~~freeways~~ highways as follows:

- 6 (A) Where a route is bridged over a ~~freeway~~ fully controlled access highway,  
7 the 500 foot measurement shall begin on the outside edge of pavement of  
8 the ~~freeway~~ fully controlled access highway at a point directly below the  
9 edge of the bridge. The direction of measurement shall be along the edge  
10 of pavement away from the interchange.
- 11 (B) Where a ~~freeway~~ fully controlled access highway is bridged over another  
12 route, the 500 foot measurement shall be made from the end of the bridge  
13 in the quadrant. The direction of measurement shall be along the edge of  
14 main traveled way away from the bridge.
- 15 (C) Where the routes involved are both ~~freeways~~ fully controlled access  
16 highways, measurements on both routes shall be made according to (A) or  
17 (B) of this Subitem, whichever applies.

18 Should there be a situation where there is more than one point at which  
19 the pavement widens along each road within a quadrant, the measurement  
20 shall be made from the pavement widening which is farthest from the  
21 intersecting roadways.

22 (c) Controlled Regulated Routes Without Fully Controlled Access:

- 23 (i) Outside of incorporated towns and cities --no two structures shall be spaced less  
24 than 300 feet apart.
- 25 (ii) Within incorporated towns and cities --no two structures shall be spaced less than  
26 100 feet apart.
- 27 (d) The foregoing provisions for the spacing of signs do not apply to structures separated by  
28 buildings or other obstructions in such a manner that only one sign facing located within the  
29 above spacing distances is visible from the highway at any one time.
- 30 (e) Official and "on-premise" signs, as permitted under the provisions of G.S. 136-129(1), (2),  
31 (2a) and (3), and structures that are not lawfully maintained shall not be included nor shall  
32 measurements be made from them for purposes of determining compliance with spacing  
33 requirements.
- 34 (f) The minimum distance between structures shall be measured along the nearest edge of the  
35 main traveled way between points directly opposite the signs along each side of the highway  
36 and shall apply only to structures located on the same side of the highways.

37 (3) Lighting of Signs; Restrictions:



- 1 (a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving  
2 light or lights including animated or scrolling advertising, are prohibited, ~~which shall not~~  
3 ~~mean signs unless~~ expressly allowed under Item 4, of this rule except those giving public  
4 service information such as time, date, temperature, weather, or similar information.
- 5 (b) Signs which are not effectively shielded as to prevent beams or rays of light from being  
6 directed at any portion of the traveled ways of the controlled routes and which are of such  
7 intensity or brilliance as to cause glare or to impair the vision of the driver of any motor  
8 vehicle, or which otherwise interfere with the operation of a motor vehicle are prohibited.
- 9 (c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an  
10 official traffic sign, device, or signal.
- 11 (d) All such lighting shall be subject to any other provisions relating to lighting of signs  
12 presently applicable to all highways under the jurisdiction of the state.
- 13 (e) Lighting shall not be added to ~~or used to~~ illuminate ~~signs not conforming to NCDOT~~  
14 ~~standards nonconforming signs, signs or signs conforming by virtue of the grandfather clause.~~
- 15 (4) Automatic Changeable Facing Sign:
- 16 (a) Automatic changeable facing signs shall be permitted on the controlled routes under the  
17 following conditions:
- 18 (i) The sign does not contain or display flashing, intermittent, or moving lights,  
19 including animated or scrolling advertising;
- 20 (i) The changeable facing remains in a fixed position for at least eight seconds;
- 21 (iii) If a message is changed electronically, it must be accomplished within an interval  
22 of two seconds or less;
- 23 (iv) The sign is not placed within 1,000 feet of another automatic changeable facing  
24 sign on the same side of the highway;
- 25 (v) The 1000-foot distance shall be measured along the nearest edge of the pavement  
26 and between points directly opposite the signs along each side of the highway;
- 27 (vi) A ~~sign conforming to NCDOT standards legally conforming structure~~ may be  
28 modified to an automatic changeable facing upon compliance with these standards  
29 and approval by the Department. ~~A request to modify a structure shall be submitted~~  
30 ~~by cCertified mMail. Signs not conforming to NCDOT standards Nonconforming or~~  
31 ~~grandfathered structures shall not be modified to an automatic changeable facing;~~
- 32 (vii) The sign must contain a default design that will freeze the sign in one position if a  
33 malfunction occurs; and
- 34 (viii) The sign application meets all other permitting requirements.
- 35 (b) The outdoor advertising permit shall be revoked for failure to comply with this Item.
- 36 (5) Unzoned Commercial or Industrial Area Qualification for Signs:

**Commented [A1]:** Clarifies that digital displays if compliant with Item 4 would not be considered "flashing, etc.".

**Commented [A2]:** If lighting was already part of a sign legally erected but no longer complying with DOT rules it would not necessarily lose its right to have lighting. The intent of this rule was not to allow any lights to be added to signs that no longer conform DOT standards. Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs.

**Commented [A3]:** Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs.

- 1 (a) To qualify an area unzoned commercial or industrial for the purpose of outdoor advertising  
2 control, one or more commercial or industrial activities shall meet all of the following  
3 criteria prior to submitting an outdoor advertising permit application:
- 4 (i) The activity shall maintain all necessary business licenses as may be required by  
5 applicable state, county or local law or ordinances;
- 6 (ii) The property used for the activity shall be listed for ad valorem taxes with the  
7 county and municipal taxing authorities as required by law;
- 8 (iii) The activity shall be connected to basic utilities including but not limited to power,  
9 telephone, water, and sewer, or septic service;
- 10 (iv) The activity shall have direct or indirect vehicular access and be a generator of  
11 vehicular traffic;
- 12 (v) The activity shall have a building designed with a permanent foundation, built or  
13 modified for its current commercial or industrial use, and the building must be  
14 located within 660 feet from the nearest edge of the right of way of the controlled  
15 route. Where a mobile home or recreational vehicle is used as a business or office,  
16 the following conditions and requirements also apply:
- 17 (A) The mobile home unit or recreational vehicle shall meet the North  
18 Carolina State Building Code criteria for commercial or business use.
- 19 (B) A self-propelled vehicle shall not qualify for use as a business or office for  
20 the purpose of these rules.
- 21 (C) All wheels, axles, and springs shall be removed.
- 22 (D) The unit shall be permanently secured on piers, pad, or foundation.
- 23 (E) The unit shall be tied down in accordance with local, state, or county  
24 requirements;
- 25 (vi) The commercial or industrial activity must be in active operation a minimum of six  
26 months prior to the date of submitting an application for an outdoor advertising  
27 permit;
- 28 (vii) The activity shall be open to the public during hours that are normal and customary  
29 for that type of activity in the same or similar communities but not less than 20  
30 hours per week;
- 31 (viii) One or more employees shall be available to serve customers whenever the activity  
32 is open to the public; and
- 33 (ix) The activity shall be visible and recognizable as commercial or industrial from the  
34 main traveled way of the controlled route. An activity is visible when that portion  
35 on which the permanent building designed, built, or modified for its current  
36 commercial use can be clearly seen twelve months a year by a person of normal  
37 visual acuity while traveling at the posted speed on the main traveled way of the

1 controlled route adjacent to the activity. An activity is recognizable as commercial  
2 or industrial when its visibility from the main traveled way of the controlled route is  
3 sufficient for the activity to be identified as commercial or industrial.

4 (b) Each side of the controlled route shall be considered separately. All measurements shall  
5 begin from the outer edges of regularly used buildings, parking lots, storage or processing  
6 areas of the commercial or industrial activity, not from the property line of the activity and  
7 shall be along the nearest edge of the main traveled way of the controlled route.

8 (c) The proposed sign location must be within 600 feet of the activity.

9 (d) To qualify an area as unzoned commercial or industrial for the purpose of outdoor  
10 advertising control, none of the following activities shall be recognized:

- 11 (i) Outdoor advertising structures;
- 12 (ii) On-premise or on-property signs defined by Rule .0201(18) of this Section if the  
13 on-premise/on-property sign is the only part of the commercial or industrial activity  
14 that is visible from the main-traveled way;
- 15 (iii) Agricultural, forestry, ranching, grazing, farming, and related activities, including,  
16 but not limited to temporary wayside fresh produce stands;
- 17 (iv) Transient or temporary activities;
- 18 (v) Activities not visible and recognizable as commercial or industrial from the traffic  
19 lanes of the main traveled way;
- 20 (vi) Activities more than 660 feet from the nearest edge of the right of way;
- 21 (vii) Activities conducted in a building principally used as a residence;
- 22 (viii) Railroad tracks and minor sidings;
- 23 (ix) Any outdoor advertising activity or any other business or commercial activity  
24 carried on in connection with an outdoor advertising activity; and
- 25 (x) Illegal junkyards, as defined in G.S. 136-146, and nonconforming junkyards as set  
26 out in G.S. 136-147;

27  
28 *History Note: Authority G.S. 136-130;*  
29 *Eff. July 1, 1978;*  
30 *Amended Eff. MONTH 1, 2014; August 1, 2000; November 1, 1993; December 1, 1990; November 1,*  
31 *1988.*  
32

1 19A NCAC 02E .0201 is repealed without notice pursuant to G.S. 150B-21.5(b)(3) and 136-131.2 as follows:

2  
3 **~~19A NCAC 02E .0204~~ — LOCAL ZONING AUTHORITIES**

4 Local zoning authorities may certify to the Board of Transportation when they have established effective control within  
5 zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting and spacing of  
6 outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965, Section 131 of Title 23 of  
7 the United States Code, and with customary use. Upon authorization from the Chief Engineer to the local zoning  
8 authority, the size, lighting and spacing requirements set forth in G.S. 136 Articles 11 and 11A or 19A NCAC 02E .0200,  
9 will not apply to those areas and the local zoning authority shall be authorized to issue permits for the erection and  
10 maintenance of outdoor advertising signs.

11  
12 *History Note:* Authority G.S. 136-130;

13 *Eff. July 1, 1978;*

14 *Amended Eff. December 1, 2012; November 1, 1993.*

15 *Repealed Eff. MONTH 1, 2014.*  
16

**Commented [A1]:** This should remain deleted for several reasons: (1) Because G.S. 136-130 or any other statute does not authorize the Department to delegate control to local governments, is unlawful; (2) G.S. 136-131.1 and HB 74 conflict with this Section (3) Federal funding hinges on the State's compliance with the Highway Beautification Act and federal regulations. Why would the State subject itself to suffering the loss of funds if a local government improperly exercises control over outdoor advertising? (How does the DOT get it back from a local government once delegated? What remedies to the State if a local government violates the "effective control" requirements, which includes paying just compensation for signs taken pursuant to the exercise of regulatory or eminent domain powers) and (4) This Section is standard-less and therefore difficult to administer. Scott Capps said the DOT would never allow a delegation of control to happen. If so, why set up an opportunity for a local government to litigate over a claim that DOT arbitrarily denied a local authority's certification of compliance with the Highway Beautification Act?

1 19A NCAC 02E .0206 is amended without notice pursuant to G.S. 150B-21.5(a)(2),(4) as follows:

2  
3 **19A NCAC 02E .0206 APPLICATIONS**

4 (a) An application for an outdoor advertising permit for a newly erected sign at a new location shall be made on NCDOT  
5 form OA-1, which may be obtained at any District Office or the NCDOT website. Upon completion, the application shall be  
6 submitted to the district office for the district where the proposed site is located. The application shall be submitted by  
7 cCertified mMail and include the following attachments:

- 8 (1) A written lease or written proof of interest in the land where a sign is proposed to be constructed. An  
9 applicant may delete information pertaining to term and amount of lease;
- 10 (2) A right of entry form to provide the right of entry from the property owner or adjacent property owners to  
11 allow DOT personnel to enter upon property when necessary for the enforcement of the Outdoor  
12 Advertising Control Act or these rules;
- 13 (3) If zoned, a written statement from the local zoning authority indicating the present zoning of the parcel and  
14 its effective date. Upon request of the district ~~engineer or designee, engineer,~~ the applicant shall submit  
15 copies of minutes from the appropriate zoning authority pertinent to the zoning action;
- 16 (4) If the area is an unzoned commercial or industrial area, a copy of the documentation confirming that the  
17 requirements under .19A NCAC 02E .0203(5)(a)(i) and (ii) have been met;
- 18 (5) A sign permit of zoning permit, if required by the local government having jurisdiction over the proposed  
19 location;
- 20 (6) A written certification from the sign owner indicating there has been no misrepresentation of any material  
21 facts regarding the permit application, or other information supplied to acquire a permit; and
- 22 (7) The initial nonrefundable permit fee.

23 (b) Any omission of attachments or certification required in Items (1) through (7) in this Rule may cause the rejection of the  
24 application. If the application is incomplete, the entire application package, including application fee, shall be returned to the  
25 applicant.

26 (c) In the instance of the reconstruction of a sign conforming to NCDOT standards as set forth in Rule .0225 of this Section,  
27 the application requirements for a permit addendum are set forth in Rule .0225.

28 (d) Where an outdoor advertising sign is erected prior to the addition of a route to the interstate or federal-aid primary system  
29 or National Highway System, and because of that addition a NCDOT permit is required to maintain the sign, the sign owner  
30 shall submit attachments (1), (2), (6) and (7) in subsection (a) above. The sign owner shall also submit proof of a current  
31 zoning map showing the site or, if unzoned, documentation confirming that the requirements of Rule .0203(5)(a)(i) and (ii)  
32 are met.

34 *History Note: Authority G.S. 136-130;*

35 *Eff. July 1, 1978;*

36 *Amended Eff. MONTH 1, 2014; August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.*  
37

**Commented [A1]:** This clarifies new sign versus reconstructed or repaired sign covered by HB 74.

**Commented [A2]:** A new permit should not be required for reconstruction.

**Commented [A3]:** In this instance, the signs may have been in place for decades. Over those years, signs may have been sold at various times and original files lost, misplaced or simply not transferred. In any event, historical documentation of zoning, or building permits, at time of original erection is not necessarily readily available, even from the government. If the applicant submits a copy of the current zoning map, that should be enough. Any intentionally false statement will subject the applicant to possible revocation penalties.

1 19A NCAC 02E .0207 is amended without notice pursuant to G.S. 150B-21.5(a)(2) as follows:

2  
3 **19A NCAC 02E .0207 FEES AND RENEWALS**

4 (a) Initial and annual renewal fees shall be paid by the sign owners for each permit requested in order to defer the costs of the  
5 administrative and inspection expenses incurred by the Division of Highways of the Department of Transportation in  
6 administering the permit procedures. ~~Fees shall also be paid for any addendum to an existing permit applied for pursuant to~~  
7 ~~Rule .0225 or Rule .0226 in this Section.~~

*Commented [A1]:* Not addressed before.

8 (b) An initial nonrefundable fee of one hundred and twenty dollars (\$120.00) per outdoor advertising structure shall be  
9 submitted with each permit application and an annual nonrefundable renewal fee of sixty dollars (\$60.00) per sign structure  
10 shall be paid by the sign owners on or before April 15 of each year to the appropriate district ~~engineer or designee.~~ ~~engineer.~~  
11 Sign owners must return the information required under Paragraph (c) of this Rule with their annual renewal fees. ~~A~~  
12 ~~nonrefundable fee of sixty dollars (\$60.00) shall be paid with each application for an addendum to an existing permit~~  
13 ~~referenced above.~~

14 (c) The Division of Highways of the Department of Transportation shall send an invoice for the annual renewal fee to each  
15 sign owner/permit holder with a valid permit. For a renewal to be approved, the sign owner/permit holder must submit the  
16 signed invoice along with the renewal fee. If requested, the permit holder/sign owner shall provide a valid lease or other  
17 proof of interest in the land where the sign is located. Failure to submit this documentation within 30 days of written request  
18 from the district ~~engineer or designee~~ District Engineer by certified mail will subject the permit to revocation under 19A  
19 NCAC 2E .0210(4).

20  
21 *History Note: Authority G.S. 136-130; 136-133;*

22 *Eff. July 1, 1978;*

23 *Amended Eff. November 1, 1993; October 1, 1991; December 1, 1990; July 1, 1986;*

24 *Temporary Amendment Eff. November 16, 1999;*

25 *Amended Eff. MONTH 1, 2014; August 1, 2000.*  
26

1 19A NCAC 02E .0210 is proposed for amendment as follows:

3 **19A NCAC 02E .0210 REVOCATION OF OUTDOOR ADVERTISING PERMIT**

4 The appropriate district engineer or designee shall revoke a permit for a lawful outdoor advertising structure based on  
5 any of the following:

- 6 (1) mistake of facts by the issuing ~~District Engineer~~ district engineer or designee for which had the correct  
7 facts been known, he would not have issued the outdoor advertising permit;
- 8 (2) misrepresentations of any facts made by the permit holder or sign owner and on which the ~~District~~  
9 ~~Engineer~~ district engineer or designee relied in approving the outdoor advertising permit application;
- 10 (3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit  
11 holder or sign owner, the permit applicant or the owner of property on which the outdoor advertising  
12 structure is located;
- 13 (4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207(c) of this  
14 Section;
- 15 (5) failure to construct the outdoor advertising structure except all sign faces within 180 days from the  
16 date of issuance of the outdoor advertising permit;
- 17 (6) a determination upon inspection of an outdoor advertising structure that it fails to comply with the  
18 Outdoor Advertising Control Act or the rules in this Section;
- 19 (7) any alteration of an outdoor advertising structure for which a permit has previously been issued which  
20 would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor  
21 Advertising Control Act or the rules adopted pursuant thereto;
- 22 (8) alterations to a ~~sign not conforming to NCDOT standards~~ ~~none conforming sign~~ or a sign conforming by  
23 ~~virtue of the grandfather clause~~ other than reasonable repair and maintenance as defined in Rule  
24 .0225(c). For purposes of this Rule, alterations include:
  - 25 (a) enlarging a dimension of the sign facing or raising the height of the sign;
  - 26 (b) changing the material of the sign structure's support;
  - 27 (c) adding a pole or poles; or
  - 28 (d) adding illumination;
- 29 (9) failure to affix the emblem as required by Rule .0208 of this Section or failure to maintain the emblem  
30 so that it is visible and readable from the main-traveled way or controlled route;
- 31 (10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor  
32 advertising sign to the sign structure in sufficient size to be visible as required by Rule .0208 of this  
33 Section;
- 34 (11) unlawful destruction or illegal cutting of trees, shrubs or other vegetation within the right-of-way of  
35 any State-owned or State-maintained highway as specified in G.S. 136-133.1(i);
- 36 (12) unlawful use of a controlled access facility for purposes of repairing, maintaining or servicing an  
37 outdoor advertising sign where an investigation reveals that the unlawful violation was conducted

**Commented [A1]:** Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs.

1 actually or by design by the sign owner or permit holder, the lessee or advertiser employing the sign,  
2 the owner of the property upon which the sign is located, or any of their employees, agents, or assigns,  
3 including independent contractors hired by any of the above persons; and

4 (a) involved the use of highway right of way for the purpose of repairing, servicing, or  
5 maintaining a sign including stopping, parking, or leaving any vehicle whether attended or  
6 unattended, on any part or portion of the right of way except as authorized by the Department  
7 of Transportation, including activities authorized by the Department for selective vegetation  
8 removal pursuant to G.S. 136-131.1, G.S. 136-131.2 and G.S. 136-133.4. Access from the  
9 highway main travel way shall be allowed only for surveying or delineation work in  
10 preparation for and in the processing of an application for a selective vegetation removal  
11 permit; or

12 (b) involved crossing the control of access fence to reach the sign structure, except as authorized  
13 by the Department, including those activities referenced in Sub-Item (a) of this Item;

14 (13) maintaining a blank sign for a period of 12 consecutive months;

15 (14) maintaining an abandoned, dilapidated, or discontinued sign;

16 (15) a sign that has been destroyed or significantly damaged as determined by Rule .0201(8) and (29) of  
17 this Section;

18 (16) moving or relocating a ~~sign not conforming to NCDOT standards~~ ~~noneconforming sign~~ or a sign  
19 ~~conforming by virtue of the grandfather clause which changes the location of the sign as determined~~  
20 ~~by Rule .0201(27) of this Section, as determined by Rule .0201(27) of this Section;~~

21 (17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North  
22 Carolina Outdoor Advertising Control Act, codified in G.S. 136, Article 11, and the rules adopted  
23 pursuant thereto; and

24 (18) willful failure to substantially comply with all the requirements specified in a vegetation removal  
25 permit if such willful failure meets the standards of G.S. 136-133.1(i) as specified in G.S. 136-  
26 133.4(e).

**Commented [A2]:** Clarifies that HB 74 mandates that local standards are not to be used for existing DOT permitted signs. Also the definition of "location" should be reinserted.

27  
28 *History Note:* Authority G.S. 136-93; 136-130; 136-133; 136-133.1(i); 136-133.4(e);  
29 Eff. July 1, 1978;  
30 Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993; March 1, 1993; October 1, 1991;  
31 December 1, 1990;  
32 Temporary Amendment Eff. March 1, 2012;  
33 Amended Eff. MONTH 1, 2014; November 1, 2012.  
34



**DID YOU HAVE CHANGES TO THIS ONE?**

**19A NCAC 02E .0224 SCENIC BYWAYS**

(a) Outdoor advertising is prohibited adjacent to any highway designated as a scenic byway by the Board of Transportation after the date of the designation as scenic, regardless of the highway classification, except for outdoor advertising permitted in G.S. 136-129 (1), (2), (2a) or (3).

(b) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway that is on a controlled route for outdoor advertising shall become signs not conforming to NCDOT standards nonconforming signs and shall be subject to all applicable outdoor advertising regulations provided in 19A NCAC 02E.0200. Any sign erected on a controlled route adjacent to a Scenic Byway after the date of official designation shall be an illegal sign as defined in G.S. 136-128 and G.S. 136-134.

Commented [A1]:

(c) Permits shall not be required for signs adjacent to scenic byways which were not on a controlled route for outdoor advertising. The department shall maintain an inventory of signs that were in existence at the time the route was designated a Scenic byway. Any sign erected after its designation as a Scenic Byway, except for outdoor advertising permitted in G.S. 136-129(1), (2), or (3), shall be an illegal sign as defined by G.S. 136-128 and G.S. 136-134.

(d) Outdoor advertising signs adjacent to Scenic Byways that are not required to obtain permits are nonetheless governed by the rules in this section.

*History Note: Authority G.S. 136-129.2;  
Eff. August 1, 2000.*

1 19A NCAC 02E .0225 is proposed for amendment as follows:

2  
3 **19A NCAC 02E .0225 REPAIR/MAINTENANCE/ALTERATION OF ~~CONFORMING~~ SIGNS**  
4 **CONFORMING TO NCDOT STANDARDS**

5 (a) Signs may not be serviced from or across the right of way of interstates and fully controlled access primary routes  
6 freeways or from or across controlled access barriers or fences of controlled routes. Prior to or within sixty (60) days of  
7 commencement of the below described reconstruction activity, tThe sign owner shall submit a request for an addendum to  
8 the existing NCDOT permit onAn application for an outdoor advertising alteration permit shall be made on NCDOT form  
9 OA-1A, which may be obtained at any District Office or the NCDOT website. Notification to NCDOT is required in the  
10 form of an addendum request in the event a sign is reconstructed so that any of the following occurs: (i) the height of the sign  
11 is increased in compliance with NCDOT standards; (ii) the pole materials are changed; (iii) automatic changeable copy is  
12 installed; or (iv) the sign is changed from a multipole to a monopole.

13 (b) ~~Signs c~~Conforming to NCDOT standards~~signs~~ may be altered within the limits of the rules in this Section.

14 (1) A conforming sign that has been destroyed or significantly damaged may be reconstructed within the limits  
15 of the rules in this Section ~~by notifying the district engineer in writing of any substantial changes that~~  
16 ~~would affect the original dimensions of the initial permit application.~~

17 (2) Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any  
18 applicable state, ~~state or federal or local~~ rules, regulations or ordinances.

19 (3) A nonrefundable ~~permit~~ fee is required with the request for an addendum application.

20 (4) ~~The alteration of a conforming outdoor advertising structure shall not commence until a permit has been~~  
21 ~~issued.~~ The outdoor advertising structure except all sign faces must be completely reconstructed and  
22 erected within 180 days from the date of the issuance of the addendum to the permit. If the outdoor  
23 advertising structure except sign faces is not reconstructed within 180 days of issuance of the addendum to  
24 the permit then any intervening rule change shall apply to the sign structure. During the 180 day period,  
25 the altered outdoor advertising structure shall be considered in existence for the purpose of spacing of  
26 adjacent signs.

27 (c) ~~Alteration to a nonconforming sign or sign conforming by virtue of the grandfather clause is prohibited. Reasonable~~  
28 ~~repair and maintenance are permitted including changing the advertising message or copy. The following activities are~~  
29 ~~considered to be reasonable repair and maintenance:~~

30 (1) ~~Change of advertising message or copy on the sign face;~~

31 (2) ~~Replacement of border and trim;~~

32 (3) ~~Repair and replacement of a structural member, including a pole, stringer, or panel, with like material;~~

33 (4) ~~Alterations of the dimensions of painted bulletins incidental to copy change; and~~

34 (5) ~~Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face~~  
35 ~~or faces are reduced they may not thereafter be increased beyond the size of the sign on the date it became~~  
36 ~~nonconforming.~~

**Commented [A1]:** Before, whenever a sign was repaired or altered, a new permit was not required and notice was only required if the size of the advertising space was increased. See below regarding "substantial changes that would affect the original dimensions of the initial permit application." Not every act of altering should trigger notice to the NCDOT and some level of administrative review with corresponding fees. This draft language is a suggestion of the types of activities that would trigger the need for an "addendum". Form OA-1A needs to match this Section. Since it is well-established that any change arising from reconstruction must comply with NCDOT standards as to height, size, spacing, etc, then there is no need to wait on NCDOT approval in advance. This is simply a notification mechanism. An addendum rather than a new permit, is in keeping with the ministerial check-off of this activity.

**Commented [A2]:** Local rules should be deleted pursuant to HB 74.

**Commented [A3]:** Reconstruction is the verb used in HB 74.

1 ~~(d) The addition of lighting or illumination to existing nonconforming signs or signs conforming by virtue of the grandfather~~  
2 ~~clause is specifically prohibited as reasonable maintenance; however, such lighting may be permanently removed from such~~  
3 ~~sign structure.~~

4 ~~(e) A nonconforming sign or sign conforming by virtue of the grandfather clause may continue as long as it is not~~  
5 ~~abandoned, destroyed, discontinued, or significantly damaged.~~

6 ~~(f) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E~~  
7 ~~.0201(29), the sign owner may request the Department to review the damaged sign, including salvageable sign components,~~  
8 ~~prior to repairs being made. Should the sign owner perform repairs without notification to the Department, and the~~  
9 ~~Department later determines the damage is greater than 50% of the combination of the sign face and support pole(s), the~~  
10 ~~permit may be revoked. To determine the percent of damage to the sign structure, the only components to be used to~~  
11 ~~calculate this value are the sign face and support pole(s). The percent damage shall be calculated by dividing the~~  
12 ~~unsalvageable sign components by the original sign structure component quantities, using the following criteria:~~

13 ~~(1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and~~  
14 ~~the percentage of damage attributable to sign face shall be 50%;~~

15 ~~(2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be~~  
16 ~~80% and the percentage of damage attributable to sign face shall be 20%; and~~

17 ~~(3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the~~  
18 ~~percentage of damage attributable to sign face shall be 20%.~~

19  
20 *History Note: Authority G.S. 136-131.2; 136-130; 136-89.58;*  
21 *Eff. August 1, 2000;*  
22 *Amended Eff. MONTH 1, 2014; August 1, 2000.*  
23

1 19A NCAC 02E .0226 is proposed for amendment as follows:

2  
3 **19A NCAC 02E .0226 ORDER TO STOP WORK ON UNPERMITTED OUTDOOR ADVERTISING**  
4 **REPAIR AND MAINTENANCE OF ~~NON-CONFORMING SIGNS NOT~~**  
5 **CONFORMING TO NCDOT STANDARDS**

6 (a) Alteration to a ~~sign not conforming to NCDOT standards~~ ~~nonconforming sign~~ is prohibited, ~~unless the nonconformity is~~  
7 ~~eliminated as a result of such alteration~~. Reasonable repair and maintenance are permitted including changing the advertising  
8 message or copy. The following activities are considered to be reasonable repair and maintenance:

- 9 (1) Change of advertising message or copy on the sign face;  
10 (2) Replacement of border and trim;  
11 (3) Repair and replacement of a structural member, including a pole, stringer, or panel, with like material;  
12 (4) Alterations of the dimensions of painted bulletins incidental to copy change; and  
13 (5) Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face  
14 or faces are reduced they may not thereafter be increased beyond the size of the sign on the date it became  
15 nonconforming.

16 (b) The addition of lighting or illumination to existing ~~sign not conforming to NCDOT standards~~ ~~nonconforming signs~~ is  
17 specifically prohibited as reasonable maintenance; however, such lighting may be permanently removed from such sign  
18 structure.

19 (c) A ~~nonconforming sign not conforming to NCDOT standards~~ ~~may~~ continue as long as it is not abandoned, destroyed,  
20 discontinued, or significantly damaged.

21 (d) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E  
22 .0201(28), the sign owner may request the Department to review the damaged sign ~~not conforming to NCDOT standards~~,  
23 including salvageable sign components, prior to repairs being made. Should the sign owner perform repairs without  
24 notification to the Department, and the Department later determines the damage is greater than 50% of the combination of the  
25 sign face and support pole(s), the permit may be revoked. To determine the percent of damage to the sign structure, the only  
26 components to be used to calculate this value are the sign face and support pole(s). The percent damage shall be calculated  
27 by dividing the unsalvageable sign components by the original sign structure component quantities, using the following  
28 criteria:

- 29 (1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and  
30 the percentage of damage attributable to sign face shall be 50%;  
31 (2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be  
32 80% and the percentage of damage attributable to sign face shall be 20%; and  
33 (3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the  
34 percentage of damage attributable to sign face shall be 20%.

35  
36 (a) ~~If outdoor advertising is under construction and the Department determines that a permit has not been issued for the~~  
37 ~~outdoor advertising as required under the provisions of this Chapter, the District Engineer may require that all work on the~~

Commented [A1]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing DOT permitted signs.

Commented [A2]: Example: Sign is taller than 50 feet and therefore not conforming to DOT standards. If rebuilt so that the sign is less than 50 feet, this should be allowed. This would actually clarify and encourage bringing signs into compliance with NCDOT standards.

Commented [A3]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing signs.

Commented [A4]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing signs.

Commented [A5]: This is consistent with HB 74 to clarify that local rules are not to be applied to existing signs.

1 sign cease until the sign owner shows that the sign does not violate the provisions of this chapter. The order to cease work  
2 shall be in writing and prominently posted on the outdoor advertising structure, and no further notice of the stop work order is  
3 required. The failure of a sign owner to comply immediately with the stop work order shall subject the outdoor advertising  
4 structure to removal by the Department of Transportation or its agents.

5 (b) For purposes of this rule only, outdoor advertising is under construction when it is in any phase of construction prior to  
6 the attachment and display of the advertising message in final position for viewing by the traveling public.

7 (c) The cost of removing outdoor advertising by the Department of Transportation or its agents shall be assessed against the  
8 sign owner.

9 (d) No stop work order may be issued when the Department of Transportation process agent has been served with a court  
10 order allowing the sign to be constructed. The District Engineer shall consult with the Outdoor Advertising coordinator to  
11 determine whether such an order has been served on the Department.

12  
13 *History Note: Authority G.S. 136-130; 136-133;*  
14 *Temporary Adoption Eff. November 16, 1999;*  
15 *Eff. MONTH 1, 2014; August 1, 2000.*  
16  
17

October 24, 2014

Via email and mail

Richard E. Greene, Jr.  
NCDOT - Division of Highways  
1536 Mail Service Center  
Raleigh, NC 27699-1536  
[rgreene@ncdot.gov](mailto:rgreene@ncdot.gov)

Scott Capps  
NCDOT  
1566 Mail Service Center  
Raleigh, NC 27699-1566  
[scapps@ncdot.gov](mailto:scapps@ncdot.gov)

**RE: House Bill 74 and Rule Making**

Dear Ricky and Scott:

On behalf of my client, the North Carolina Outdoor Advertising Association ("NCOAA"), I wanted to thank you for the meeting that we had in Raleigh on October 14, 2014. As you know, the purpose of that meeting was to see if the Department of Transportation and the NCOAA could "get on the same page" with implementation of House Bill 74's allowances addressing modernization of outdoor advertising. At our meeting, we went over the issues presented in and material included with my August 22, 2014 letter (with exhibits) to Ricky as well as my December 23, 2103 letter to Roy Grasse. Here are some of the major points that I took away from the meeting:

1. You agree that submitting an "addendum" to permit is a proper course to follow whenever a sign owner seeks to modernize his billboard, rather than having to obtain a new DOT permit.
2. You agree that the following actions taken by sign owners for billboards conforming to DOT standards (not necessarily local) would be authorized by HB 74 and would not trigger any enforcement action by the DOT:
  - a. Reconstructing a billboard by swapping out wooden poles for steel poles;
  - b. Reconstructing a sign by replacing multi poles with a mono pole; and
  - c. Increasing the height of a sign.

Until an "addendum" process is in place in a new set of rules, my clients will use the process of notification outlined in my October 4, 2013 letter to Roy Grasse and Jon Nance that was included as an exhibit to the above August 22, 2014 letter.



3. Consistent with No. 2 above, you would work on rewriting the rules to clear up inconsistencies dealing with the use of the term "nonconforming sign" to match up with HB 74's directive that local standards are not relevant to the repair and reconstruction of DOT-permitted signs, including the activities described above. As you know, we have suggested that you use the phrases "sign conforming to NCDOT standards" or "sign not conforming to NCDOT standards".
4. You intend to keep in place the reference to "nonconforming signs" in the rules dealing with digital, which allows local standards to continue to apply.
5. You would consider a clarification that would allow a "sign conforming to NCDOT standards" to be relocated anywhere on the same "lot" (same landowner) without having to seek a new permit. If necessary, the addendum approach mentioned above might be employed. As we discussed, allowing more room to relocate by express allowances in the rules will potentially lead to more resolutions in condemnation actions.

Several of my clients have expressed the strong desire to carry out the modernization benefits of HB 74. More than likely, you will see in the short term an increase in these endeavors. While you continue to work on the rules, my folks will rely in the meantime on the assurances provided by you that the above activities described in No. 2 above will not receive any resistance or negative response from the DOT. Because it takes a significant outlay of money, time and/or labor to modernize a sign and because local government resistance may be common place (despite the clear language of HB 74), it is important to know that we are "on the same page" with DOT.

Again, I thank you for the meeting we had. Once you complete a draft set of new rules, we would appreciate the opportunity for review and feedback (and perhaps another meeting) before they are filed for public comment.

If you have any questions, please feel free to contact my office.

Sincerely,  
**VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.**  
*Craig D. Justus*  
(Electronically Signed)  
Craig D. Justus

cc: Client - via email  
Ebony Pittman, Esq. - via email - [epittman@ncdoj.gov](mailto:epittman@ncdoj.gov)  
Roy T. Grasse - via email - [rgrasse@ncdot.gov](mailto:rgrasse@ncdot.gov)  
DMS4821-7834-1782/132783-32783-0007/10/23/2014





THE  
VAN WINKLE  
LAW FIRM

Writer's Extension: 2404  
Writer's Facsimile: 828-257-2773  
Writer's E-mail: [cjustus@vwlawfirm.com](mailto:cjustus@vwlawfirm.com)

May 12, 2015

Via email and mail

Scott Capps  
NCDOT  
1566 Mail Service Center  
Raleigh, NC 27699-1566  
[scapps@ncdot.gov](mailto:scapps@ncdot.gov)

RE: I-95 Billboard in the Town of Benson; State Permit No. I-095-051034  
("Billboard")

Dear Scott:

I hope you are doing well. As you probably know, my firm represents Capital Outdoor Advertising ("Capital"). As a follow up to my October 24, 2014 correspondence to you and to Ricky Greene<sup>1</sup>, a copy of which is attached hereto, I wanted to notify you on behalf of Capital that my client is in the process of reconstructing the above referenced Billboard located in the Town of Benson in order to increase its height, not to exceed the NCDOT standards of fifty (50) feet.

We believe that the Billboard conforms to NCDOT/State standards. As you know, Capital does not intend to use HB 74 to modify signs that are not conforming to DOT standards unless the modification cures the nonconformity. At our meeting last year in Raleigh, we all acknowledged that the federal Highway Beautification Act and the corresponding federal-state agreement establishes a minimum floor of standards for controlling outdoor advertising along interstates and federal aid primary highways. States can choose to be more restrictive. In our case, the North Carolina General Assembly has chosen to allow DOT-permitted billboards to be repaired and/or reconstructed without adherence to local standards, which still preserves the "floor" referenced above.

As indicated in my October 24, 2014 letter, we understand that the above activity is authorized by the House Bill 74 legislation and that your office would agree that such action would not trigger any enforcement by the NCDOT.

<sup>1</sup> As you know, I have on behalf of several outdoor advertising clients previously submitted this same type of notice of modernization activities so that your Department could update its records.





Scott Capps  
May 12, 2015  
Page 2

The notice provided for herein is consistent with the process of notification outlined in my October 4, 2013 letter to Roy Grasse and Jon Nance, my August 22, 2014 letter to Ricky Greene and my above mentioned October 24<sup>th</sup> letter.

If you have any questions, please do not hesitate to contact me at your earliest convenience.

Sincerely,  
VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.

*Craig D. Justus*  
(Electronically Signed)  
Craig D. Justus

CDJ/ca

cc: Client - via email  
Ebony Pittman. Esq. - via email - [epittman@ncdoj.gov](mailto:epittman@ncdoj.gov)  
Richard E. Greene, Jr. - via email - [rgreene@ncdot.gov](mailto:rgreene@ncdot.gov)  
Roy Grasse, NCDOT Outdoor Advertising Coordinator - [rgrasse@ncdot.gov](mailto:rgrasse@ncdot.gov)  
DMS:4846-6668-3383v1|33265-33265-0008|5/11/2015



THE  
VAN WINKLE  
LAW FIRM

Writer's Extension: 2404  
Writer's Facsimile: 828-255-0255  
Writer's E-mail: [cjustus@vwlawfirm.com](mailto:cjustus@vwlawfirm.com)

March 25, 2019

Via email and mail

Marc Morgan, P.E.  
615 Concord Road (NC 73)  
Albemarle, NC 28001  
[mmorgan@ncdot.gov](mailto:mmorgan@ncdot.gov)

Roy Grasse  
1567 Mail Service Center  
Raleigh, NC 27699  
[rgrasse@ncdot.gov](mailto:rgrasse@ncdot.gov)

RE: Lamar Outdoor Advertising – Outdoor Advertising Sign Along NC 24/27

Dear Marc and Roy:

As you know, I represent Lamar. I am writing to you concerning your letter dated February 28, 2019 wherein you provide the requisite 30 days-notice prior to revocation of Lamar's outdoor advertising permit under 19 NCAC 2E 0212. In your letter, you claim that my client's billboard along US 24/27 ("Sign") in Stanley County was illegally erected adjacent to a scenic byway.

As you know, Lamar possesses a State permit for the Sign (NC024 084020). You acknowledge that in your letter since the point of your letter is to provide notice "prior" to permit revocation. Most of your letter is truly a head-scratcher. In order to accommodate a North Carolina Department of Transportation ("DOT") road widening project, the Sign was relocated within the same "sign location/site" as defined in 19 NCAC 2E .0201(27)(i.e. 1/100 mile) ("Site"). This effort to mitigate damages associated with a State project by relocating straight back off the newly proposed right-of-way is a common occurrence all over the State; a time-honored practice going at least as far back as I have been practicing law (more than 25 years). It is one way for the outdoor advertiser to preserve an asset, especially a nonconforming one, while reducing expenditures of public funds normally triggered by condemnation. Now, after years and years of precedent, you claim this act of relocation is illegal. This surprising determination by you smacks in the face of decades and decades worth of the same or similar examples without the consequence of permit revocation, is contrary to unambiguous DOT rules on the topic, and conflicts with prior rulings from the North Carolina Secretary of Transportation.

19 NCAC 2E .0210(16) states that a DOT permit shall be revoked if a *nonconforming sign* is moved or relocated so as to change the location of the sign as defined by .0201(27) referenced above. The flip to this is that it is perfectly legal to move a sign, even a nonconforming one, within the same permitted address.

19 NCAC 2E .0224(b) provides that all "lawfully erected outdoor advertising signs adjacent to a Scenic Byway" shall be considered "nonconforming signs and shall be subject



Marc Morgan  
Roy Grasse  
March 25, 2019  
Page 2

to all applicable outdoor advertising regulations provided in 19A NCAC 02E .0200.”<sup>1</sup> In this case, the Sign was, again, relocated on the same Site, which is recognized as a permitted activity under 19 NCAC 2E .0210(16).

You mention G.S. 136-129.2 and G.S. 136-134 in your letter. Those statutes speak to signs “erected” in a manner contrary to the North Carolina Outdoor Advertising Control Act (“OACA”) or DOT rules promulgated to enforce same. In G.S. 136-128 of the OACA, the term “erect” “means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.” The key here is that the verbs mentioned do not include “relocate”, “reconstruct” or “reestablish.” The Sign was already existing, established and permitted on the Site. Rather than creating a new sign at a new location, the Sign was simply moved.

Consistent with the distinction between creating a new sign at a new location and activities associated with maintaining or operating an existing sign, G.S. 136-133 requires a person to obtain a State permit only for the former. Long ago, the Sign was lawfully erected on the Site. Lamar possesses a DOT permit for the Sign; Lamar does not need a new permit. The act of relocation has NEVER required a new permit or permission so long as the outdoor advertising sign is moved within the boundaries of the same “sign location/site”. Therefore, relocation has never been considered by the DOT as an act of “erection.” If it had, a new OA-1 permit application would have historically been part of the mix. It has not been.<sup>2</sup>

The fact that relocation does not trigger a new permit has been acknowledged in multiple communications and meetings between the outdoor advertising industry and DOT over the years. Attached as Exhibits “1”, “2”, “3”, “4” and “5” are a sampling of communications memorializing the long-standing position of the DOT that the act of relocation on the same “sign location/site” does not require a new permit. The Sign’s nonconforming nature does not change that outcome. The maintenance or operation of that Sign, even if it is nonconforming, included the right to relocate on the same Site; there is no other way to read 19 NCAC 2E .0210(16).

Attached as Exhibit “6” is a 2007 ruling from Lyndo Tippet, then North Carolina Secretary of Transportation, in a case involving an appeal from a District Engineer’s decision to revoke a permit based on moving a billboard on the same “sign location/site”.

---

<sup>1</sup> The Sign meets the standards imposed in the Federal-State agreement implementing the federal Highway Beautification Act.

<sup>2</sup> The undersigned is aware that there are draft DOT rule amendments to require a permit every time a sign is altered- which would include relocation. The very fact that the DOT rules may be changed to require a permit for that event supports the notion that heretofore a permit was not required.

Marc Morgan  
Roy Grasse  
March 25, 2019  
Page 3

The Rink Media sign in question, located ironically in Stanley County, was nonconforming due to agricultural zoning. Like this case, Rink Media's nonconforming sign was moved to accommodate a State highway project. Secretary Tippet ruled against the District Engineer and required permit reinstatement based on the plain language of 19 NCAC 2E .0210(16) that provided the outdoor advertiser with the right to relocate. It is interesting to note the following finding in Secretary Tippet's opinion:

It is DOT's practice to allow a nonconforming sign structure removed as a result of a highway project, to be moved within the same sign location as specified on the permit application. As applied, a sign structure may be moved up to 52.8 feet (26.4 feet left or right) back on the same property, without changing its location.

In light of the above clear precedent and unambiguous DOT rules, you must not revoke Lamar's permit. Such revocation would justify an award of attorney's fees to my client under G.S. 6-19.1 as well as any damages associated with a taking of Lamar's property.

The DOT should be thankful a new spot on the same "sign location/site" was reasonably available so as to minimize any just compensation impact associated with widening NC 24/27. In fact, there should be no excuse to hold up State relocation assistance funding since the act complained of is expressly allowed by DOT rules.

I look forward to hearing from you. I have copied Ebony Pittman with this letter. We hope to resolve this matter amicably and expeditiously.

Sincerely,  
VAN WINKLE, BUCK, WALL,  
STARNES AND DAVIS, P.A.  
*Craig D. Justus*  
(Electronically Signed)  
Craig Justus

CDJ/ca  
Enclosures  
Cc: Ebony Pittman - via email  
Client - via email

4842-1088-7822, v. 1



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

RECEIVED  
MAR 06 2007  
DIVISION ENGINEER TENTH DIVISION

Dist. \_\_\_\_\_ Maint. \_\_\_\_\_  
Oper. \_\_\_\_\_  
Blas. \_\_\_\_\_  
LYNDO TIPPETT  
SECRETARY

February 28, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Betty S. Waller  
201 Shannon Oaks Circle, Suite 200  
Cary, NC 27511

MAR 06 2007

DEPARTMENT OF TRANSPORTATION  
RALEIGH, NC 27699-1501

Dear Ms. Waller:

SUBJECT: Appeal of revocation of NCDOT Outdoor Advertising Permit number  
NC024 084010 for Rink Media, Stanly County, NC

This is in response to your October 31, 2006, appeal concerning the revocation  
of subject outdoor advertising permit by District Engineer D. R. Hearne.

Based on the outdoor advertising regulations and state law, my final decision is  
outlined in the attached document.

Sincerely,

Lyndo Tippet

LT/sw  
Enclosure

cc: W. S. Varnedoe, P.E., Chief Engineer - Operations  
J. P. Brandenburg, P.E., State Road Maintenance Engineer  
Scott Wheeler, Outdoor Advertising Coordinator  
B. S. Moose, P.E., Division Engineer  
D. R. Hearne, P.E., District Engineer  
Rink Media

PHONE 919-733-2520 FAX 919-733-9150



STATE OF NORTH CAROLINA  
DIVISION 10, DISTRICT 1

IN THE OFFICE OF THE  
SECRETARY OF TRANSPORTATION  
06 OA 008

IN RE: Rink Media )  
APPELLANT, Appeal of Denial of Outdoor ) FINAL DECISION  
Advertising Permit, Stanly County, North Carolina )

This matter was considered by Lyndo Tippet, Secretary of Transportation of the State of North Carolina, pursuant to an appeal dated October 31, 2006, by Rink Media (Appellant) which sought review of a decision by District Engineer D. R. Hearne dated September 8, 2006. Appellant granted Secretary Tippet an additional 30 days in which to render a Final Decision pursuant to N.C. Admin. Code t.19A, s.2E.0213.

ISSUES

Issue. Whether the district engineer properly revoked Appellant's permit for an outdoor advertising structure adjacent to NC 24 in Stanly County on property owned by Ruby Almond pursuant to N.C. Admin. Code t.19A, s.2E.0210(16)?

EXHIBITS

- A. Letter to Rink Media dated August 4, 2006, from District Engineer D. R. Hearne, notifying of alleged violation of N.C. Admin. Code t.19A, s.2E.0210(16).
- B. Letter to Rink Media dated September 8, 2006, from District Engineer D. R. Hearne, revoking outdoor advertising permit number NC024 084010 based on N.C. Admin. Code t.19A, s.2E.0210(16).
- C. Copy of appeal from Betty Waller, counsel for Rink Media, dated October 31, 2006.
- D. Copy of N.C. Admin. Code t.19A, s.2E.0210, Revocation of Permit.
- E. Copy of N. C. Admin. Code t.19A, s.2E.0201 (27), Definitions (Sign Location /Site)
- F. Copy of Form OA-1, Application for Outdoor Advertising Permit
- G. Letter to Gateway Outdoor (previous owner of subject sign) dated January 25, 2005 from NCDOT Right of Way Agent advising of acquisition of portion of Ruby Almond property.



- H. Letter to Rink Media dated February 2, 2006 from NCDOT Right of Way Agent sending payment for signs to be relocated on NC 24/27 west of Albermarle.
- I. Copy of sketch showing sign location.

### FINDINGS OF FACT

1. Rink Media is the permit holder/sign owner of Permit Number NC024-084010 that is assigned to a billboard located on property owned by Ruby Almond adjacent to NC 24 in Stanly County.
2. The sign structure was erected prior to the enactment of the NC Outdoor Advertising Control Act. The sign structure was permitted on April 6, 1977. At the time the permit was issued, the sign structure was located in an area zoned residential-agricultural. Based on these findings the sign was permitted as a nonconforming sign structure. (Exhibit F)
3. In a letter dated January 25, 2005, Roger L. Lisk, NCDOT Right-of-Way Agent informed Gateway Outdoor Advertising (previous owner of the subject sign) that the DOT had purchased the property on which the sign was located. The letter further informed the sign owner of the need to vacate the premises and remove all personalty from the right-of-way. The DOT informed the sign owner that it would pay \$3950.00 to move the sign structure. (Exhibit G)
4. In accordance with the DOT's request, on December 5, 2005 the nonconforming sign structure was moved.
5. The nonconforming sign structure was moved back less than 52.8 feet (26.4 feet left or right) from where it was previously situated. (Exhibit I)
6. N. C. Admin. Code t.19A, s.2E.0201 (27) provides that "a sign location for purposes of these rules shall be measured to the closest 1/100<sup>th</sup> of a mile, in conformance with Department of Transportation method of measurement for all state roads." As applied and in accordance with DOT policy regarding removing and relocating sign structures due to highway projects, a sign structure may be moved 56 feet back on the same property, without changing its location. (Exhibit E)
7. In a letter dated February 2, 2006 from NCDOT Right of Way Agent, Rink Media was sent the relocation payment for the subject sign structure. (Exhibit H)
8. In a certified letter dated August 4, 2006, District Engineer D. R. Hearne notified Rink Media that sign permit number NC024 084010 was in violation based on N.C. Admin. Code t.19A, s.2E.0210(16). (Exhibit A)

9. N.C. Admin. Code t.19A, s.2E.0210(16) provides that the district engineer shall revoke a permit for a lawful outdoor advertising structure for "moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which changes the location of the sign as determined by .0201(27) of this section;" (Exhibit D)
10. In a certified letter dated September 8, 2006, District Engineer D. R. Hearne notified Rink Media that sign permit number NC024 084010 was being revoked based on N.C. Admin. Code t.19A, s.2E.0210(16). (Exhibit B)
11. In a letter dated October 31, 2006, Rink Media through legal counsel submitted an appeal to Secretary Tippet where in it contested the revocation of outdoor advertising permit number NC024 084010 ."( Exhibit C)

### CONCLUSIONS OF LAW

1. N. C. Admin. Code t.19A, s.2E.0201 (27) provides that "a sign location for purposes of these rules shall be measured to the closest 1/100<sup>th</sup> of a mile, in conformance with Department of Transportation method of measurement for all state roads."
2. It is DOT's practice to allow a nonconforming sign structure removed as a result of a highway project, to be moved within the same sign location as specified on the permit application. As applied, a sign structure may be moved up to 52.8 feet (26.4 feet left or right) back on the same property, without changing its location.
3. N.C. Admin. Code t.19A, s.2E.0210(16) provides that the district engineer shall revoke a permit for a lawful outdoor advertising structure for "moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which ***changes the location of the sign as determined by .0201(27) of this section;***" (emphasis added)
4. The revocation of the permit was based on the District Engineer's determination that the sign structure had been relocated in a manner which changed the location of the sign.
5. Findings of Facts 3-6 clearly indicate that the relocation of the nonconforming sign structure did not change the sign location, as determined by N. C. Admin. Code t.19A, s.2E.0201 (27), since the nonconforming sign structure was not moved more than 56 feet back on the same property.
6. Based on these findings, the decision to revoke the sign permit was not justified based on N.C. Admin. Code t.19A, s.2E.0210 (16).



**ORDER**

I HEREBY REVERSE the District Engineer's decision to revoke the outdoor advertising permit of Rink Media for permit number NC024 084010 based on N.C. Admin. Code t.19A, s.02E.0210(16) and order that the subject permit be reinstated by the District Engineer within 30 days of the date of this decision.

IT IS FURTHER ORDERED that a copy of this decision be served upon the appellant, Rink Media, and its attorney, by certified mail, return-receipt requested, addressed as follows:

Rink Media  
C/O Douglas Rink  
P. O. Box 405  
Newton, NC 28685

Betty S. Waller  
Waller & Stewart, LLP  
201 Shannon Oaks Circle, Suite 200  
Cary, NC 27511

**NOTICE**

Any party aggrieved by this final decision has thirty (30) days from the receipt of this decision to file a petition for judicial review in accordance with N.C. Gen. Stat. § 136-134.1.

This the 28<sup>th</sup> day of February, 2007.

  
\_\_\_\_\_  
Lyndo Tippet  
Secretary of Transportation

# Exhibit B



North Carolina Outdoor Advertising Association

209 Fayetteville St. Box 6 - Raleigh, NC 27601

TJ Bugbee  
Executive Director  
tjbugbee@ncoaa.net

February 17, 2020

North Carolina Department of Transportation  
c/o Helen Landi  
NCDOT APA Coordinator  
1501 Mail Service Center  
Raleigh, NC 27699-1501

Public Comments Regarding 2020 Proposed Revisions to Rules Governing Outdoor Advertising

Mrs. Landi,

On behalf of the North Carolina Outdoor Advertising Association (NCOAA) and its members, thank you for the opportunity to respond to the proposed readoption of rules for the control of outdoor advertising in North Carolina, as required under G.S. 150B-21.3A, and submitted to the North Carolina Register on January 2<sup>nd</sup>, 2020. NCOAA's membership collectively represents more than 90% of the outdoor advertising industry in North Carolina. I write to you today on behalf of the industry, to raise practical, justifiable concerns as related to the amended rules, currently proposed by the North Carolina Department of Transportation (NCDOT).

The outdoor advertising industry in North Carolina has seen a steady decline in the overall number of outdoor advertising structures over the past ten years. The proposed rules identified in the written comments submitted by NCOAA counsel Craig Justus (Van Winkle Law Firm), entitled "Proposed DOT Rulemaking (2020) – Public Comment" outline a number of objections to the rules currently being proposed that will contribute to, and expedite this decline.

The rules as proposed are far from a simple readoption, and the newly proposed changes will result in an overall negative impact on our State, reaching well beyond businesses directly operating outdoor advertising structures. The unintended consequences of some of the proposed changes will also negatively impact other North Carolina businesses, landowners, and taxpayers.

The business of outdoor advertising is inherently local, with local businesses accounting from 70%, to upwards of 90% of the advertisers in some markets. As a tourism destination, North Carolina is also host to an abundance of out-of-state visitors, and many businesses rely on this medium to reach a very specific audience: the nearby travelling public. Local businesses depend on this medium to drive traffic off of the highways, and into our towns, or to their websites, on a day-to-day basis. Local nonprofits, civic groups, and government entities utilize the medium to keep residents informed. Sign owners employ people locally, pay local property tax on their signs, and provide regular income to local landowners through the lease of their property. In addition, numerous businesses and individuals not primarily involved in the operation of outdoor advertising structures, own one, or multiple off-premise signs, for the sole purpose of advertising their primary business, or simply providing additional income to their family.

In 2013, the North Carolina General Assembly (NCGA) required North Carolina's Departments and Agencies to periodically review their existing rules. The intent of the Regulatory Reform Act of 2013 (S.L. 2013-413) is clearly stated in the short title of the Session Law, "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION...". The proposed rules identified in the written comments submitted by NCOAA counsel, neither streamline the regulatory process, nor do they stimulate job creation. On the contrary, the rules identified are directly adverse to the legislative intent of the General Assembly in requiring the periodic review of existing rules.

In particular, the proposed changes to the definition of "sign location" from 1/100<sup>th</sup> of a mile, to a GPS coordinate, will eliminate a mechanism by which sign owners are able to move a sign off of the new right-of-way established by a road widening, within the bounds of the same "Sign Location/Site". Currently, a sign may be moved within the same "Sign location/site" (26 feet either side of the pole:1/100 mile) as currently defined in NCDOT's regulations, and affirmed by the N.C. Supreme Court in *Lamar v. Stanly County*. The effect of this proposed change would overturn *Lamar v. Stanly County*, leading to further unnecessary, and extensive just compensation disputes over the taking of a sign.

In addition, the establishment of a new "alteration permit", runs counter to the legislative intent of the modernization statute (G.S. 136-131.2), and would place additional, unnecessary red tape on sign owners. The practical effect of this proposal would also place additional workload on NCDOT. Requiring an entirely new permit to make even minor modifications to an established structure, only adds another regulatory hurdle that has not been, and is not necessary, for NCDOT's adequate control of outdoor advertising.

The practical effect of many of these rules as proposed, will increase the rate of the forced taking of signs. NCDOT has been aware of similar objections since March 15<sup>th</sup>, 2019, when NCOAA responded in good faith to a different set of draft rules, courteously provided to NCOAA by NCDOT, prior to a one-year extension granted to NCDOT by the Rules Review Commission. The rules as identified by NCOAA counsel will further contribute to that decline, and thus, increase the regulatory burden on the outdoor advertising industry, the workload on NCDOT, and the cost to North Carolina taxpayers.



To adhere to the intent set forth by the General Assembly in S.L. 2013-413, NCDOT should instead be proposing rules that reduce NCDOT's workload, by allowing NCDOT to focus its efforts on signs that do not meet current State or Federal regulations, and bad actors in the industry that do not adhere to those standards.

It is our sincere hope that NCDOT will take the concerns we have addressed into account. NCOAA and its members respectfully request that NCDOT amend its proposed rules to account for the concerns identified by NCOAA counsel and myself, and refrain from implementing these new, burdensome regulations, that will ultimately harm landowners, businesses, the travelling public, and the taxpayers of North Carolina. NCOAA stands ready, and looks forward to working with NCDOT ahead of its August 31<sup>st</sup>, 2020 readoption deadline, to preserve NCDOT's sufficient control of outdoor advertising, and equitably streamline regulatory burdens facing the outdoor advertising industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'TJ Bugbee', with a large, sweeping loop at the end.

TJ Bugbee  
Executive Director  
North Carolina Outdoor Advertising Association

Cc: Jeannine Dodson, President NCOAA  
Ebony Pittman, Esq., NCDOT  
Craig Justus, Esq., Van Winkle Law Firm

# Exhibit C

A G R E E M E N T

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF  
OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM  
OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY  
SYSTEM

THIS AGREEMENT made and entered into by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the "Administrator," and the State of North Carolina, represented by the State Highway Commission acting by and through its Chairman, hereinafter referred to as the "State".

W I T N E S S E T H:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid primary systems should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(d) of Title 23, United States Code, authorizes the Secretary of Transportation to enter into agreements with the several States to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under authority of State law or in unzoned commercial or industrial areas, also to be determined by agreement; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in

the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(b) of Title 23, United States Code, provides that Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determined has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under Section 104 of Title 23, United States Code, until such time as such State shall provide for such effective control; and

WHEREAS, the State of North Carolina desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and the national policy in order to remain eligible to receive the full amount of all Federal-aid highway funds to be apportioned to such State on or after January 1, 1968, under Section 104 of Title 23, United States Code.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

Section I. Definitions

1. Commercial or industrial activities for purposes of unzoned commercial or industrial areas means those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:
  - (a) Outdoor advertising structures.
  - (b) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
  - (c) Transient or temporary activities.
  - (d) Activities not visible from the main traveled way.



- (e) Activities more than 660 feet from the nearest edge of the right-of-way.
  - (f) Activities conducted in a building principally used as a residence.
  - (g) Railroad tracks and minor sidings.
2. Zoned commercial or industrial areas mean those areas which are zoned for business, industry, commerce, or trade pursuant to a State or local zoning ordinance or regulation.
3. Unzoned commercial or industrial areas mean those areas which are not zoned by State or local law, regulation, or ordinance, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition.
- All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property line of the activities, and shall be along or parallel to the edge or pavement of the highway.
4. National System of Interstate and Defense Highways and Interstate System means the system presently defined in and designated pursuant to subsection (d) of Section 103 of Title 23, United States Code.
5. Federal-aid primary highway means any highway within that portion of the State highway system as designated, or as may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.
6. Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.
7. Main-traveled way means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
8. Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or

information contents of which is visible from any part of the main-traveled way of the Interstate or Federal-aid primary highway system.

9. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or normal maintenance or repair of a sign structure.
10. Maintain means to allow to exist.
11. Safety rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.
12. Visible means that the advertising copy or informative contents are capable of being seen without visual aid by a person of normal visual acuity.

## Section II. Scope of Agreement

This agreement shall apply to all zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate and Federal-aid Primary Systems within the State of North Carolina in which outdoor advertising signs may be visible from the main-traveled way of either or both of said systems.

## Section III. State Control

(a) The State hereby agrees that in all areas within the scope of this agreement, the State shall effectively control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this agreement other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon. Except as herein provided in subsection (b), the following criteria shall apply to the erection and maintenance of such outdoor advertising signs, displays and devices in all zoned and unzoned commercial and industrial areas:

### (1) SIZE OF SIGNS

- a. The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and

maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, supports, and other structural members.

- b. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.
- c. The maximum size limitations shall apply to each side of a sign structure; and signs may be placed back-to-back, side-by-side, or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

(2) SPACING OF SIGNS

a. Interstate and Federal-aid Primary Highways.

Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

b. Interstate Highways and Freeways on the Federal-aid Primary System.

- 1. No two structures shall be spaced less than 500 feet apart.
- 2. Outside of incorporated towns and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet to be measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

c. Non-freeway Federal-aid Primary Highways.

- 1. Outside of incorporated towns and cities - no two structures shall be spaced less than 300 feet apart.
- 2. Within incorporated/~~towns~~ towns and cities - no two structures shall be spaced less than 100 feet apart.

d. The above spacing-between-structures provisions do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

e. Explanatory Notes.

1. Official and "on-premise" signs, as defined in Section 131(c) of Title 23, United States Code, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.
2. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

(3) LIGHTING OF SIGNS. RESTRICTIONS

- a. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date temperature, weather, or similar information.
- b. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or Federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
- c. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
- d. All such lighting shall be subject to any other provisions relating to lighting or signs presently applicable to all highways under the jurisdiction of the State.

(b) When local zoning authorities have established effective control within zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting, and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965 and with customary use, the State may notify the Administrator of such effective control. After notification to the Administrator of effective control by the local zoning authority, the size, lighting, and spacing requirements set forth in subsection (a) will not apply to those areas.

Section IV. Interpretation

The provisions contained herein shall constitute the standards for effective control of signs, displays, and devices within the scope of this agreement.

The provisions contained herein pertaining to the size, lighting, and spacing of outdoor advertising signs permitted in zoned and unzoned commercial and industrial areas shall apply only to those signs erected subsequent to the effective date of this agreement except for those signs erected within six months after the effective date of this agreement in zoned or unzoned commercial or industrial areas on land leased prior to such effective date, provided that a copy of such lease be filed with the State Highway Department within 30 days following such effective date.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress or the State legislation is amended, the parties reserve the rights to re-negotiate this agreement or to modify it to conform with any amendment.

Section V. Effective Date

This agreement shall be effective when Federal funds are made available to the State for the purpose of carrying out the provisions of 23 USC 131.

IN WITNESS WHEREOF the parties hereto have executed this agreement this the 7th day of January, 1972.

STATE OF NORTH CAROLINA

By the State Highway Commission

  
D. McLaughlin Faircloth, Chairman

UNITED STATE OF AMERICA  
DEPARTMENT OF TRANSPORTATION

By:   
Federal Highway Administrator

# Exhibit D

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2013-413  
HOUSE BILL 74**

AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER  
TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION,  
TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN  
ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

**PART I. IMPROVE RULE-MAKING PROCESS**

**SECTION 1.** G.S. 150B-2 is amended by adding a new subdivision to read:

"(7a) "Policy" means any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency which is intended and used purely to assist a person to comply with the law, such as a guidance document."

**SECTION 2.** G.S. 150B-21.4 reads as rewritten:

**"§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – ~~Before an agency publishes in the North Carolina Register the proposed text of adopts~~ a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office of State Budget and Management that the funds that would be required by the proposed rule change are available. The agency shall submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office at the same time as the agency submits the notice of text for publication pursuant to G.S. 150B-21.2. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation ~~before when the agency publishes the proposed text of the rule change in the North Carolina Register~~ submits the notice of text for publication. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – ~~Before an agency publishes in the North Carolina Register the proposed text of adopts~~ a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina



Code as defined in G.S. 105-130.2(1)-G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).

...."

## **OUTDOOR ADVERTISING AMENDMENTS**

**SECTION 8.(a)** G.S. 136-133.1 reads as rewritten:

**"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

...  
(a1) Notwithstanding any law to the contrary, in order to promote the outdoor advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of Transportation, at the request of a selective vegetation removal permittee, may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone defined in subsection (a) of this section along acceleration or deceleration ramps so long as the view to the outdoor advertising sign will be improved and the total aggregate area of cutting or removal does not exceed the maximum allowed in subsection (a) of this section.

...  
(f) Tree branches within a highway right-of-way that encroach into the zone created by points A, C, ~~and DB~~, D, and E may be cut or pruned. Except as provided in subsection (g) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

...."

**SECTION 8.(b)** Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

**"§ 136-131.2. Modernization of outdoor advertising devices.**

No municipality, county, local or regional zoning authority, or other political subdivision shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a valid permit issued by the Department of Transportation so long as the square footage of its advertising surface area is not increased. As used in this section, reconstruction includes the changing of an existing multipole outdoor advertising structure to a new monopole structure."

## **DISPOSITION OF DMH/DD/SAS RECORDS**

**SECTION 9.** The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual to provide that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless a longer period is required by federal law. At the termination of that time period, records may be destroyed or transferred to a State agency or contractor identified by the Department of Health and Human Services.

## **STUDY OCCUPATIONAL LICENSING BOARD AGENCY**

**SECTION 10.(a)** The Joint Legislative Program Evaluation Oversight Committee shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General Assembly a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. For purposes of this act, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation Division shall include the following within this study:

- (1) Consideration of the feasibility of establishing a single State agency to oversee the administration of all or some of the occupational licensing boards.
- (2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards while allowing the boards to continue performing the regulatory functions.
- (3) Whether the total number of boards should be reduced by combining and/or eliminating some boards.

**SECTION 10.(b)** The Program Evaluation Division shall submit its findings and recommendations from Section 10(a) of this act to the Joint Legislative Program Evaluation



# Exhibit E



# HOUSE BILL 74: Regulatory Reform Act of 2013

2013-2014 General Assembly

**Committee:** Floor  
**Introduced by:** Reps. Murry, Moffitt, Samuelson, Bryan  
**Analysis of:** Conference Report

**Date:** July 25, 2013  
**Prepared by:** Karen Cochrane-  
Brown, Jeff Hudson,  
Jennifer McGinnis  
Staff Attorney

**SUMMARY:** *The Conference Committee Substitute (CCS) for House Bill 74 makes numerous changes to rulemaking laws and procedures, State and local government regulations, business and labor regulations, and various environmental and public health regulations. The CCS also amends certain environmental and natural resources laws.*

## BILL ANALYSIS:

### PART I. IMPROVE RULE MAKING PROCESS

**Section 1** adds a definition of the term "policy" to the Administrative Procedure Act (APA).

**Section 2** amends the APA provision relating to fiscal notes. This amendment would streamline the rulemaking process by making the review of the fiscal note and the public comment period run concurrently rather than consecutively. The amendment also raises the threshold for substantial economic impact notes to \$1 million for all persons affected by a rule in a 12-month period.

**Section 3** establishes a three-tiered process for the periodic review of existing rules. The Rules Review Commission is directed to establish a schedule for the review. If an agency fails to conduct the review by the date set in the schedule, the rule will automatically expire. However, if the rule is required to conform to or implement federal law, the rule will not automatically expire. The RRC is directed to report to the Joint Legislative Administrative Procedure Oversight Committee on any rules that do not expire for this reason. The current provision relating to review of existing rules is repealed.

Subsection (d) of this section directs the Rules Review Commission to subject rules related to surface water quality and wetlands to review in the first year of the program.

**Section 4** directs the Joint Legislative Administrative Procedure Oversight Committee to study the exemptions from rulemaking contained in the APA and elsewhere in the General Statutes. The Committee shall evaluate the continued need for exemption and possible consequences of repeal of the exemption and report to the 2014 Session of the General Assembly.

### PART II. STATE AND LOCAL GOVERNMENT REGULATIONS

**Section 5(a) & (b)** prohibits the enforcement of a zoning or unified development ordinance against a grandfathered use more than ten years after the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety.

**Section 5(c) & 5(d)** prohibits local governments from requiring a private contractor to abide by any restriction the locality could not impose on all employers as a condition of bidding on a contract.

O. Walker Reagan  
Director



\* H 7 4 - S M R I - 5 9 R P T - V 6 \*

Research Division  
(919) 733-2578

# House Bill 74

Page 2

**Section 6(a) & (b)** prohibits a local zoning or unified development ordinance from differentiating between fraternities and sororities that are approved or recognized by a college or university and those that are not.

**Section 6(c) through 6(e)** provides that a student or student organization at a constituent institution charged with violating the disciplinary or conduct rules of the constituent institution may be represented by an attorney or non-attorney advocate at any formal stage of the disciplinary proceedings, at the student or organization's own expense (explicit language is included to clarify that the provision is not to be construed to create a right to be represented at a disciplinary proceeding at public expense).

The CCS directs each constituent institution to track the number and type of disciplinary proceedings impacted by this section, as well as the number of cases in which a student or student organization is represented by an attorney or nonattorney advocate. The constituent institutions must report their findings to the Board of Governors of The University of North Carolina, and the Board of Governors must submit a combined report to the Joint Legislative Education Oversight Committee and the House and Senate Education Appropriations Subcommittees by May 1, 2014.

**Section 7** amends the definition of the term "Private club" contained in the Public Health law to include the definition of the term contained in the ABC law.

**Section 8(a) & (b)** amends the outdoor advertising act to allow vegetation cutting and removal along acceleration and deceleration ramps so long as the view of the outdoor advertising sign is improved and total aggregate amount of cut area is not increased. Also, prohibits local governments from restricting the repair or reconstruction of outdoor advertising, without just compensation, as long as the advertising surface area is not increased. Reconstruction includes changing an existing multi-pole to a monopole structure.

**Section 9** directs the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to amend its Records Retention and Disposition Schedule Manual to provide that if a Medicaid service has been eliminated by the State, the provider must retain records for three years after the last date of the service, unless federal law requires a longer period. At the termination of that time period, records must be destroyed or transferred to a State agency or contractor identified by the Department of Health and Human Services.

**Section 10** directs the Joint Legislative Program Evaluation Oversight Committee to include in the 2013-2014 Work Plan for the Program Evaluation Division a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. The study must include:

- (1) Consideration of the feasibility of establishing a single state agency to oversee the administration of all or some of the occupational licensing boards.
- (2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards, while allowing the boards to continue performing the regulatory functions.
- (3) Whether the total number of boards should be reduced by combining and/or Eliminating Some Boards.

**Section 10.1(a) and (b)** prohibit local governments from enacting or enforcing ordinances that require an employer to assume responsibility for the mitigation of their employees' commute or transportation to or from the workplace, which may result in the employer being subject to fines or other negative consequences.

# House Bill 74

Page 3

**Section 10.2(a) through 10.2(d)** prohibits a local government from enacting an environmental ordinance unless the ordinance is approved by a unanimous vote of the governing members of the local government present and voting. This prohibition would be effective when the act becomes law, would apply to ordinances enacted on or after that date, and would expire October 1, 2014. This section would also direct the Environmental Review Commission to study the circumstances under which local governments should be authorized to enact environmental ordinances that are more stringent than State or federal environmental laws. The Environmental Review Commission will report its findings and recommendations to the 2014 Short Session.

## **PART III. BUSINESS AND LABOR REGULATIONS**

**Section 11** amends the law to allow a bed and breakfast to offer three meals per day to its guests.

**Section 11.1(a) through (i)** makes the following changes to the Professional Employer Organization (PEO) Act:

- (1) Deletes the definition of "hazardous financial condition" applicable to PEO license applicants; instead, an applicant must demonstrate that its current assets exceed current liabilities;
- (2) Sets the bond requirement for licensure applicants at \$100,000; additional bond is required for those applicants whose current assets do not exceed current liabilities;
- (3) Deletes requirement that a licensee give assigned employees written notice when the employee ceases to be an employee;
- (4) Makes changes concerning the rights of a PEO and client company to control, hire, discipline, and terminate assigned employees;
- (5) Provides that Commissioner may only recover the reasonable costs of examination of a licensee following disciplinary violations or prohibited acts of a licensee; and
- (6) Repeals the provision in PEO Act giving Commissioner authority to discipline a licensee who, as an insurance fiduciary, willfully fails to give notice of group health or life insurance plan termination. If licensee is an insurance fiduciary, failure to provide notice remains a Class H felony under existing law.

**Section 12** amends the law providing for mandatory criminal history checks for child care providers to require that the check be completed within 15 days of the request for the check. If the check reveals that the child care provider has no criminal history, the Department of Health and Human Services must make a determination of the fitness of the provider within 15 calendar days of receipt of the results of the check. If the check reveals that the child care provider has a criminal history, the Department must make a determination of the fitness of the provider within 30 business days of receipt of the results of the check.

**Section 12.1** Prohibits local governments from regulating or licensing digital dispatching services for prearranged transportation services for hire.

**Section 13** allows an insurer to cancel a workers' compensation policy using any method of service provided in Rule 4 of the North Carolina Rules of Civil Procedure and would allow electronic communications and records to satisfy requirements that communications be provided in writing.

**Section 14** allows private, nonpublic employers in the State to provide an employment preference to veterans and spouses of honorably discharged veterans who have a service-connected permanent and

# House Bill 74

Page 4

total disability. The provision specifically provides that granting of the preference is not a violation of any State or local equal employment opportunity law.

**Section 15** amends the Right to Work statute to prohibit agreements that condition the purchase of agricultural products on the agricultural producer's status as a union or non-union employer by making such agreements invalid and unenforceable as against public policy in restraint of trade or commerce.

**Section 17** creates a rebuttable presumption that taxi operators who own or lease their vehicles are independent contractors not covered under the Workers Compensation Act. The section also provides that the presumption is not rebutted solely because a taxicab accepts a trip request to be at a specific place at a specific time; provides that the presumption may be rebutted by application of the common law test for determining independent contractor status.

## **PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS**

**Section 18** amends a provision enacted in 2012, which required the Department of Environment and Natural Resources to adopt rules to prohibit permitted scrap tire collectors from contracting with a scrap tire processing facility unless the processing facility documents that it has access to a facility permitted to receive scrap tires. The CCS would codify this requirement in the statutes and eliminate the rulemaking requirement.

**Section 19(a)** directs the Building Code Council to adopt rules to require lodging establishments to install electrical, hard-wired, carbon monoxide detectors in every enclosed space having a fossil-fuel burning heater, appliance, or fireplace, and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil-fuel burning heater, appliance, or fireplace. The section also establishes two associated requirements in the statute providing for permitting of lodging establishments: (1) **Section 19(b)** requires installation of battery-operated or electrical carbon monoxide detectors in these same locations within lodging establishments, effective October 1, 2013, and would expire October 1, 2014; and (2) **Section 19(c)** requires installation of electrical, hard-wired, carbon monoxide detectors in these same locations within lodging establishments, effective October 1, 2014. **Section 19(c)** directs the Building Code Council, the Department of Health and Human Services, and the Commission for Public Health, to jointly study these requirements in order to determine whether the requirements are adequate to protect the health and safety of the traveling public, and report their findings and recommendations to the General Assembly no later than April 15, 2014. At a minimum, the entities are directed to study the requirements for placement of detectors and evaluate whether sufficient coverage will be provided to guests and occupants in all areas of an establishment.

**Sections 20 and 21** provide for alternative implementation of a rule governing closure requirements for containment basins, such as lagoons or waste storage structures, permitted at a cattle facility to allow for an alternative closure process if the cattle facility no longer meets the definition of an animal operation under the statutes. These sections direct the Environmental Management Commission (EMC) to adopt a rule consistent with the provisions of the act, and direct the EMC to amend the definition for "new animal waste management system" under the Administrative Code.

**Section 22** provides for alternative implementation of a rule governing various required setbacks applicable to reclaimed water irrigation and directs the EMC to adopt a rule consistent with the provisions of the act.

# House Bill 74

Page 5

**Section 23** directs the Commission for Public Health to amend and clarify its rules for the implementation of the prohibition on smoking in restaurants and bars to ensure consistent interpretation and enforcement and to specifically clarify the definition of enclosed areas.

**Section 24** directs the Environmental Review Commission to study the statutory models for establishing, operating, and financing certain organizations that provide water and sewer services in the State and to report to the 2014 Session of the General Assembly.

## **PART V. AMEND ENVIRONMENTAL LAWS**

**Section 25** directs the Environmental Management Commission to repeal the "Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Requirements" (15A NCAC 02D .1009) rule on or before December 1, 2013. The rule provides that no model year 2008 or subsequent model year heavy-duty vehicle may be leased or registered in North Carolina unless the vehicle or its engine has been certified by the California Air Resources Boards as meeting the applicable model year requirements of the California Code of Regulations.

**Section 26** directs the Department of Environment and Natural Resources to study whether all of the counties covered under the emissions testing and maintenance program are needed to maintain the current and proposed federal ozone standards in the State.

**Section 27** provides the Environmental Management Commission with the flexibility to determine whether rules are necessary for controlling the effects of complex sources on air quality.

**Section 28** amends the rules in the North Carolina Administrative Code (NCAC) that pertain to open burning for land clearing or right-of-way maintenance to provide that an air quality permit is not required if materials are not carried offsite or transported over public roads for open burning unless the materials are carried or transported to: (i) facilities permitted for the operation of an air curtain burner; or (ii) a location where the material is burned no more than 4 times per year; that is at least 500 feet from any dwelling or occupied structure not located on the property; there are no more than 2 piles, each 20 feet in diameter burned at one time; and the location is not a permitted solid waste facility. This section also makes conforming statutory changes.

**Section 29** provides that with the exception of permits issued pursuant to Title V of the federal Clean Air Act, air quality permits must be issued for a term of eight years. This section also provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission may commence a contested case within 30 days of the Commission notifying the applicant of its decision.

**Section 30** amends the Department of Environment and Natural Resources' notice requirements for minor permits issued pursuant to the Coastal Area Management Act.

**Section 33** clarifies the process for appeals from civil penalties assessed by a local government that has established and administers a State-approved erosion and sedimentation control program. This section also provides that civil penalties assessed by a local government under the Sedimentation and Pollution Control Act of 1973 must be remitted to the Civil Penalty and Forfeiture Fund.

**Section 34** amends the rules in the North Carolina Administrative Code to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems as required by Table No. 1 in 15A NCAC 18A .1949(b). This section would exempt proposed wastewater systems from complying with the Daily Flow Rate for Design and any design flow standard established by the Commission for Public Health or the Department of Health and Human Services provided (i) the daily flow rate for design of

# House Bill 74

Page 6

the system is less than the rate listed by rule (Table No. 1, 15A NCAC 18A .1949(b)), (ii) the daily flow rate for design can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies, and (iii) the design is prepared, sealed, and signed by a professional engineer licensed in North Carolina. This section further provides that proposed wastewater systems with a daily flow for design of less than 3,000 gallons per day are not required to obtain State-level review for the system.

**Section 35** directs the Commission for Public Health (Commission) to adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for the well is located within 1,000 feet of a known source of contamination. The rules adopted by the Commission must provide for notice and information of the known sources of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site. This section also directs local health departments to either issue a permit or deny an application for a permit for the construction, repair, or operation of a private drinking water well within 30 days of receipt of an application, and provides that a permit shall automatically be issued if not acted upon within that 30 day period (and gives a local health department a right to appeal issuance of the permit in this circumstance in accordance with Chapter 150B of the General Statutes).

**Section 36** provides that underground storage tanks and systems installed after January 1, 1991, and prior to April 1, 2001, are not required to comply with well setback requirements or provide secondary containment until January 1, 2020.

**Section 37** amends various statutes governing protected species, marine, and wildlife resources to conform to analogous federal law.

**Section 38(a)** amends the statute regulating ownership or use of venomous reptiles to correctly refer to the term "antivenin," not "antivenom," as the serum or treatment for venom.

**Section 38(b)** amends the statute governing the investigation of suspected violations, seizure, and disposition of reptiles to direct law enforcement personnel to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park to identify appropriate and safe methods to seize a reptile. If there is an immediate risk to public safety, the officer is not required to first consult with Museum or Zoo representatives. This section further provides that representatives of the Museum or the Zoological Park may euthanize a venomous reptile for which antivenin is not readily available.

**Section 39** amends the Administrative Procedure Act to provide the Wildlife Resources Commission with temporary rulemaking authority for manner of take.

**Section 40** prohibits the State and the Community Colleges System from purchasing or acquiring an ownership interest in real property with known contamination without approval of the Governor and the Council of State. This section becomes effective September 1, 2013 and applies to a purchase or acquisition of interest in real property occurring on or after that date.

**Section 41** clarifies that no building permit is required under the Building Code for routine maintenance on fuel dispensing pumps and other dispensing devices.

**Section 42** clarifies that the Secretary of Environment and Natural Resources may, in addition to adopting a schedule of entrance fees for the aquariums, may do so for the piers operated by the aquariums, and may adopt fees for facility rentals and educational programs.

**Section 43** repeals the Mountain Resources Planning Act.

# House Bill 74

Page 7

**Sections 44(a) and 44(b)** provide an exemption from the 25 acre or more size requirement for local governments entering into development agreements for developable properties of any size provided the property is subject to an executed brownfields agreement.

**Section 45** directs the Department of Transportation to adopt rules for selective pruning within highway rights-of-way for vegetation that obstructs a motorists' view of properties on which agritourism activities occur. The Department is exempt from preparing fiscal notes for any rules proposed pursuant to this section.

**Section 46(a)** amends the statute that regulates sources of water pollution and the activities for which a permit is required by requiring any source that must obtain a permit must also have a compliance boundary established, either by the permit or by a rule adopted by the Environmental Management Commission, beyond which groundwater quality standards may not be exceeded. The compliance boundary must be established at the property boundary, unless otherwise established by the Commission. Multiple contiguous properties under common ownership and permitted for use as a disposal site must be treated as a single property.

This Section also provides that the Commission must only require a permitted disposal system to remedy an exceedance of groundwater quality standards within the compliance boundary when certain conditions are met. Where operation of a disposal system results in an exceedance of groundwater quality standards at or beyond the compliance boundary, the exceedance must be remedied through clean-up, recovery, containment, or other response as directed by the Commission.

**Section 46(b)** provides that the statutory amendments described above in Section 46(a) apply to exceedances of groundwater quality standards within a compliance boundary rather than certain requirements of the Restricted Designations rule (15A NCAC 2L .0104(d) and (e)) until the Department of Environment and Natural Resources revises the rules to comply with Section 46(a).

**Section 47** adds radio towers to those towers exempt from applicability with the Military Lands Protection Act of 2013 under certain conditions.

**Section 48(a)** clarifies a provision enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations such that permits are for both construction and operation of the facility.

**Section 48(b)** provides that if Senate Bill 328, 2013 Regular Session becomes law, Section 48(a) would be repealed.

**Section 49** codifies existing factors and adds the amount of money a violator saved as a new factor for consideration in assessing solid waste penalties. Current law under the General Statutes and the North Carolina Administrative Code (15A NCAC 13B .0702) requires the Secretary of Environment and Natural Resources to consider numerous factors to determine the amount of a penalty for violations of solid waste management laws.

**Section 50** prohibits a local government from impeding the storage, retention, or use of nonhazardous recyclable materials, including asphalt pavement, rap, or roofing shingles in properly zoned storage facilities through regulation of the height or setback of recyclable materials stockpiles, except when such facilities are located on lots within 200 yards of residential districts.

For purposes of implementing stormwater programs, **Section 51** amends the definition of "built-upon area" to mean " impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel. This Section directs the Environmental Management Commission to amend its rules to be consistent with the



# House Bill 74

Page 8

definition of "built-upon area." The definition of "built-upon area" applies to projects for which permit applications are received on or after the effective date of this act.

The provision also directs the Environmental Review Commission to study State stormwater programs, including how partially impervious surfaces are treated in the calculation of built-upon area under those programs, and report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

**Section 52** exempts freshwater ponds that are constructed and used for agriculture (as that term is defined in G.S. 106-581.1), provided the pond is not a component of an animal waste management system, from the: (i) Neuse River Basin riparian buffer rules; (ii) Tar-Pamlico River Basin riparian buffer rules; (iii) Jordan Water Supply Watershed riparian buffer rules; (iv) Randleman Lake Water Supply Watershed riparian buffer rules; (v) riparian buffer rules in the Catawba River Basin; (vi) riparian buffer rules in the Goose Creek Watershed (Yadkin Pee-Dee River Basin) and; (vii) any similar rule adopted for the protection and maintenance of riparian buffers.

This section provides that the riparian buffer rules must apply if the use of the property adjacent to the pond changes such that it no longer is used for agriculture.

This section becomes effective when this act becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997.

**Section 53** provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission regarding a water quality permit may commence a contested case within 30 days of the Commission notifying the applicant of its decision.

**Section 54** repeals the Article that provides alternative requirements for land-disturbing activity that results in an increase in vehicular surface area of one acre or more.

**Section 55** amends the notice procedure to riparian property owners that adjoin property subject to an application for a dredge and fill permit.

**Section 56** provides that water treatment systems with expired authorizations may obtain new authorizations that allow the systems to withdraw surface water from the same water body and at the same rate as was approved in the expired authorization and such new authorizations are not required to prepare an environmental document pursuant to the State Environmental Policy Act. This section applies only those systems whose authorization for the water treatment plant expired within the last ten calendar years of the effective date of this act.

**Section 57(a)** directs the Department of Environment and Natural Resources to combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources.

**Sections 57(b) through (gg)** make conforming statutory and Session Law changes related to combining the Division of Water Quality with the Division of Water Resources.

**Section 58** directs the Department of Environment and Natural Resources, in conjunction with the Departments of Transportation and Health and Human Services, and local governments operating delegated permitting programs on behalf of the departments, to study their internal processes for review of applications and plans submitted for approval, including: (1) standard processes for each environmental permit program with respect to evaluation of applications and plans submitted for approval, and the role professional engineers play in each permit program in terms of direct review of applications or plans, or supervisory responsibilities for review of applications and plans by other staff; (2) mechanisms in place to ensure that staff who are not professional engineers are not engaged in the

# House Bill 74

Page 9

unauthorized practice of engineering; (3) the standard scope of review within each permit program, including whether staff are reviewing applications or plans solely on the basis of the application or plan's ability to satisfy the requirements of the statute, rule, standard, or criterion against which the application or plan is being evaluated, or whether staff are requiring revisions that exceed statutory or rulemaking requirements when evaluating such permits or plans; and (4) opportunities to eliminate unnecessary or superfluous revisions that may have resulted in the past from review processes that exceeded requirements under law, and opportunities to otherwise streamline and improve the review process for applications and plans submitted for approval. The entities are required to report their findings and recommendations to the Environmental Review Commission no later than January 1, 2014.

The Environmental Review Commission is then directed to study the matter, with the assistance of the departments, applicable local governments, the North Carolina State Board of Examiners for Engineers and Surveyors, and the Professional Engineers of North Carolina, and report its findings and recommendations on the matter, including any legislative proposals, to the 2014 General Assembly upon its convening.

## **PART VI. SOLID WASTE REFORM PROVISIONS**

**Section 59** modifies a basis on which DENR is statutorily required to deny a permit for solid waste management facilities. Under current law DENR must deny a permit if the cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. The CCS would modify this provision to specify that the provision only applies to the extent required by federal law.

**Section 59.1** makes modifications to certain requirements governing sanitary landfills including: environmental impact studies, applicable buffers, cleaning and inspection of leachate collection lines, alternative daily cover, and required studies for certain landfill owners and operators, as follows:

- Modifies the requirement that an applicant for a proposed sanitary landfill conduct an environmental impact study of the proposed facility, to provide that the applicant must contract with a qualified third party approved by DENR to conduct the study (DENR conducts the study under existing law, with reimbursement of costs from the applicant).
- Modifies the one mile buffer from the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission, by providing that only buffers established on or before July 1, 2013 would apply.
- Deletes requirements for annual cleaning of leachate collection lines, but provide that these lines must be cleaned as necessary for proper functioning and to address buildup of leachate over the liner.
- Adds a requirement that with respect to requirements for daily cover at sanitary landfills, once the Department has approved use of an alternative method of daily cover for use at any sanitary landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills located within the State.
- Adds requirements that owners or operators of sanitary landfills permitted to receive more than 240,000 tons of waste per year: (i) research the development of alternative disposal technologies and allow access to nonproprietary information and provide site resources for individual research and development projects related to alternative disposal techniques for the purpose of studies that may be conducted by local community or State colleges and universities or other third-party

# House Bill 74

Page 10

developers or consultants; and (ii) perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State, and specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located in the form of direct supply of energy to the local government and its citizens, or through revenue sharing with the local government from sale of the energy, with revenues owing to the local government credited to a fund specifically designated for economic development within the jurisdiction.

**Section 59.2** of the CCS directs the Commission for Public Health to amend a rule governing containers for collection and transport of solid waste to provide that vehicles or containers used for the collection and transportation of solid waste be designed and maintained to be leak-resistant in accordance with industry standards, rather than be leak-proof as required under existing law. In addition, the CCS amends a statute that requires vehicles to be constructed and loaded to prevent leakage, to provide that "leakage," for purposes of the statute does not include water accumulated from precipitation.

**Section 59.3** of the CCS amends the statutes governing solid waste to define "leachate" to exclude liquid adhering to tires of vehicles leaving sanitary landfills and transfer stations.

**Section 59.4.** of the CCS authorizes cities and counties to levy a surcharge on existing fees for use of waste disposal facilities provided by them on other cities and counties located within the State that use the disposal facility, and authorizes cities and counties imposing such a surcharge to use the funds that accrue in excess of the amount needed to operate the landfill for other purposes. In addition, the CCS authorizes cities and counties to include such a surcharge on other local governments' waste as part of a franchise agreement entered into with a private landfill owner or operator.

## **PART VII. INDUSTRIAL COMMISSION**

**Section 60** Amends the law governing the Industrial Commission to exempt the administrator and the deputy commissioners from the State Personnel Act. This section becomes effective July 1, 2015.

## **PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**Section 61(a)** provides that if any section or provision of the act is declared unconstitutional or invalid by the courts, it would not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

**Section 61(b)** Except as otherwise provided, the act would be effective when it becomes law.

*Jennifer Mundi, Legislative Analyst, and Giles S. Perry, Staff Attorney, substantially contributed to this summary.*

# Exhibit F

# Scenic North Carolina

[Home](#) [News](#) [Issues](#) [Donate](#) [About Us](#)



## New Bill Attempts To Make "Billboards Forever" In NC

Proposed new legislation in the N.C. General Assembly would force communities to approve the reconstruction of existing billboards along state and federal highways, even in areas where they have decided that billboards should not be allowed. As a result, statewide public interest organizations are calling the proposal the "Billboards Forever" bill.

Organizations opposing the billboard provisions include Scenic North Carolina, the N.C. Sierra Club, and the N.C. Chapter of the American Planning Association.

Senate Bill 112 includes provisions allowing existing billboards to be completely rebuilt into more permanent structures so that they continue to display advertising, even if a community has long ago decided not to allow heavily damaged or dilapidated signs to be reconstructed in order to improve community appearance.

"This legislation says in effect that billboards are forever," said Ben Hitchings, President of the North Carolina Chapter of the American Planning Association. "This is not a battle cry we think will have much appeal with residents across the state." A 2011 poll by Public Policy Polling, for example, found that 71% of North Carolinians think billboards detract from community appearance.

In an age when consumers are accessing more and more information through smart phones and the internet,

allowing billboards to be rebuilt in this way is like preserving a dinosaur in amber.

The bill provisions would also allow expanded tree cutting along highway on- and off-ramps so that billboards are more visible. This raises serious safety concerns, since this is a location where drivers need to be particularly focused on the road. The proposal comes on the heels of 2011 state legislation that allowed billboard companies to increase tree-cutting along public highways by as much as 50% around their signs.

Virtually no other land use is allowed to be completely rebuilt without being subject to local regulations. And such a provision would come at the expense of local control over community appearance. "New structures should have to abide by current community rules," said Molly Diggins, Executive Director of the N.C. Sierra Club. "Communities should continue to be allowed to set appropriate standards for the reconstruction of billboards," she noted.

Over the last few years, the billboard industry has already received major concessions at the public's expense. "Enough is enough," said Reyn Bowman, President of Scenic North Carolina. "Billboard companies should have to abide by the same rules as home builders and all other businesses," he added.

Leave a Reply

Your email address will not be published. Required fields are marked \*

Comment

Name \*

Email \*

# Exhibit G

October 7, 2020

Craig D. Justus, Esq.  
The Van Winkle Law Firm  
11 North Market Street  
P.O. Box 7376  
Asheville, NC 28802-7376

Re: Modernization

Craig:

As a long-term, 43-year billboard operator in the State of North Carolina, I have been involved with multiple regulatory changes, rule amendments, and impact legislation between the Outdoor Industry and the NCDOT.

During this time, I have been involved directly in conversations to resolve various issues, to assist in changes or new rules, to aid in the simplicity and cooperation between both parties to make life easier.

Of all the meetings at the DOT or the State legislature, the most effective, wisest, and agreeable change was modernization.

Our biggest complaint my first 35 years from our opponents of various cities, large or small, was the unsightly condition and appearance of "old billboards". Especially wood pole billboards.

Modernization allows us, at our cost, to resolve that and keep a new, clean looking structure in place of an older one, while not increasing our total number.

This is better for the city, DOT, the traveling public, our landlords, and customers. The outdoor company pays the bill for it.

As you are aware. I was present at the meeting in Raleigh (at DOT) with you, Scott Capps, Ebony Pittman, Roy Grasse, etc. We all came to the final agreement together to resolve an issue that has existed for years, and we found a great "common ground" compromise.



I have attached an example of ours in Rowan County, Salisbury on I-85 at NC 52.

The photo (attached) of a dilapidated structure was at the main entrance to the city for years. The true definition of an "eyesore", an embarrassment to Salisbury.

Through a partnership with our landlord, the approval of Salisbury, and DOT (see memo from Eric Thrasher), we were able to invest \$48,000.00 to build a new. Steel monopole. As you can see in the photo, this is now being advertised by the City of Salisbury, and the world known famous, local favorite, Cheerwine, as well as local stores and restaurants like Go Burrito!

Again, good for the city, the public, the landlord, the DOT, and our customers. All at our expense.

Any change to this previously, positive opportunity would be extremely disappointing, and will create further issues, problems, and unsafe structures for all parties.

As a lifelong veteran of the N. C. Outdoor Industry, and a small business operator, I highly object.

Thank you for this opportunity to state my opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Sykes', with a long horizontal flourish extending to the right.

Robert Sykes, President  
Capital Outdoor, Inc.

## Angela Wood

---

**From:** AL HARKINS <alharkinscapitaloutdoor@yahoo.com>  
**Sent:** Tuesday, October 6, 2020 3:16 PM  
**To:** Angela Wood  
**Subject:** Fwd: Earnhardt Sign  
**Attachments:** Earnhardt I-085 080049.pdf

Can you print me the email from Eric thrasher and the attachments please? Thanks.al

Sent from my iPhone

Begin forwarded message:

**From:** AL HARKINS <alharkinscapitaloutdoor@yahoo.com>  
**Date:** October 6, 2020 at 10:06:01 AM EDT  
**To:** Robert Sykes <rsykescapitaloutdoor@gmail.com>  
**Subject:** Fw: Earnhardt Sign  
**Reply-To:** AL HARKINS <alharkinscapitaloutdoor@yahoo.com>

NCDOT Permit for Salisbury- **Modernization**-from Eric Thrasher

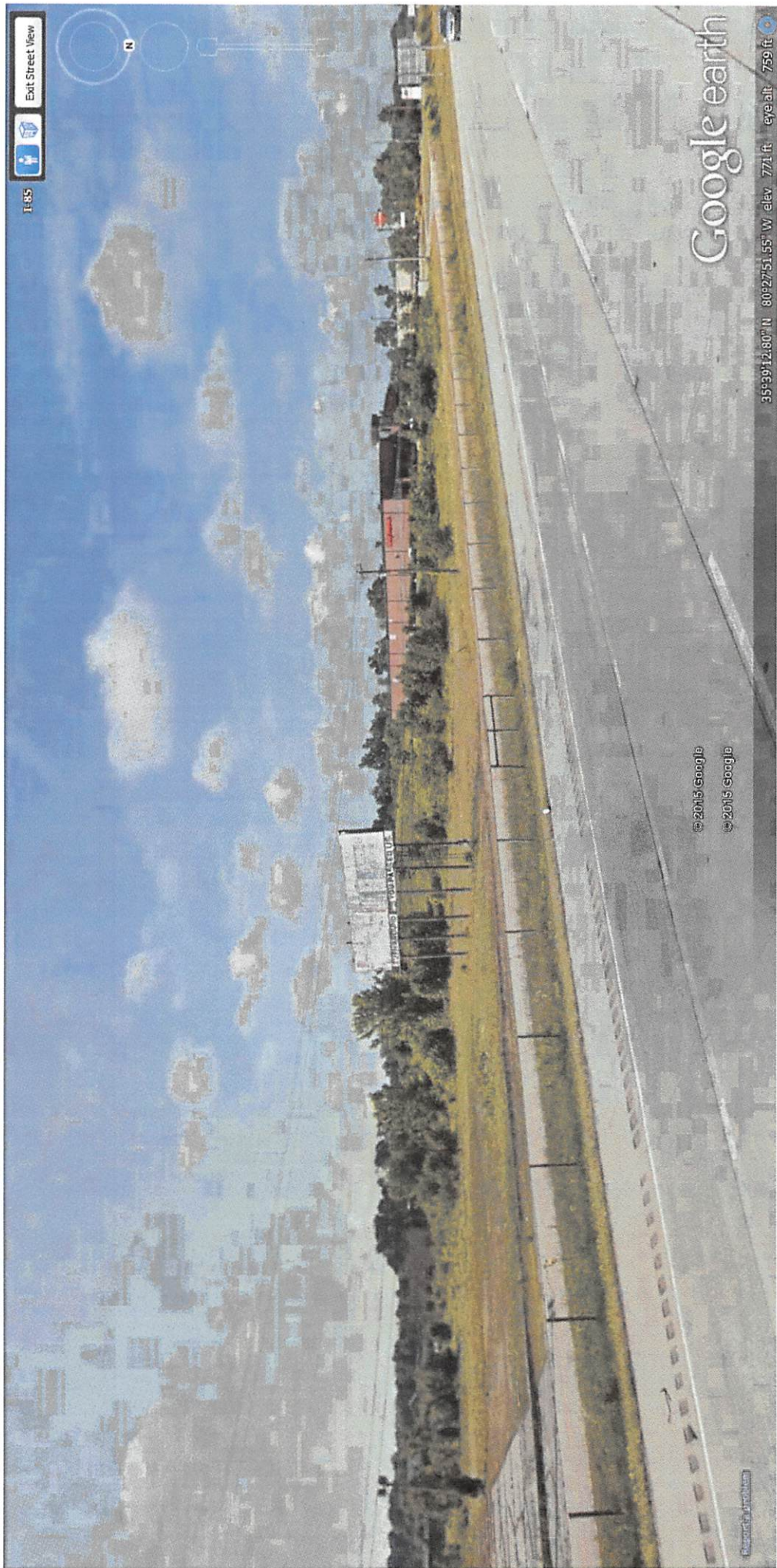
**Al Harkins**  
**Capital Outdoor**  
PO BOX 309 Zebulon N.C.,27597  
Office #-919-873-9020-**Mobile # 919-815-7660**

----- Forwarded Message -----

**From:** "eric.thrasher@volkert.com" <eric.thrasher@volkert.com>  
**To:** "alharkinscapitaloutdoor@yahoo.com" <alharkinscapitaloutdoor@yahoo.com>  
**Sent:** Thursday, March 19, 2015, 11:12:42 AM EDT  
**Subject:** Earnhardt Sign

Al:  
As we discussed the approved modernization application.

Eric Thrasher









**AMERICA'S FIRST 10 GIG CITY!**

THE CITY OF  
**Salisbury**  
North Carolina

A man in a dark suit is sitting on the billboard, leaning back in a chair and working on a laptop. His legs are crossed at the ankles, and he is looking at the screen. The billboard is white, and the man and his chair are positioned in the center.

#wehavefibrant

CAPITAL

# Exhibit H



## NOTICE OF TEXT [Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- ☒ Notice with a scheduled hearing  
☐ Notice without a scheduled hearing  
☐ Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.  
Previous publication of text was published in Volume:                      Issue:

1. Rule-Making Agency: NC Department of Transportation

2. Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/Pages/default.aspx>

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

- ☐ ADOPTION:
- ☐ AMENDMENT:
- ☐ REPEAL:
- ☐ READOPTION with substantive changes:
- ☒ READOPTION without substantive changes: 19A NCAC 02E .0201-.0204, .0206-.0210, .0212-.0215, .0224-.0225, .0601-.0604, and .0608-.0611
- ☒ REPEAL through READOPTION: 19A NCAC 02E .0226

4. Proposed effective date: 05/01/2020

5. Is a public hearing planned? ☒ Yes ☐ No

If yes: Public Hearing date: Thursday, February 20, 2020

Public Hearing time: 3:00 pm

Public Hearing location: Transportation Mobility and Safety Conference Room 161, 750 Greenfield Parkway, Garner, NC 27529



6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

**7. Explain Reason For Proposed Rule(s):** Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 19A NCAC 02B, 02D and 02E these proposed rules were determined as "Necessary With Substantive Public Interest" thus necessitating readoption.

Upon review for the readoption process, the agency deemed the following rules to be necessary without substantive changes and are recommended for readoption: 19A NCAC 02E .0201-.0204, .0206-.0210, .0212-.0215, .0224-.0225, .0601-.0604, and .0608-.0611.

Upon review for the readoption process, the agency deemed the following rule to be unnecessary and is recommending repeal: 19A NCAC 02E .0226.

**8. Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

☐ Rule(s) is automatically subject to legislative review. Cite statutory reference:

**9. The person to whom written comments may be submitted on the proposed rule(s):**

Name: Hannah D. Jernigan

Address: 1501 Mail Service Center

Raleigh, NC 27699-1501

Phone (optional): 919-707-2821

Fax (optional):

E-Mail (optional): Rulemaking@ncdot.gov

**10. Comment Period Ends: March 5, 2020**

**11. Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$ \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

**12. Rule-making Coordinator:** Helen Landi

Phone: 919-707-2821

E-Mail: Rulemaking@ncdot.gov

Additional agency contact, if any: Hannah D. Jernigan

**13. The Agency formally proposed the text of this rule(s) on**  
**Date: December 4, 2019**

**14. Signature of Agency Head\* or Rule-making Coordinator:**



**Phone:** 919-707-2821

**E-mail:** Rulemaking@ncdot.gov

**Typed Name:** Helen Landi

**Title:** Rule-making Coordinator/Interagency Director

*\*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.*

# Exhibit I

March 1, 2019

**Fiscal Note**

**Session Law 2013-413 (House Bill 74) – Regulatory Reform Act, Specifically the Section on Outdoor Advertising (ODA) Modernization of outdoor advertising devices.**

**Proposed NCAC Rule Changes:**

<b>19A NCAC 02E .0201</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0203</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0206</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0207</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0208</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0209</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0210</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0212</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0213</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0215</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0225</b>	<b>Comply with Session Law</b>
<b>19A NCAC 02E .0226</b>	<b>Technical Changes</b>

Agency Contact: Helen Landi  
Interagency Director/APA Coordinator

Statutory Authority: G.S. 136-130 and G.S. 136-131.2

Impact Summary: Federal Government: No  
State government: Yes  
Local government: Yes  
Substantial impact: Yes

**Necessity:**

NCDOT is proposing to revise 19A NCAC 02E .0225 to comply with outdoor advertising modernization amendments enacted during the 2013 General Assembly session to G.S. 136-131.2. Session Law 2013-413 removed the authority of municipal, county, local or regional zoning authorities, or other political subdivision to prohibit the repair or reconstruction of any outdoor advertising for which the owner holds a valid permit issued by the Department of Transportation. Additional technical changes to a number of other rules are proposed to clarify and update language.

A summary of the impact from the proposed rule changes is presented in Table 1.

**Table 1. Impact Summary**

<b><i>Costs</i></b>	<b>Annual Impacts</b>
NCDOT cost to review application & inspect site	\$18,985
Industry cost to prepare application & inspect site <sup>1</sup>	\$22,730
Industry cost of modernization <sup>1</sup>	\$1,750,000
Aesthetic impacts to local residents and governments	Unquantified
<b><i>Benefits</i></b>	
NCDOT fee revenue	\$21,000
Industry benefits of modernization <sup>2</sup>	Unquantified

<sup>1</sup> There are many uncertainties related to estimating the cost of modernization. The numbers presented in this table assume a cost per site of \$50,000 (which may not be representative of the average cost) plus the cost of application and inspection. It is difficult to estimate industry benefits; this analysis assumes benefits would have to be at least equal to costs, or otherwise industry would not choose to modernize.

Statistics:

There are about 8200 signs that are currently permitted or in the process of being permitted. The federal transportation apportionment bill (MAP-21), which took effect on October 1, 2012, increased and extended the National Highway System (NHS) to include new routes classified as principal arterials. Since NCDOT is required to control outdoor advertising on any NHS route, the Department has tasked a consultant with inventorying and permitting signs on the additional mileage. For the past five years, NCDOT has been actively permitting these new MAP 21 signs; however, approximately 75 remain to be permitted. No new signs will be allowed on these routes without going through the established NCDOT application process.

Since the passage of S.L. 2013-413, approximately 120 signs were modernized. It is assumed that industry continue modernizing signs in similar quantities over the next five years. It is estimated that NCDOT will receive 175 applications to modernize the following number of signs in the next five years:

First year Estimated 20% = 35 signs modernized  
Second year: Estimated 20% = 35 signs modernized  
Third year: Estimated 20% = 35 signs modernized  
Fourth year: Estimated 20% = 35 signs modernized  
Fifth year: Estimated 20% = 35 signs modernized

Administrative costs could potentially increase for NCDOT and the Industry. A sample calculation for a continued modernization effort is described below.

NCDOT Administrative Cost Increase:

The NCDOT will have minimal extra cost involved in reviewing requests for modernization:

- NCDOT estimates it will take six extra (6) hours of an engineering technician's time investigating each permit. This is for reviewing documents and conducting a field investigation once construction/modernization is complete. The technician will also have to travel to the site which is estimated at 2 hours for the round trip.
- An average ODA consultant technician rate is approximately \$29.41/hour. Adding the standard overhead and payroll burden of % 125, the rate is approximately \$66.18/hour. The vehicle allowance in the current ODA contract is \$720 per month plus \$.16 per mile. Assuming 2000 miles per month, and 160 working hours per month, the average hourly rate for consultant technician vehicle use is \$6.50 per hour. This calculation assumes two hours of travel time and two hours for the consultant to conduct the field investigation. The current ODA consultant contract can be renewed for an additional year and no significant salary increases are expected over the next few years. So this analysis assumes no growth in the hourly NCDOT consultant technician cost.

Based on the assumptions above, the 5-year extra DOT costs are estimated as follows:

$$(\$ \text{'s for Investigation} + \$ \text{'s for Travel}) * \text{Number of Signs} = \text{Cost}$$

	<b>Calculation:</b>	<b>Cost:</b>
<b>Year 1, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ $* 35 \text{ signs}$	\$18,985
<b>Year 2, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ $* 35 \text{ signs}$	\$18,985
<b>Year 3, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ $* 35 \text{ signs}$	\$18,985
<b>Year 4, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ $* 35 \text{ signs}$	\$18,985
<b>Year 5, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ $* 35 \text{ signs}$	\$18,985
		<b>Total \$94,922</b>

#### NCDOT Fee Revenue Increase:

NCDOT charges a permit fee per sign of \$120. As a result of the proposed change and the resulting additional permit requests, NCDOT would see an increase in its fee revenue of \$21,000 based on applications for 175 sign modernizations over the next 5 years.

### Industry Cost Increase:

Industry should have minimal extra cost involved in preparing the requests for modernization and it is not expected that these costs should increase significantly over the next few years.

- NCDOT estimates it will take eight (8) hours of an industry representative's time for each permit based upon input from field technicians with working knowledge of the industry. This is for populating a form and conducting a field investigation once construction/modernization is complete. This time estimate is based upon input from field technicians working knowledge of industry.
- Assuming industry's cost is similar to the NCDOT consultant technician rate, the hourly rate is \$66.18 per hour.
- Each sign's permit fee is \$120 (per G.S. 136-133 and 19A NCAC 02E .0207) and this fee is unlikely to change in the future.

Based on the assumptions above, the 5-year extra industry costs are estimated as follows:

$$(\$ \text{'s for Investigation} + \$120 \text{ permit fee}) * \text{Number of Signs} = \text{Cost}$$

	<b>Calculation:</b>	<b>Cost:</b>
<b>Year 1, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 2, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 3, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 4, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 5, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730

**Total \$113,650**

The industry would additionally incur the cost of the actual modernization; however, this cost is difficult to estimate. Modernization may entail a variety of changes to the sign, such as replacing wood poles with steel ones, billboard face upgrades, changes in the number of poles, etc.

Therefore, the range of cost per modernization could vary greatly. Based on information submitted by the NC Outdoor Advertising Association to a NCDOT survey, projecting modernization costs is further complicated by “uncertainties in the economy, including the fluctuating costs of materials such as steel...”

The NCDOT survey results indicate that the cost of replacing multiple wooden poles with a mono steel structure would cost between \$40,000 and \$60,000 at a site based on current steel prices. This example is selected for this fiscal analysis since it is the most common choice for modernization. It is unclear whether this range is at all representative of the average cost per modernization site. The Department of Revenue, which values billboard for tax purposes, estimate the cost of monopole structures from 25,000 to 164,000 depending upon the size and design of the structure.<sup>1</sup>

### Industry Benefits:

The industry would also clearly incur some benefits from being allowed to modernize their signs. The modernization would increase the value of a sign and, therefore, the amount of revenues collected. The response to the NCDOT survey mentioned above indicate that in some cases, depending on the firm, the location of the sign, increased height and visibility, the revenue could increase by as much as 100%. The responses to the survey also indicated the benefits could come in a variety of shapes, not just additional revenue gains, including “enhanced safety, aesthetics, operational efficiencies, environmental efficiencies, etc.”

The industry estimates that the benefits reaped from the proposed change would greatly exceed the costs associated with permit application and modernization. But, given the different characteristics of firms affected by this rule change and the lack of concrete available information, forecasting the benefit to the industry is extremely challenging.

### Local Government and Resident Impact:

More signs can be repaired and reconstructed that would have been prohibited under local rules or ordinances. Many local authorities have more stringent regulations than the State regarding outdoor advertising. Before GS 136-131.2, local municipal, town, and county governments had various controls over issues with billboards being modernized.

Many types of alterations can be made to billboards through repair and reconstruction. Any type of alteration can be made to a conforming billboard as long as the alteration adheres to the State and Federal regulations. Restrictions include: the square footage of the billboard cannot be increased; and the sign location cannot change. Examples of modernization include: static faces become digital; heights may be increased to the state maximum of 50’ as measured from the edge of pavement; and wood multi-pole structures become steel mono-pole structures.

<sup>1</sup> NCDOR, 2019. Billboard Structures Valuation Guide. Accessible at [https://files.nc.gov/ncdor/documents/files/2019\\_billboard\\_structures\\_valuation\\_guide\\_final\\_0.pdf](https://files.nc.gov/ncdor/documents/files/2019_billboard_structures_valuation_guide_final_0.pdf)



Aesthetics tends to be important to local governments and residents for personal enjoyment and to attract residents, tourists, and business to the area. While this rule does not address vegetation cutting, placement of structures associated with modernization may not “fit” with the overall comprehensive plan of that community. Vegetation will not be allowed to be removed as part of this rule. G.S. 136-133.1 addresses outdoor advertising vegetation cutting or removal. Communities often strive to develop aesthetically pleasing corridors and often adopt rules or ordinances to preserve a certain appearance. This rule, which is consistent with 136-131.2, prohibits local communities from being able to restrict modifications on state conforming signs.

### Alternatives

The first alternate is the, “do nothing” alternate. GS 136-131.2 addresses modernization of outdoor advertising structures. Without clarifying 19A NCAC 02E .0225, locals and industry may not understand Department expectations with modernization, which could lead to inconsistencies with regulation. This rule without modification, currently requires local approval for alterations. While GS 136-131.2 clearly removes local approval, an unmodified 19A NCAC 02E .0225 could create unnecessary confusion.

The second alternate is to further limit activities that industry could do as part of modernization. An example includes restricting companies to modernize from static to digital faces. Some local governments have more stringent rules associated with outdoor advertising regulations including moratoriums on allowing digital billboards. NCDOT considered excluding digital faces as part of modernization. NCDOT chose not to make this exclusion since the state already allows digital billboards and that industry should be allowed to accommodate for technology enhancements.

The third alternate, which is the alternate endorsed by NCDOT, is to re-write 19A NCAC 02E .0225 to be consistent with GS 136-131.2. This rule defines expectations of industry for the repair, maintenance, alteration and reconstruction of conforming signs. This rule also defines expectations of industry for the repair and maintenance of non-conforming signs. It is the Department’s intent to be consistent and clear with regulating both conforming and non-conforming signs.

# Exhibit I

March 1, 2019

**Fiscal Note**

**Session Law 2013-413 (House Bill 74) – Regulatory Reform Act, Specifically the Section on Outdoor Advertising (ODA) Modernization of outdoor advertising devices.**

**Proposed NCAC Rule Changes:**

<b>19A NCAC 02E .0201</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0203</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0206</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0207</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0208</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0209</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0210</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0212</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0213</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0215</b>	<b>Technical Changes</b>
<b>19A NCAC 02E .0225</b>	<b>Comply with Session Law</b>
<b>19A NCAC 02E .0226</b>	<b>Technical Changes</b>

Agency Contact: Helen Landi  
Interagency Director/APA Coordinator

Statutory Authority: G.S. 136-130 and G.S. 136-131.2

Impact Summary: Federal Government: No  
State government: Yes  
Local government: Yes  
Substantial impact: Yes

**Necessity:**

NCDOT is proposing to revise 19A NCAC 02E .0225 to comply with outdoor advertising modernization amendments enacted during the 2013 General Assembly session to G.S. 136-131.2. Session Law 2013-413 removed the authority of municipal, county, local or regional zoning authorities, or other political subdivision to prohibit the repair or reconstruction of any outdoor advertising for which the owner holds a valid permit issued by the Department of Transportation. Additional technical changes to a number of other rules are proposed to clarify and update language.

A summary of the impact from the proposed rule changes is presented in Table 1.

**Table 1. Impact Summary**

<b><i>Costs</i></b>	<b><i>Annual Impacts</i></b>
NCDOT cost to review application & inspect site	\$18,985
Industry cost to prepare application & inspect site <sup>1</sup>	\$22,730
Industry cost of modernization <sup>1</sup>	\$1,750,000
Aesthetic impacts to local residents and governments	Unquantified
<b><i>Benefits</i></b>	
NCDOT fee revenue	\$21,000
Industry benefits of modernization <sup>2</sup>	Unquantified

<sup>1</sup> There are many uncertainties related to estimating the cost of modernization. The numbers presented in this table assume a cost per site of \$50,000 (which may not be representative of the average cost) plus the cost of application and inspection. It is difficult to estimate industry benefits; this analysis assumes benefits would have to be at least equal to costs, or otherwise industry would not choose to modernize.

Statistics:

There are about 8200 signs that are currently permitted or in the process of being permitted. The federal transportation apportionment bill (MAP-21), which took effect on October 1, 2012, increased and extended the National Highway System (NHS) to include new routes classified as principal arterials. Since NCDOT is required to control outdoor advertising on any NHS route, the Department has tasked a consultant with inventorying and permitting signs on the additional mileage. For the past five years, NCDOT has been actively permitting these new MAP 21 signs; however, approximately 75 remain to be permitted. No new signs will be allowed on these routes without going through the established NCDOT application process.

Since the passage of S.L. 2013-413, approximately 120 signs were modernized. It is assumed that industry continue modernizing signs in in similar quantities over the next five years. It is estimated that NCDOT will receive 175 applications to modernize the following number of signs in the next five years:

First year Estimated 20% = 35 signs modernized  
Second year: Estimated 20% = 35 signs modernized  
Third year: Estimated 20% = 35 signs modernized  
Fourth year: Estimated 20% = 35 signs modernized  
Fifth year: Estimated 20% = 35 signs modernized

Administrative costs could potentially increase for NCDOT and the Industry. A sample calculation for a continued modernization effort is described below.

NCDOT Administrative Cost Increase:

The NCDOT will have minimal extra cost involved in reviewing requests for modernization:

- NCDOT estimates it will take six extra (6) hours of an engineering technician's time investigating each permit. This is for reviewing documents and conducting a field investigation once construction/modernization is complete. The technician will also have to travel to the site which is estimated at 2 hours for the round trip.
- An average ODA consultant technician rate is approximately \$29.41/hour. Adding the standard overhead and payroll burden of % 125, the rate is approximately \$66.18/hour. The vehicle allowance in the current ODA contract is \$720 per month plus \$.16 per mile. Assuming 2000 miles per month, and 160 working hours per month, the average hourly rate for consultant technician vehicle use is \$6.50 per hour. This calculation assumes two hours of travel time and two hours for the consultant to conduct the field investigation. The current ODA consultant contract can be renewed for an additional year and no significant salary increases are expected over the next few years. So this analysis assumes no growth in the hourly NCDOT consultant technician cost.

Based on the assumptions above, the 5-year extra DOT costs are estimated as follows:

$$(\$ \text{'s for Investigation} + \$ \text{'s for Travel}) * \text{Number of Signs} = \text{Cost}$$

	<b>Calculation:</b>	<b>Cost:</b>
<b>Year 1, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ * 35 signs	\$18,985
<b>Year 2, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ * 35 signs	\$18,985
<b>Year 3, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ * 35 signs	\$18,985
<b>Year 4, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ * 35 signs	\$18,985
<b>Year 5, 35 signs</b>	$(\$66.18 * 6 \text{ hours}) + (\$66.18 + \$6.50) * 2 \text{ hours}$ * 35 signs	\$18,985
		<b>Total \$94,922</b>

#### NCDOT Fee Revenue Increase:

NCDOT charges a permit fee per sign of \$120. As a result of the proposed change and the resulting additional permit requests, NCDOT would see an increase in its fee revenue of \$21,000 based on applications for 175 sign modernizations over the next 5 years.

### Industry Cost Increase:

Industry should have minimal extra cost involved in preparing the requests for modernization and it is not expected that these costs should increase significantly over the next few years.

- NCDOT estimates it will take eight (8) hours of an industry representative's time for each permit based upon input from field technicians with working knowledge of the industry. This is for populating a form and conducting a field investigation once construction/modernization is complete. This time estimate is based upon input from field technicians working knowledge of industry.
- Assuming industry's cost is similar to the NCDOT consultant technician rate, the hourly rate is \$66.18 per hour.
- Each sign's permit fee is \$120 (per G.S. 136-133 and 19A NCAC 02E .0207) and this fee is unlikely to change in the future.

Based on the assumptions above, the 5-year extra industry costs are estimated as follows:

$$(\$ \text{'s for Investigation} + \$120 \text{ permit fee}) * \text{Number of Signs} = \text{Cost}$$

	<b>Calculation:</b>	<b>Cost:</b>
<b>Year 1, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 2, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 3, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 4, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730
<b>Year 5, 35 signs</b>	(\$66.18 * 8 hours + \$120 permit fee) * 35 signs	\$22,730

**Total \$113,650**

The industry would additionally incur the cost of the actual modernization; however, this cost is difficult to estimate. Modernization may entail a variety of changes to the sign, such as replacing wood poles with steel ones, billboard face upgrades, changes in the number of poles, etc.

Therefore, the range of cost per modernization could vary greatly. Based on information submitted by the NC Outdoor Advertising Association to a NCDOT survey, projecting modernization costs is further complicated by “uncertainties in the economy, including the fluctuating costs of materials such as steel...”

The NCDOT survey results indicate that the cost of replacing multiple wooden poles with a mono steel structure would cost between \$40,000 and \$60,000 at a site based on current steel prices. This example is selected for this fiscal analysis since it is the most common choice for modernization. It is unclear whether this range is at all representative of the average cost per modernization site. The Department of Revenue, which values billboard for tax purposes, estimate the cost of monopole structures from 25,000 to 164,000 depending upon the size and design of the structure.<sup>1</sup>

#### Industry Benefits:

The industry would also clearly incur some benefits from being allowed to modernize their signs. The modernization would increase the value of a sign and, therefore, the amount of revenues collected. The response to the NCDOT survey mentioned above indicate that in some cases, depending on the firm, the location of the sign, increased height and visibility, the revenue could increase by as much as 100%. The responses to the survey also indicated the benefits could come in a variety of shapes, not just additional revenue gains, including “enhanced safety, aesthetics, operational efficiencies, environmental efficiencies, etc.”

The industry estimates that the benefits reaped from the proposed change would greatly exceed the costs associated with permit application and modernization. But, given the different characteristics of firms affected by this rule change and the lack of concrete available information, forecasting the benefit to the industry is extremely challenging.

#### Local Government and Resident Impact:

More signs can be repaired and reconstructed that would have been prohibited under local rules or ordinances. Many local authorities have more stringent regulations than the State regarding outdoor advertising. Before GS 136-131.2, local municipal, town, and county governments had various controls over issues with billboards being modernized.

Many types of alterations can be made to billboards through repair and reconstruction. Any type of alteration can be made to a conforming billboard as long as the alteration adheres to the State and Federal regulations. Restrictions include: the square footage of the billboard cannot be increased; and the sign location cannot change. Examples of modernization include: static faces become digital; heights may be increased to the state maximum of 50’ as measured from the edge of pavement; and wood multi-pole structures become steel mono-pole structures.

<sup>1</sup> NCDOR, 2019. Billboard Structures Valuation Guide. Accessible at [https://files.nc.gov/ncdor/documents/files/2019\\_billboard\\_structures\\_valuation\\_guide\\_final\\_0.pdf](https://files.nc.gov/ncdor/documents/files/2019_billboard_structures_valuation_guide_final_0.pdf)

Aesthetics tends to be important to local governments and residents for personal enjoyment and to attract residents, tourists, and business to the area. While this rule does not address vegetation cutting, placement of structures associated with modernization may not “fit” with the overall comprehensive plan of that community. Vegetation will not be allowed to be removed as part of this rule. G.S. 136-133.1 addresses outdoor advertising vegetation cutting or removal. Communities often strive to develop aesthetically pleasing corridors and often adopt rules or ordinances to preserve a certain appearance. This rule, which is consistent with 136-131.2, prohibits local communities from being able to restrict modifications on state conforming signs.

### Alternatives

The first alternate is the, “do nothing” alternate. GS 136-131.2 addresses modernization of outdoor advertising structures. Without clarifying 19A NCAC 02E .0225, locals and industry may not understand Department expectations with modernization, which could lead to inconsistencies with regulation. This rule without modification, currently requires local approval for alterations. While GS 136-131.2 clearly removes local approval, an unmodified 19A NCAC 02E .0225 could create unnecessary confusion.

The second alternate is to further limit activities that industry could do as part of modernization. An example includes restricting companies to modernize from static to digital faces. Some local governments have more stringent rules associated with outdoor advertising regulations including moratoriums on allowing digital billboards. NCDOT considered excluding digital faces as part of modernization. NCDOT chose not to make this exclusion since the state already allows digital billboards and that industry should be allowed to accommodate for technology enhancements.

The third alternate, which is the alternate endorsed by NCDOT, is to re-write 19A NCAC 02E .0225 to be consistent with GS 136-131.2. This rule defines expectations of industry for the repair, maintenance, alteration and reconstruction of conforming signs. This rule also defines expectations of industry for the repair and maintenance of non-conforming signs. It is the Department’s intent to be consistent and clear with regulating both conforming and non-conforming signs.



# Exhibit J

## Craig D. Justus

---

**From:** Landi, Helen E <hlandi@ncdot.gov>  
**Sent:** Monday, September 28, 2020 11:25 AM  
**To:** Thomas Bugbee  
**Cc:** Craig D. Justus; jdodson@adamsoutdoor.com; Pittman, Ebony; Jernigan, Hannah  
**Subject:** RE: [External] Request for Explanation  
**Attachments:** ODA Nonconforming sign location definition letter to NCDOT 4-23-20.pdf; Per G.S. 150B-21.2(h).pdf

Mr. Bugbee,

Please see attached as requested.

Best,  
Ms. Landi

---

**From:** Thomas Bugbee <tjbugbee@ncoaa.net>  
**Sent:** Monday, September 14, 2020 4:57 PM  
**To:** Landi, Helen E <hlandi@ncdot.gov>; Jernigan, Hannah <hjernigan@ncdot.gov>  
**Cc:** Craig D. Justus <cjustus@vwlawfirm.com>; jdodson@adamsoutdoor.com; Pittman, Ebony <epittman@ncdoj.gov>  
**Subject:** [External] Request for Explanation

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [report.spam@nc.gov](mailto:report.spam@nc.gov)

Mrs. Landi,

Please see the attached Request for Explanation of Rules recently adopted by NCDOT. For your convenience, attached are the two documents referenced in the request.

Thank you,

TJ Bugbee  
Executive Director  
North Carolina Outdoor Advertising Association  
209 Fayetteville St. Box 6  
Raleigh, NC 27601  
M: (910) 262-3594  
[tjbugbee@ncoaa.net](mailto:tjbugbee@ncoaa.net)



*The content of this email is confidential and intended for the exclusive use of the individual recipient of this message or the internal use of his or her office as indicated. Sharing any part of this message with any third party, without a written consent of the sender is prohibited.*

**Per G.S. 150B-21.2(h), Response to Readoption of Rulemaking Request for  
19A NCAC 02E .0201(26) and 19A NCAC 02E .0225**

Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 19A NCAC 02E, these proposed rules were determined as “Necessary With Substantive Public Interest” thus necessitating readoption. In addition, the proposed rules were readopted to comply with Session Law 2013-413.

**Public Comments**

NCDOT received more than 350 public comments as part of the rule readoption process. Comments were received from the outdoor advertising industry, legislators, and local governing authorities. A substantially large portion of comments were received from special interest groups.

Copies of the public comments are available for review on the NCDOT Rules Review website at <https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/Pages/default.aspx>.

Based on lengthy review of the public comments, modifications were made to the proposed rules which were adopted on August 28, 2020.

**19A NCAC 02E.0201 (26) Definition of Sign Location**

The definition of sign location was updated to require recreational grade GPS for identifying sign locations. The existing definition references 1/100<sup>th</sup> of a mile. NCDOT is aware of the outdoor advertising industry’s position regarding this definition change and the impact it will potentially have on a sign owner’s ability to move or relocate an existing sign structure within the 26-foot box. In recent years, sign companies have moved signs, within the 26-foot box, based on this definition. While moving a sign in this manner is not an issue with a conforming sign, it is an issue with a nonconforming sign. The local FHWA office has issued guidance directing NCDOT to update this definition of sign location and has reminded the Department that under federal law, nonconforming signs should not be moved at all. (See FHWA letter dated, April 23, 2020, attached.)

For the foregoing reasons, NCDOT did not revise this definition based on the public comment from the outdoor advertising industry.

### **19A NCAC 02E.0225 Repair/Maintenance/Alteration/Reconstruction of Conforming Signs and Repair and Maintenance of Non-Conforming Signs**

This rule has been modified to comply with Session Law 2013-413, s. 8(b), codified as G.S. 136-131.2, and details modifications that can be made to conforming signs and non-conforming signs.

This rule received many public comments from all stakeholders including the outdoor advertising industry, legislators, local governing authorities, and special interest groups. Outdoor advertising Industry comments included concerns over the alteration permit and fee as well as the use of the term “nonconforming signs.” Local governing authorities and special interest groups had concerns with the limited local control of signs in their jurisdictions based on the initial proposed draft of this rule. After reviewing public comments, NCDOT revised this rule including changing the title to, *19A NCAC 02E.0225 Repair /Maintenance /Alteration /Reconstruction of Signs*.

Based on the public comments from outdoor advertising industry, NCDOT modified the initial proposed draft of the rule to now require a permit addendum instead of a “new” alteration permit.

Based on the public comments from the General Assembly, local governing authorities and special interest groups, NCDOT modified the initial proposed draft of the rule to clarify the scope of modernization of signs under S.L. 2013-413. The modified rule now states that conforming sign structures may be reconstructed by changing of an existing multi-pole structure to a monopole structure so long as the square footage of the advertising surface area is not increased. Further, conforming sign structures may not be changed from a static face to an automatic changing face and the sign height cannot be increased without local approval. In accordance with federal law, this modified rule also clarifies that nonconforming signs may not be altered or reconstructed.

NCDOT maintains these changes are consistent with the legislative intent of S.L. 2013-413 as set forth in comments provided by members of the General Assembly (see letter to NCDOT dated March 5, 2020, included in the public comment materials) and the legislative debates held on July 11, 2013.

### **Fiscal Note**

There have been no changes to the Fiscal Note.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**North Carolina Division**

April 23, 2020

310 New Bern Avenue, Suite 410  
Raleigh, NC 27601  
(919) 856-4346  
(919) 747-7030  
<http://www.fhwa.dot.gov/ncdiv/>

In Reply Refer To:  
HDA-NC

Mr. Tim Little, PE  
Chief Engineer, North Carolina  
Department of Transportation  
1536 Mail Service Center  
Raleigh, NC 27699-1536

Dear Mr. Little:

The Federal Highway Administration (FHWA) North Carolina Division Office has completed a review of the North Carolina Department of Transportation's proposed rule changes to the North Carolina Administrative Code regarding the State's Outdoor Advertising Control Program. While most of the changes were generally minor, it is noted that 19A NCAC 02E .0201, Definitions for Outdoor Advertising Control, (26) Sign Location, appears to allow for very minor relocation of a non-conforming sign based on location data provided by a recreational grade Global Positioning System Device. FHWA must reiterate that the location of a legally non-conforming outdoor advertising sign may not be changed for any reason unless it is to relocate that sign to a conforming location, per the Code of Federal Regulations at 23 CFR 750.707.

**§750.707 Nonconforming signs.**

*(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.*

The North Carolina Administrative Code should reflect the definition in 23 CFR 750.707 (3) that the location of a Non-Conforming sign may not be changed.

If you have any questions or need additional information on this matter, please contact Michael Dawson, FHWA NC Division Realty Officer, at 919-747-7009 or via email at: [michael.dawson@dot.gov](mailto:michael.dawson@dot.gov).

Sincerely,

*Michael C. Dawson*

For John F. Sullivan, III, P.E.  
Division Administrator

# Exhibit K

Name	For/Against	Alternative Solution	HB 74 Vote (S.L. 2013-413)
<b>Senators</b>			
Sen. Kirk deViere, Cumberland	Against	Alternative 2	N/A
Sen. Valerie Foushee, Chatham, Orange	Against	Alternative 2	NO – NC House
Sen. Michael Garrett, Guilford	Against	Alternative 2	N/A
Sen. Natasha R. Marcus, Mecklenburg	Against	Alternative 2	N/A
Sen. Wiley Nickel, Wake	Against	Alternative 2	N/A
Sen. Harper Peterson, New Hanover	Against	Alternative 2	N/A
Sen. Gladys A. Robinson, Guilford	Against	Alternative 2	NO
Sen. Sam Searcy, Wake	Against	Alternative 2	N/A
Sen. Terry Van Duyn, Buncombe	Against	Alternative 2	N/A
Sen. Mike Woodard, Durham, Granville, Person	Against	Alternative 2	NO
<b>Representatives</b>			
Rep. Gale Adcock, Wake	Against	Alternative 2	N/A
Rep. John Ager, Buncombe	Against	Alternative 2	N/A
Rep. John Autry, Mecklenburg	Against	Alternative 2	N/A
Rep. Cynthia Ball, Wake	Against	Alternative 2	N/A
Rep. Mary Belk, Mecklenburg	Against	Alternative 2	N/A
Rep. Scott T. Brewer, Montgomery, Richmond, Stanly	Against	Alternative 2	N/A
Rep. Deb Butler, Brunswick, New Hanover	Against	Alternative 2	N/A
Rep. Becky Carney, Mecklenburg	Against	Alternative 2	NO
Rep. Christy Clark, Mecklenburg	Against	Alternative 2	N/A
Rep. Terence Everitt, Wake	Against	Alternative 2	N/A
Rep. Susan C. Fisher, Buncombe	Against	Alternative 2	NO
Rep. Wesley Harris, Mecklenburg	Against	Alternative 2	N/A
Rep. Pricey Harrison, Guilford	Against	Alternative 2	NO

Rep. Zack Hawkins, Durham	Against	Alternative 2	N/A
Rep. Yvonne Lewis Holley, Wake	Against	Alternative 2	NO
Rep. Rachel Hunt, Mecklenburg	Against	Alternative 2	N/A
Rep. Verla Insko, Orange	Against	Alternative 2	NO
Rep. Brandon Lofton, Mecklenburg	Against	Alternative 2	N/A
Rep. Grier Martin, Wake	Against	Alternative 2	NO
Rep. Graig R. Meyer, Caswell, Orange	Against	Alternative 2	N/A
Rep. Marcia Morey, Durham	Against	Alternative 2	N/A
Rep. Joe Sam Queen, Haywood, Jackson, Swain	Against	Alternative 2	NO
Rep. Robert T. Reives, Chatham, Durham	Against	Alternative 2	N/A
Rep. Julie von Haefen, Wake	Against	Alternative 2	N/A
Shannon Capezzali, Planner II, Buncombe County Planning Department	Against	Alternative 2	
<b>Environmental</b>			
Bill Johnson, Retired, NCDOT State Roadside Environmental Engineer	Against		
Drew Ball, State Director, Environment North Carolina	Against	Alternative 2	
Mary Maclean Asbill, Senior Attorney, Southern Environmental Law Center	Against		
Brooks Rainey Pearson, Staff Attorney, Southern Environmental Law Center	Against		
<b>City/Town/County</b>			
Chip Crumpler, Assistant County Manager, Wayne County	Against	Alternative 2	



Donald T. O'Toole, Deputy City Attorney, City of Durham	Against		
Elizabeth Sweeney, Town Clerk, Zoning Administrator, Town of Bogue	Against		
Elizabeth Teague, Development Services Director, Town of Waynesville	Against		
Ellen Reckhow, Durham County Commissioner	Against		
Eric Ridenour, Town of Sylva	Against		
John Jeleniewski, Senior Planner, Jackson County Planning Department	Against		
Erin L. Wynia, Chief Legislative Counsel, NC League of Municipalities	Against		
Jack Cozort, City of Wilson	Against		
Jesse James, Senior Planner, Morganton	Against	Alternative 2	
Karen Sindelar, Former Senior Assistant City Attorney and City Attorney, City of Durham	Against		
J. Kevin Robinson, Planning & Development Services Director, City of Albemarle	Against	Alternative 2	
Larry Philpott, Commissioner, Town of Swansboro	Against	Alternative 2	
Lynn Raker, Landscape Architect, former City Planner for Salisbury	Against	Alternative 2	
Nathan Page, Planning Director, City of Graham	Against	Alternative 2	
Peggy C. Henderson, Deputy Zoning Administrator, City of Kings Mountain	Against		
Robert Waring, Assistant Town Administrator, Planning Director, Town of Shallotte	Against	Alternative 2	
Stephen M. Schewel, Mayor, City of Durham			
Stephen Wensman, Planning Director, Town of Smithfield	Against		
Stuart C. Gilbert, Community Planning and Economic Development Director, City of Kings Mountain	Against		

Gunther Jochl, Mayor, The Village of Sugar Mountain	Against		
Susan Phillips, Village Manager, Village of Sugar Mountain	Against		
Laurent Meilleur, Commissioner, Town of Swansboro	Against		
John F. Higdon, Mayor, Town of Matthews	Against		
Tracy Shearin, Town Clerk, Zoning Officer, Town of Red Oak	Against		
Wendy Jacobs, Chair, Board of County Commissioners, County of Durham	Against		
<b>Other</b>			
Dale McKeel, Board Member, Scenic North Carolina	Against	Alternative 2	
Lois Nixon, Scenic North Carolina Board Member	Against		
Ben Howell, American Planning Association, President	Against		
Chad Meadows, American Planning Association, Legislative Chair	Against	Alternative 2	
Molly Diggins, Former State Director, NC Sierra Club	Against		
Ryke Longest, Clinical Professor, Duke School of Law, Nicholas School of the Environment	Against		

# Exhibit L



10/7/2020

To whom it may concern:

My name is Mike Mielke and I am the Corporate Director of Operation for Adams Outdoor Advertising. I have been in the outdoor advertising business for 45 years, starting as a billposter for a small on premise/billboard company in my hometown of Marshfield, WI in 1975. I later became the Real Estate Manager and finally the General Manager for the North Central office of Whiteco Metrocom in Marshfield. In 1988 I became the Vice President of Operations for the Whiteco office in Tucson, AZ and also had corporate responsibilities working for the Senior Vice President of Operations. I wrote and distributed Whiteco's first safety manual and co-wrote the first Qualified Climber program. I assumed the Vice President of Operations position in Whiteco's Chicago office in 1988 and continued in that capacity after the office was purchased by Lamar Advertising until 2009, when I became the Operations Manager for Adams Outdoor Advertising in Champaign and Peoria, IL. I assumed the Corporate Director of Operations position for Adams in July of 2011 and have been in that capacity since.

I am writing today in reference to the proposed rule changes to the North Carolina Department of Transportation's control of outdoor advertising, specifically section 19A NCAC 02E.0225, concerning the alteration and reconstruction of conforming and nonconforming signs, and the need to provide written notice to the NCDOT stating the proposed alteration and the schedule for the work being accomplished.

I don't believe I saw anywhere in this section, or in section 19A NCAC 02E .0201, DEFINITION FOR OUTDOOR ADVERTISING CONTROL, the definition of an alteration as used for these purposes. Here is a listing many of the items we repair or replace regularly on our billboard structures to make sure they are maintained in a safe manner for our employees and the general public.

- Catwalks
- Catwalk support arms
- Face panels
- Poster panel trim
- Stringer clips and bolts
- Stringers
- Spreader beams and bolts
- Torsion tubes
- Aprons
- Apron stringers and bolts

- Head plates and bolts
- Welding of structural members
- Wood poles
- Wood pole supports
- I-beam uprights
- Foundation repairs
- Light fixtures
- Electrical service
- Structure painting.

There are also items that OSHA requires of us to have on our structures to be able to conform to their requirements. Those items would be:

- Catwalks for safely working on the structure
- Horizontal safety cables for every catwalk
- Access ladders to reach the catwalks
- Vertical safety cables or a personal fall arrest system on every access ladder that extends above 24 feet.

If any or all of these above are considered alterations, the amount of time to both the outdoor company and to NCDOT would be overwhelming to follow through on the notification process, considering the number of structures and the amount of work that is done on them on a continual basis. I would respectfully request that all the above be considered normal maintenance and be exempt from the notification process.

Lastly, I understand that under the updated standards, if we reconstruct a billboard that it must be done in the footprint of the old structure. In the 45 years I've been in the industry, we unequivocally **never** put a new structure in the same hole as the old one was removed. We need the new foundation to go into good, naturally compacted soil. To remove the old, no longer used foundation, because of the amount of soil that is disturbed by the removal, makes that area unsuitable for the new foundation. Foundations for billboards are engineered based upon the soil conditions and the lateral strength of the soil. Disturbed soil does not have nearly the lateral strength of undisturbed soil. The larger the foundations being removed, the larger the amount of soil that has to be disturbed to remove the actual concrete foundation.

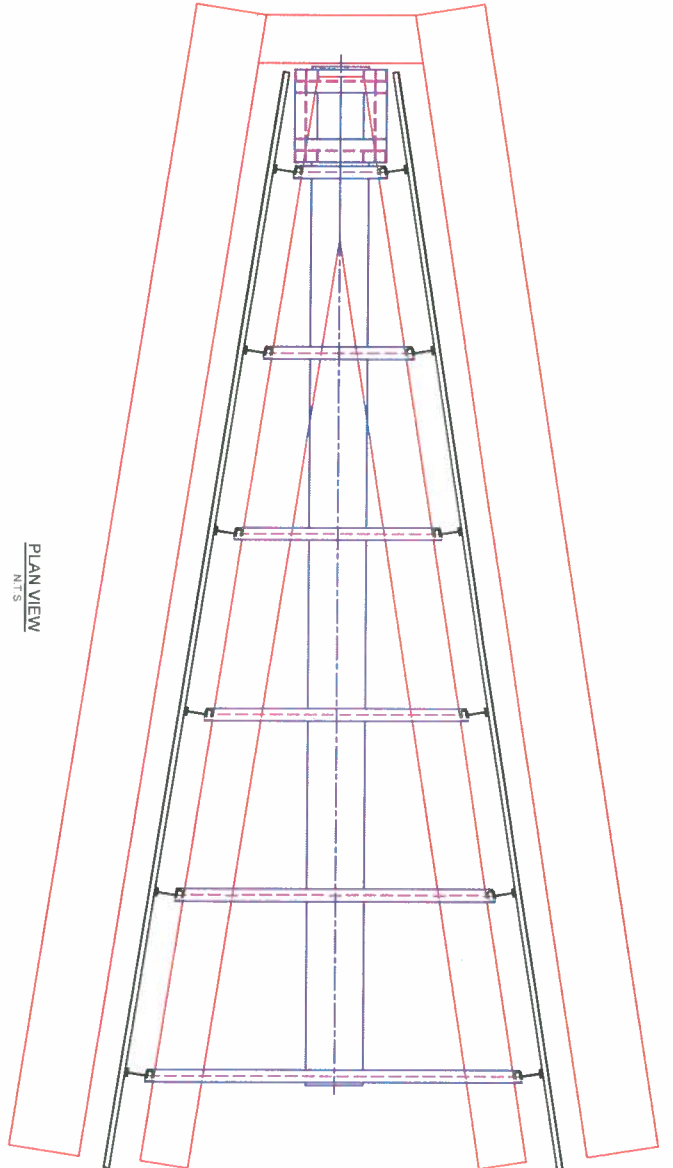
I appreciate your considerations to the above concerns.

Sincerely,



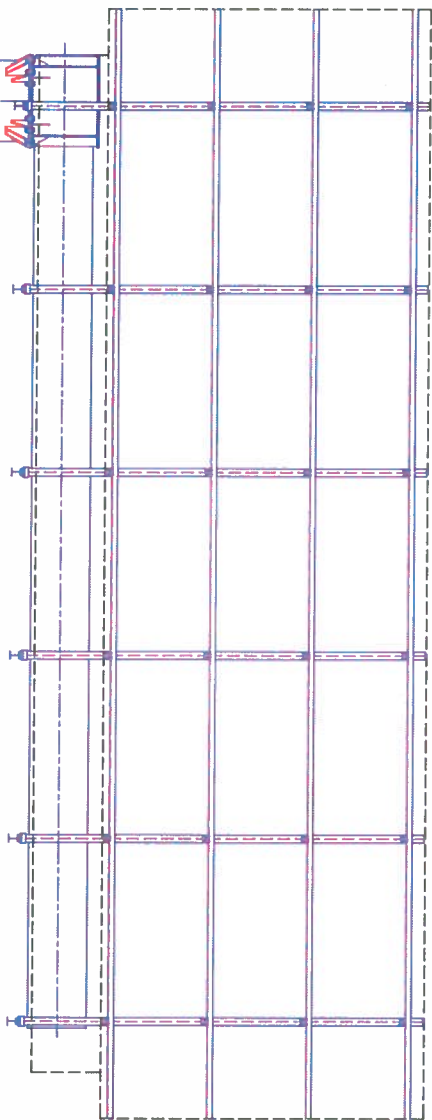
Michael A. Mielke

Corporate Director of Operations  
Adams Outdoor Advertising

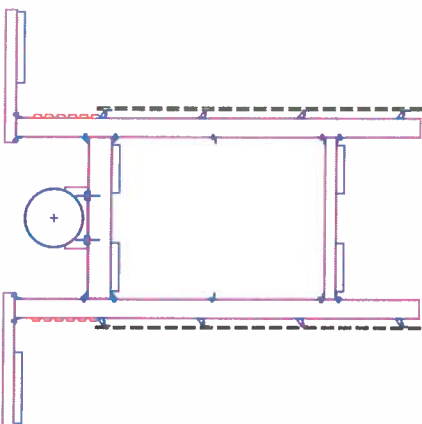


FULL FLAG, "V"  
BILLBOARD STRUCTURE  
(COLUMN CAN BE AT EITHER END)

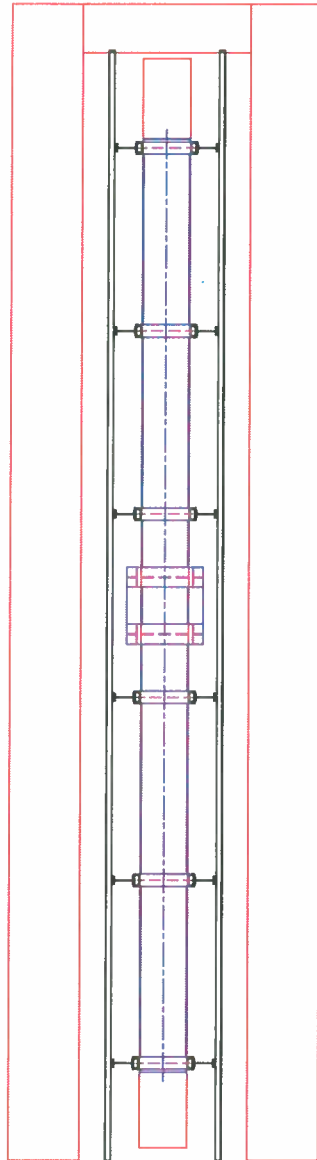
PLAN VIEW  
NTS



ELEVATION VIEW  
NTS

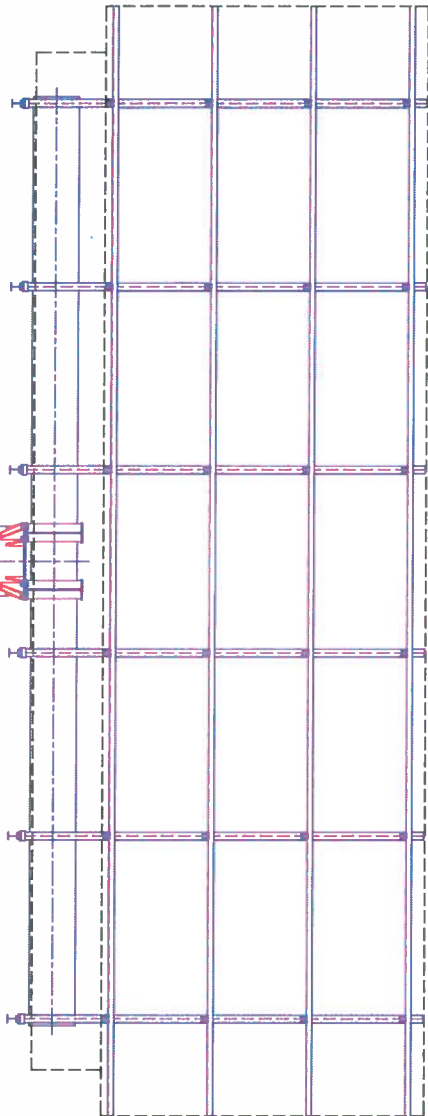


END VIEW  
NTS

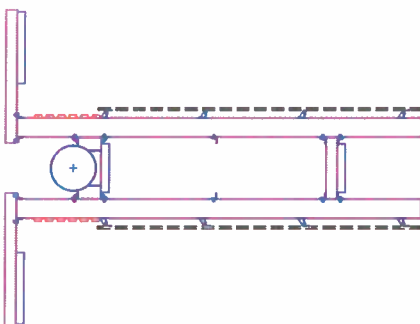


PLAN VIEW  
NTS

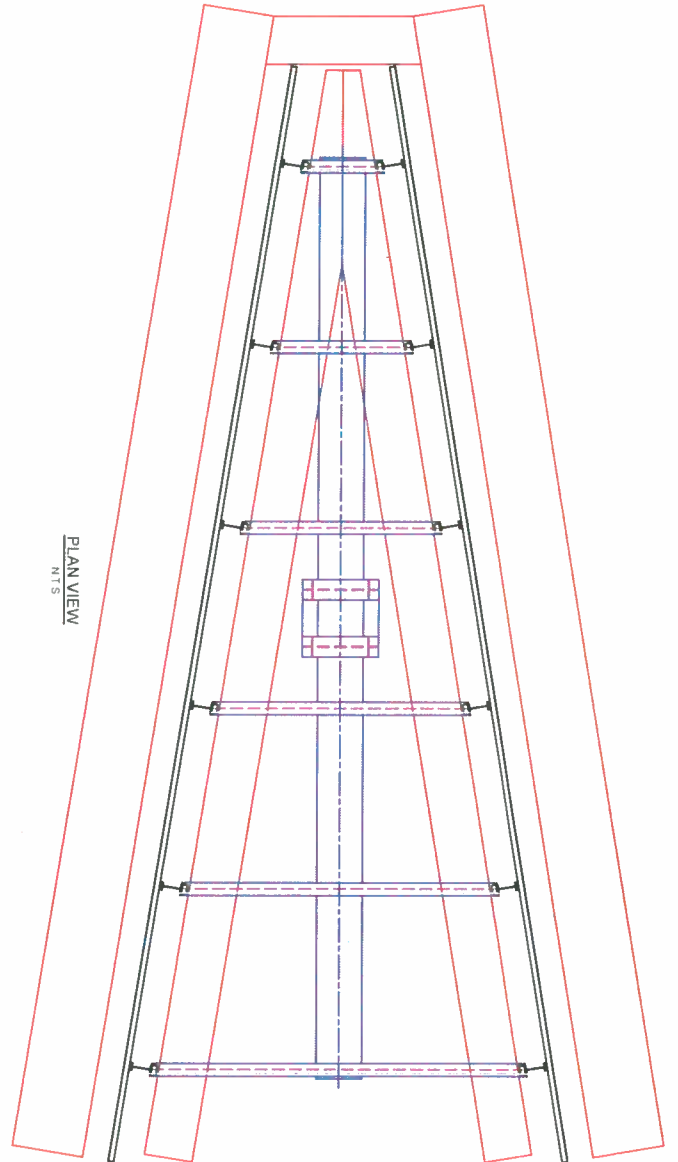
CENTER MOUNT, BACK TO BACK  
BILLBOARD STRUCTURE



ELEVATION VIEW  
NTS

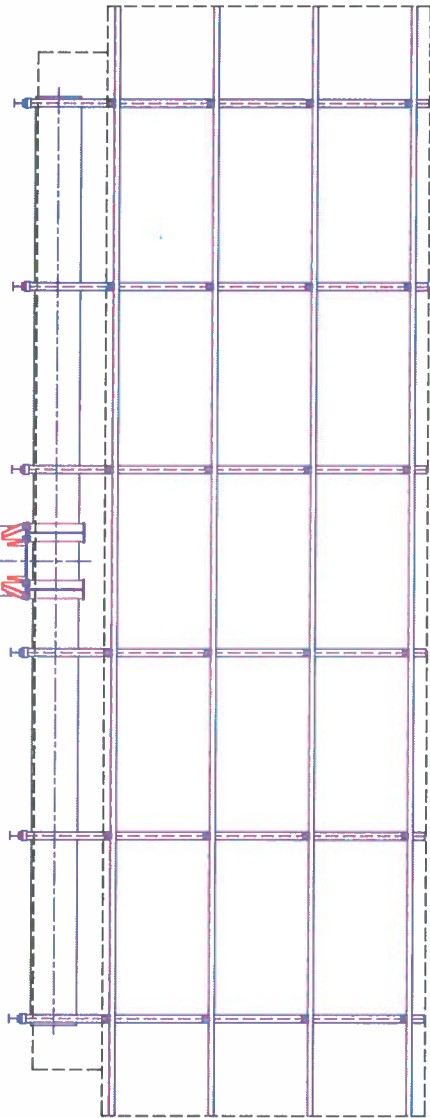


END VIEW  
NTS

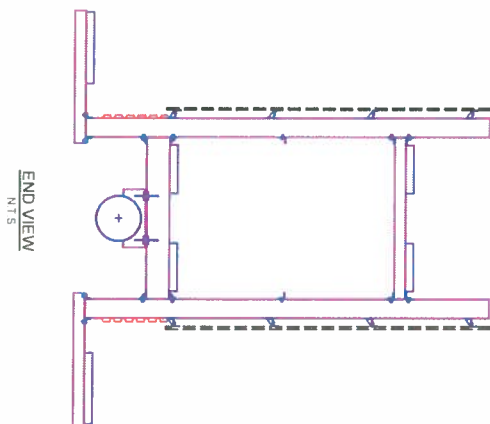


PLAN VIEW  
N.T.S.

CENTER MOUNT, "V"  
BILLBOARD STRUCTURE

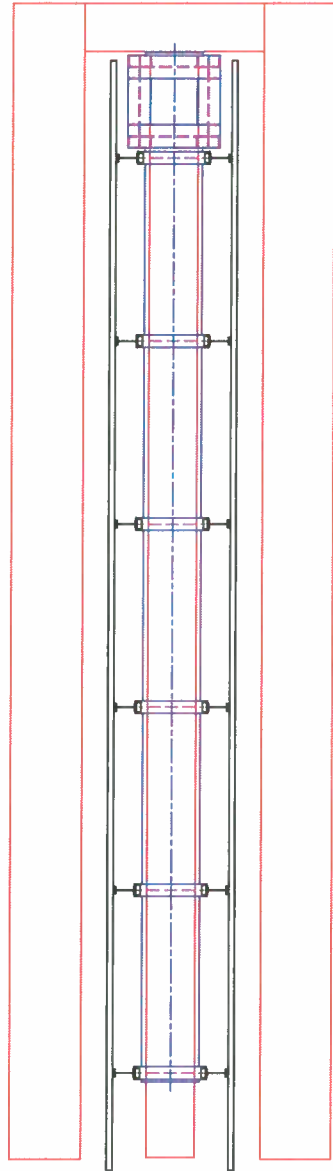


ELEVATION VIEW  
N.T.S.

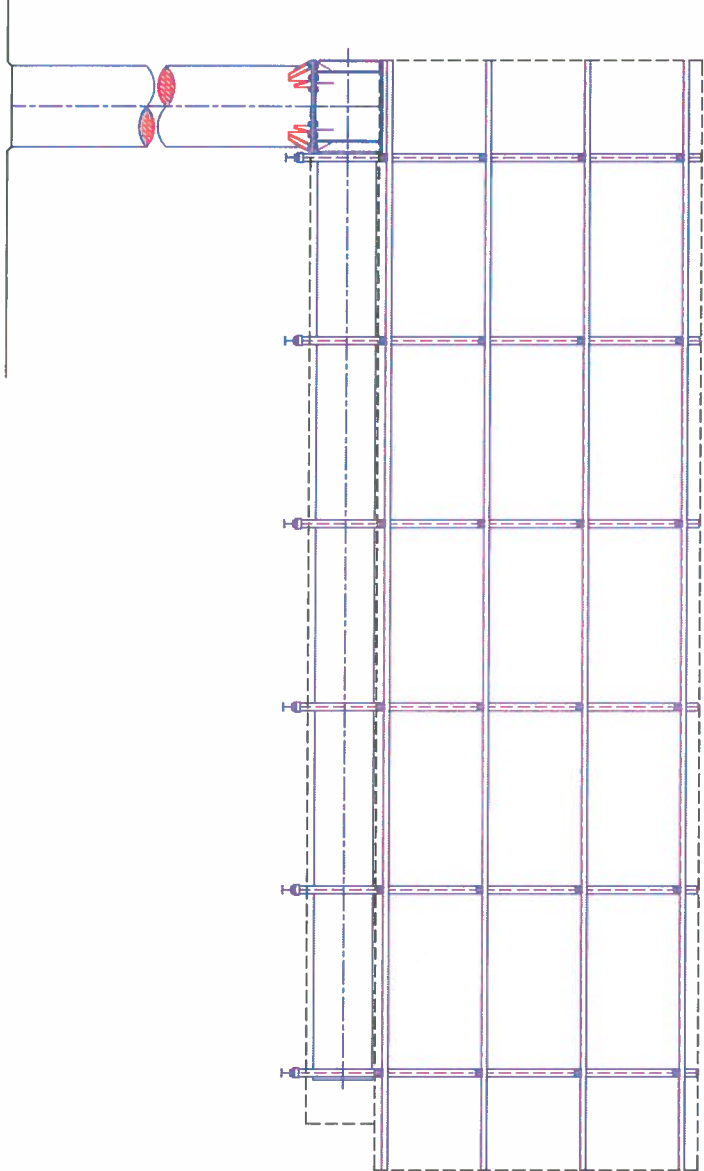


END VIEW  
N.T.S.

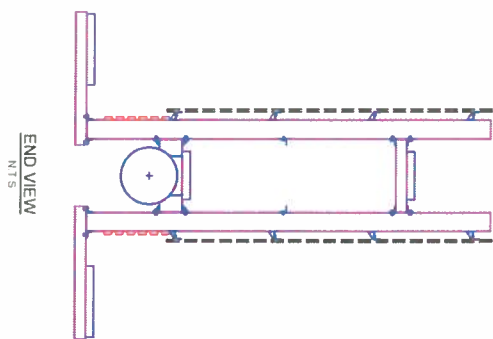




PLAN VIEW  
N.T.S.

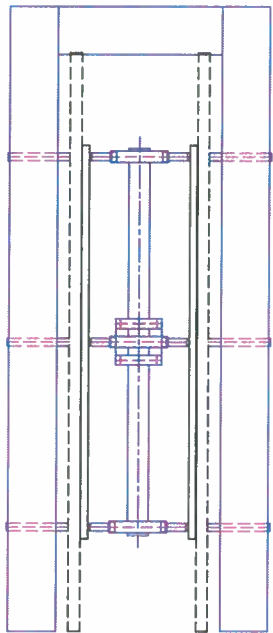


ELEVATION VIEW  
N.T.S.

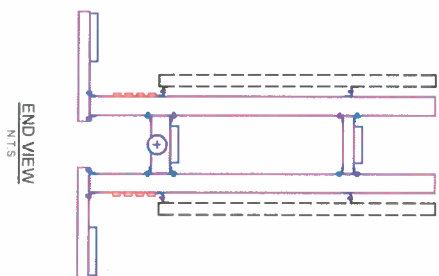
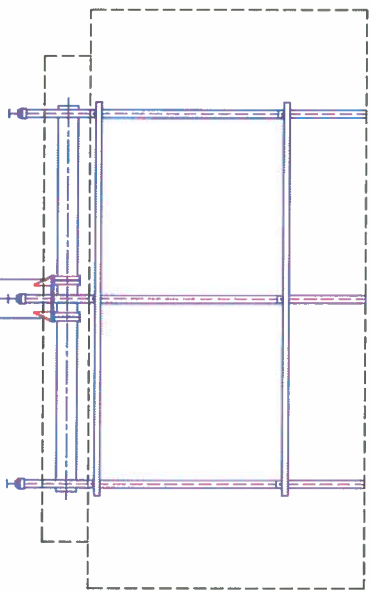


END VIEW  
N.T.S.

FULL FLAG, BACK TO BACK  
BILLBOARD STRUCTURE  
(COLUMN CAN BE AT EITHER END)



12'-0" x 25'-0" CM, BACK TO BACK  
BILLBOARD STRUCTURE



# Exhibit M

Ernest C. Drake PLS, PLLC  
P.O. Box 1931  
Skyland, NC 28776  
828-674-0008  
*erniedrakepls@gmail.com*

---

October 8, 2020

RE: North Carolina Department of Transportation Proposed Rule  
Defining Sign Location for Outdoor Advertising Billboards

To whom it may concern,

I am Ernest C. Drake. I have been a licensed Land Surveyor in the State of North Carolina for 25 years. I've owned my own business for 12 years. I also have five other state licenses. I have been using GPS for land surveying since 1993.

I have been asked to review the North Carolina Department of Transportation's proposed rule defining "sign location" for purposes of outdoor advertising/billboards. The proposed rule reads:

"Sign Location: A sign location shall be the latitude and longitude as determined by recreational grade global position system (GPS) equipment. The location shall be determined and listed on each outdoor advertising permit application by DOT personnel."

From my experiences in surveying, I am very familiar with all varieties of equipment to measure the location of things. I have attached to my letter an article from the U.S. Geological Survey organization that discussed the quality of measurement of various types of equipment. The DOT's proposed recreational grade GPS equipment is the lowest quality.

The problem with using recreational grade GPS unit is it is designed to acquire a location fix quickly without the need for pinpoint accuracy. Varying factors would be satellite configuration, number of satellites tracked, line of site to the sky, and vegetation cover. The accuracy could be off by 10 meters or 32.08 feet.

To acquire pinpoint accuracy survey grade GPS would have to be used which would require a licensed North Carolina surveyor or, using an employee that is under direct supervision of the licensed surveyor per North Carolina Statute. Using survey grade GPS would be very costly, and users would require professional training.

Sincerely,

*Ernest C. Drake*

Ernest C Drake, PLS  
NC License Number L-3798

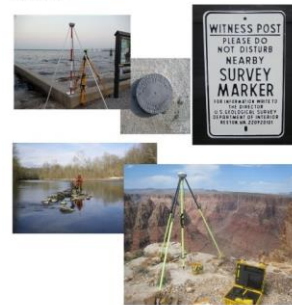
# USGS Global Positioning Application and Practice



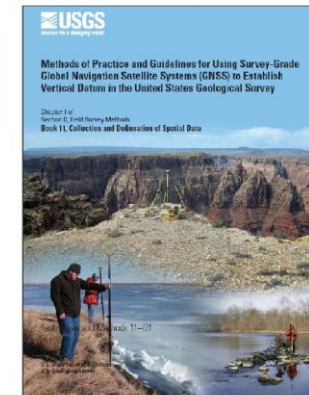
## USGS GNSS Training

Office of Employee Development (OED) ID1747

Application and Practice of Survey-Grade Global Navigation Satellite System (GNSS) Real-Time and Static Surveys in the USGS.



## USGS GNSS T&M Manual



## Mission of the USGS Global Navigation Satellite System Committee

Mission: The USGS Global Navigation Satellite System ([GNSS](#)) committee provides information and guidance on the latest applications and surveying methods to maintain a high-level of consistency and quality amongst the GNSS community within the USGS.

## USGS GNSS Committee

Paul Rydlund, PLS (Chair)

Kenneth Skinner

Doug Nagle

Chad Ostheimer, P.E

Missouri Water Science Center, [prydlund@usgs.gov](mailto:prydlund@usgs.gov)

Idaho Water Science Center, [kskinner@usgs.gov](mailto:kskinner@usgs.gov)

South Carolina Water Science Center, [ddnagle@usgs.gov](mailto:ddnagle@usgs.gov)

Ohio Water Science Center, [ostheime@usgs.gov](mailto:ostheime@usgs.gov)

Brenda Woodward	Nebraska Water Science Center, <a href="mailto:bkwoodwa@usgs.gov">bkwoodwa@usgs.gov</a>
Peter McCarthy	Montana Water Science Center, <a href="mailto:pmccarth@usgs.gov">pmccarth@usgs.gov</a>
Robert Holmes, PhD, P.E, D.WRE (OSW liaison)	USGS Office of Surface Water, <a href="mailto:bholmes@usgs.gov">bholmes@usgs.gov</a>

[Top](#)

[an error occurred while processing this directive]

### **Email List Serve: GS GNSS**

An email list serve has been established to provide dialog among the USGS GNSS community of surveying. This list serve engages all GNSS point-of-contacts from each state. Any questions, comments, or concerns can be shared by entering "GS GNSS" to compose email.

[Top](#)

[an error occurred while processing this directive]

### **Individual USGS State Contact and Equipment Inventory**

	A	B	C	D	E	F	G
1	State	Sub Office	Primary Contact	Email	Phone	Secondary Contact	
2	<b>Information listed here is available to anyone with a Work Email originally listed here. Please contact Paul Rydlund to grant access to new members when adding them to this s</b>						
3	Alaska		Dan Long	dlong@usgs.gov	907-786-7133	Jeff Conaway	Trimble: R6 RTK System, 1 Base
4	Arizona		Jeff Kennedy	jkennedy@usgs.gov	520-670-6671		Trimble: 4800 receiver with intern 4800 receiver, no radio Trimble R8 (2) 4700 receiver, with internal r (5) 5700 receiver, no radio, Zep 5800 receiver, internal receive-o R6 receiver, internal transmit and R6 receiver, internal receive-only HPB 450 radio, 2 TSC controllers license TBC software license. Please not (4800's and 4700) are on a diffe
5	California		Michelle Sneed	micsneed@usgs.gov	916-278-3119		The only equipment we have is a is fairly outdated. We have 2 eac Trimble antenna 33429-00 L1/L2 Trimble receiver 4400 Trimble data collector TSC1 navigation: GPS Newly acquired in 2013: 1 Trimble 2 geodetic antenna, 2 Trimble T:
6	Idaho		Kenneth Skinner	kskinner@usgs.gov	208-387-1343		2 - Trimble 5700 receivers (1 with base) 1 - 5800 receiver 1 - R8 receiver (GNSS compatibl controllers = 1 - TSC1, 2 - TSC2, separate GPS antennas, 2 radios
7							Magellan ProMark3 (1 unit in the system that works with GPS (L1) Topcon GR-3 (two complete base works with: GPS (L1, L2, and

[Top](#)



## Mapping Grade GNSS Equipment

### Commercial Grade ( $\geq 3$ meters horizontal)

#### Overview

Handheld units available from commercial retailers are designed for recreation or general commercial use. These units are good for general location and navigation with simple waypoint marking. They range in price up to about \$600.

Commercial Grade units are small, easy to use GPS (and some GNSS) handhelds like:



#### Approach

The above commercial grade handheld GPS units are not designed for precise or extensive mapping and data collection. They are best for navigating to a location in the field or for simple coordinate determination of a point. Most brands of GPS handhelds come with base maps installed and detailed maps available for purchase. Base maps generally are not detailed enough for navigation and the purchase of detailed maps is recommended.

When determining location coordinates, several GPS handhelds offer an averaging option to obtain coordinates that are more accurate. This averaging option should be used if available.

#### Uncertainty

Commercial grade handheld GPS units are able to obtain coordinates with a horizontal accuracy of approximately 3 meters if the unit can receive a wide area augmentation system (WAAS) signal; otherwise, the accuracy is approximately 10 meters.

This type of GPS handheld unit provides elevation data with poor accuracy.

[A general GPS discussion from Garmin including WAAS.](#)

## Differential Grade ( $\leq 1$ meter)

### Overview

Differential grade GNSS equipment differ from commercial grade GPS units by incorporating higher quality antennas and implementing differential corrections that greatly improves the accuracy of the location. Differential grade GNSS equipment incorporating high quality antennas can receive information from a greater number of satellites at once, some can receive information from the satellites in several frequencies (L1 and L2), and some can receive information from satellites in different satellite systems (primarily GPS and GLONASS). Differential grade antennas receive corrections from either a satellite based augmentation system (SBAS) or ground based augmentation systems (GBAS). SBAS include [WAAS](#), European Geostationary navigation Overlay Service (EGNOS), Multi-functional Transport Satellite (MSAS), and commercial versions like [OMNISTAR](#) and [StarFire](#). The accuracy of the SBAS and the GBAS corrections depend on the type of system being used and the users location in relationship to the systems coverage. In addition differential grade units typically have higher quality mapping software designed to map features using points, lines, and polygons. These units range from \$500 to \$10,000 with software.



### Approach



The key to utilizing differential-grade GNSS systems is their ability to apply differential corrections to positions. There are several different ways to apply these corrections. One method is to post-process the data after it is collected with data from a nearby base station such as a Continuously Operating Reference Station ([CORS](#)) which are managed by the National Geodetic Survey. This post processing is typically completed using vendor software however real time corrections are more commonly used. The types of real-time corrections that can be used depend upon the mapping grade unit. Almost all of the mapping-grade units are capable of receiving WAAS corrections. However, WAAS is problematic for users in higher latitudes (especially north of 71 degrees latitude) because of the location of the WAAS satellites. Other SBAS used by differential-grade GNSS are Europe's [EGNOS](#) and Japan's [MSAS](#). DGPS beacons also provide free real-time correction signals. U.S. beacon coverage can be viewed at <http://www.navcen.uscg.gov/dgps/coverage/Default.htm>. For compatible receivers, Trimble offers a SBAS with limited coverage ([http://www.trimble.com/mgis\\_vrsnow\\_h-star-US.shtml](http://www.trimble.com/mgis_vrsnow_h-star-US.shtml)) called the H-Star subscription service. Though coverage of this system is currently limited arrangements can be made with Trimble for coverage in specific areas. OMNISTAR, a SBAS with global coverage, has three levels (differ in the accuracy) of subscriptions available for real-time corrections. but. Another global SBAS subscription service is the StarFire subscription service from NAVCOM (a John Deere Company). There also are local real-time GPS networks in some areas, for example the Washington State Reference Network (<http://www.wsrn.org/about.aspx>). GBAS such as beacons also provide free real-time correction signals. U.S. beacon coverage

can be viewed at <http://www.wsrn.org/about.aspx>. The differential grade GPS units use mapping software for data collection and post processing. Some software is brand specific like Trimble's TerraSync, Topcon's TopSURV, or Sokkia's IMap, other mapping software used by many of the differential-grade units are generic, such as ESRI's ArcPad software. Often the mapping software must be purchased separately.

### **Uncertainty**

Accuracy of differential-grade GNSS units varies depending upon the type of differential correction applied and the quality of the GNSS receiver and antenna (type, quality, and the number of satellite and frequencies that can be received), with external antennas typically providing the best results.

All Differential-grade GPS receivers have a horizontal positional accuracy of less than 1 meter. Most new GPS receivers with differential corrections from SBAS such as WAAS and low level OMNISTAR subscriptions or from GBAS such as beacons typically have accuracies from 0.3 to 1.0 meter, depending on the quality of the receiver. Higher-level OMNISTAR service or Trimble's H-Star service improves the accuracy to 5 – 30 cm. Currently, the highest quality differential GPS receivers available are dual frequency units that utilize both GPS and GLONASS satellites. These coupled with a very accurate differential correction subscription will give the best differentially corrected position possible. Vertical accuracies for these GPS units are 2 – 3 times that of the horizontal accuracy, and should be used only for informational purposes.

[Top](#)

### **Survey Grade GNSS Equipment**

Requirements for survey-grade GNSS receivers are that they record the full-wavelength carrier phase and signal strength of the L1 and L2 frequencies and they track at least eight satellites simultaneously on parallel channels. These dual-frequency receivers limit the effects of ionospheric delay and, increase the reliability of processed results over long baselines. Receivers should have sufficient memory and battery power to record 6 hours of data at 5-second epochs. All receivers should be upgraded with the latest manufacturer's firmware after discussing equipment and use with a company representative to ensure compatibility. The antennas used for GNSS survey applications should have stable phase centers and be designed to minimize multipath interference. The surveyor must know the exact phase center offsets for their GPS antennas for post processing purpose, this data is typical printed on the antenna or in the user's manual or it can be found on the NGS antenna calibration page. Inappropriate offsets can introduce up to 10 cm of error in survey results. Other equipment that is necessary when using survey grade GNSS equipment are fixed-height tripods. If possible, all tripods should be the same height as any other fixed-height tripod on the project so measurement and recording errors are eliminated. Also, field personnel should make sure that the level bubble is in adjustment, center rod is not bent or damaged, height of

center rod is correct as reportedly measured, and legs are secure. Roving poles also should be fixed height or set to a consistent height and measured in the field for verification of height.

It is the surveyor's responsibility to know the accuracy requirements of the survey and match this with the accuracy of his or her receiver in combination with the accuracy of the correction information being received based on correction quality and location (how close the survey is to the area where the corrections are being calculated so the assumption of similar ionosphere corrections is not violated). Most survey grade equipment has horizontal and vertical accuracy based on distance (see table below). Therefore when roving in RTK mode the vertical accuracy of the surveyed points in relation to the base station 8 km away is 2 cm + 1.6 cm or 3.6 cm. The further a survey is from the correction information, the less accurate the survey.

Positioning Mode	Typical Horizontal Accuracy (5 SVs, PDOP<4)	Maximum Operating Range
Static	Horizontal: 5mm + 1 ppm Vertical: 10 mm + 1 ppm	Several 100 km depending on satellite geometry
Real-time Kinematic	Horizontal 1 cm + 2 ppm  Vertical: 2 cm + 2 ppm	Recommended: <10 km  Maximum: 40 km  Usually dependent on communication link

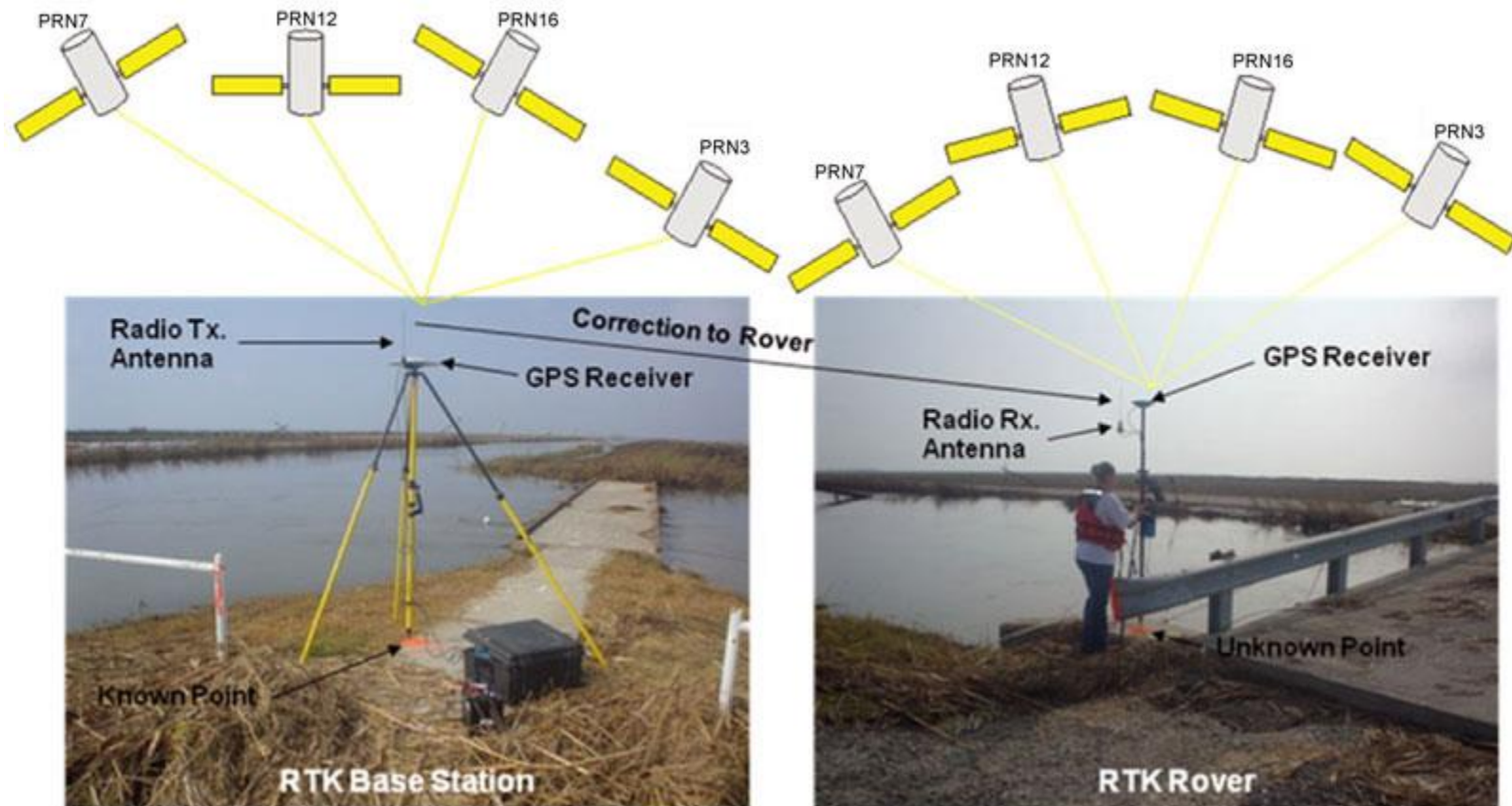
When accuracy is described in relation to a datum the quality or error in the benchmark being surveyed from and the models being used must be considered. Typical error in Geoid03 model is 4.8 cm (<http://www.ngs.noaa.gov/GEOID/geolib.html>, Assessment of the New National Geoid Height Model, GEOID03 link) and 3 cm in the GRS80 ellipsoid.

In addition it must be noted that all GNSS derived elevations, though proven through time to be fairly accurate, are only modeled results. Orthometric heights (or elevation) are simply calculated as the ellipsoid height minus the geoid height (both modeled values based on location). That is why it is important to include high order leveled vertical reference marks (typically NGS benchmarks) when relating your survey to a given datum or your survey area is very large.

### **Real-Time Kinematic (RTK) procedures**



Kinematic is a term applied to GPS surveying methods where receivers are in continuous motion, but for relative positioning the more typical arrangement is a stop and go technique. This approach involves using at least one stationary reference receiver and at least one moving receiver called a rover. RTK procedures do not require post processing of the data to obtain a position solution. A radio at the reference receiver broadcasts the position of the reference position to the roving receivers. This allows for real-time surveying in the field and allows the surveyor to check the quality of the measurements without having to process the data.



## Static and Fast Static procedures

Static GPS surveying was the first method used in the field and it continues to be the primary technique used today. Static surveys allows for systematic errors to be resolved when high-accuracy positions are required by collecting simultaneous data between stationary receivers for an extended period of time, usually 30 minutes to 4 hours, depending on baseline length. Using this method requires the design of a GPS network and an observation schedule for the coordination of receivers. Fast static is a procedure that uses very short occupation times. Unlike static methods, which sometimes require multiple occupation session to build redundancy into the network, rapid-static stations need to be occupied only once.

## Post-Processed Kinematic (PPK) procedures

PPK surveys are similar to RTK procedures, but the baselines are not processed in real-time. PPK involves using one or more roving receivers and at least one reference receiver remaining stationary over a known control point. GPS data are simultaneously collected at the reference and rover receivers. The data are downloaded from the receiver, and the baselines processed using GPS software.

When choosing between a kinematic and a static methodology, the GPS surveyor basically is making a choice between productivity and accuracy. There is no doubt that the short sessions of the kinematic procedures can produce the largest number of GPS points in the least amount of time; however, because of the shortened occupation times and less data to resolve integer ambiguity, there is a slight degradation in the accuracy of the work.

[Top](#)

## Training/Workshops

USGS facilitated

<http://biology.usgs.gov/gps/classes/training.html>

NGS facilitated

<http://www.ngs.noaa.gov/corbin/calendar.shtml>

[Introduction to Geodetic and Tidal Vertical Datums, given 8/16 and 8/18/2011](#)

[Modernization of the National Spatial Reference System, given 5/26/2011](#)

[GRAV-D Information update, given 5/9/2011](#)

[GPS\\_Derived Heights, given 5/13/2010](#)

[Datums and Projections, given 11/2009](#)  
[Using DSWorld, given 2/16/2012](#)

#### Vendor facilitated

[http://www.gps-trainer.com/gps\\_classes.htm](http://www.gps-trainer.com/gps_classes.htm)  
<http://www.gpseducationresource.com/>  
[http://www.duncan-parnell.com/training\\_instructor.html](http://www.duncan-parnell.com/training_instructor.html)  
  
<http://www.gpstraining.com/>

#### On-line training

[http://www.duncan-parnell.com/training\\_webbased.html](http://www.duncan-parnell.com/training_webbased.html)

[Top](#)

### **Online references**

#### NGS

[http://www.ngs.noaa.gov/PUBS\\_LIB/pub\\_index.html](http://www.ngs.noaa.gov/PUBS_LIB/pub_index.html)

#### USACE

<http://140.194.76.129/publications/eng-manuals/em1110-1-1003/entire.pdf>

#### State DOT

<http://onlinemanuals.txdot.gov/txdotmanuals/gps/gps.pdf>

[http://www.dot.ca.gov/hq/row/landsurveys/SurveysManual/06\\_Surveys.pdf](http://www.dot.ca.gov/hq/row/landsurveys/SurveysManual/06_Surveys.pdf)

#### Online Dictionary of Terms

[http://www.gps.oma.be/gb/dic\\_gb\\_ok\\_css.htm#top](http://www.gps.oma.be/gb/dic_gb_ok_css.htm#top)  
[http://www.ngs.noaa.gov/CORS-Proxy/Glossary/xml/NGS\\_Glossary.xml](http://www.ngs.noaa.gov/CORS-Proxy/Glossary/xml/NGS_Glossary.xml)

#### Useful Information

NGS Benchmark Database- <http://www.ngs.noaa.gov/cgi-bin/datasheet.prl>



NGS Benchmark Quality Explained- <http://gpsinformation.net/main/ngs-accuracy.html>

Solar Flares, Toposphere, and Ionosphere

<http://spaceweather.com/>

<http://www.n3kl.org/sun/status.html>

<http://www.swpc.noaa.gov/forecast.html>

[Top](#)

## **Status and Evolution of Current and Future Global Navigation Satellite Systems (GNSS)**



Currently (2010) in the United States, the Global Positioning System (GPS) is the only fully functional satellite system in the world. Approximately 24 government operational satellites are available, along with other satellites, that may be used as substitutes for those rendered inoperable. For more information on the current constellation, visit the GPS constellation provided at the United States Naval Observatory, Time Service Department (<http://www.usno.navy.mil/USNO/time/gps/current-gps-constellation>).

As of June 1, 2009, the Russian government operated GLObal NAVigation Satellite System (GLONASS) consisting of 17 operational satellite vehicles (SV's) and have an additional 3 SV's under maintenance. A recent update and withdrawal of one SV from service August 18, 2009, left the constellation with 19 functioning SV's, one of which was set unhealthy since June 18, 2009. An additional set of three GLONASS SV's are scheduled for launch in December 2009, with the scheduled achievement of a fully functional system (24 satellites) by the end of 2010 ([www.gpsworld.com](http://www.gpsworld.com)). The system requires 18 SV's for continuous navigation services covering the entire Russian territory and 24 SV's to provide services worldwide ([www.gpsdaily.com](http://www.gpsdaily.com)).

The European Union, together with the European Space Agency, has introduced a proposed GNSS known as the GALILEO positioning system. This system is anticipated to be a fully functional system by 2013 that is compatible with the United States operational GPS system and Russian GLONASS. The fully functional system will consist of 30 SV's and associated ground infrastructure ([www.insidegnss.com](http://www.insidegnss.com)).

An existing regional navigation system known as "Beidou" is proposed by the Chinese government to develop into a global navigation system named COMPASS by 2015. The system is proposed to consist of 30 SV's and associated ground infrastructure. The Chinese government has announced cooperation with other countries in the creation of COMPASS (<http://en.wikipedia.org>).

A summary of operational and proposed navigation systems can be obtained at:

[http://en.wikipedia.org/wiki/Global\\_navigation\\_satellite\\_system](http://en.wikipedia.org/wiki/Global_navigation_satellite_system)

Currently (2010), most real-time and post-process GNSS surveying utilizes anywhere from 4 to 12 GPS SV's in the United States with an additional 3 to 4 SV's received from the GLONASS network. Survey grade GPS users are benefiting from the extended constellation, thereby resulting in more accurate positioning. Real-time GPS survey users also are benefiting from more rapid fixed positioning in which to obtain solutions.

[Top](#)

## **Federal Communications Commission (FCC) License and Narrow Band Requirements for GNSS Radios**

Here is a discussion regarding radio frequencies and appropriate authorization for GNSS radios. Comments listed here are from the USGS Radio Liaison Officer (RLO), Richard Pardee ([rwpardee@usgs.gov](mailto:rwpardee@usgs.gov)), who has copied the USGS Radio Program Manager, Jerry Godbey ([godbeyj@usgs.gov](mailto:godbeyj@usgs.gov)).

Richard W. Pardee  
WRD Radio Liaison Officer

PASS Database Manager  
Electronics Technician  
U.S. Geological Survey-HIF  
Building 2101  
Stennis Space Center, MS 39529  
ph: 228.688.2111  
fax: 228.688.1577

Jerry L. Godbey  
USGS Radio Program Manager  
Fort Collins Science Center  
2150 Centre Avenue  
Building C  
Fort Collins, CO 80526  
ph: 970.226.9460  
fax: 970.226.9230

"Being part of the federal government, we are not required to have an FCC license for operation of this equipment on our frequencies. Our use of the frequency spectrum is not governed by the FCC. Instead, we operate under the management of the National Telecommunications and Information Administration (NTIA). The NTIA coordinates with the FCC in the management of the spectrum.

In the majority of cases, the equipment manufacturer is required to obtain an FCC license for their equipment. We use this licensing as one method of determining whether or not we authorize the use of a piece of equipment by federal users. This is due to the fact that, through the FCC testing and licensing processes, the equipment has been proven to meet certain requirements. Not all equipment used by federal users is necessarily FCC licensed. However, much of it is.

One other difference is that specific frequency use by federal users is determined by the NTIA and is not necessarily the same as the frequency being used by non-federal users that are using the same equipment. That is where we must follow the guidelines of the NTIA for the authorized frequency on which a piece of radio frequency (RF) equipment can be used. The department has restrictions as well.

For DGPS and RTK type equipment, we do have specific frequencies to use. DOI users are required to request from their Departmental Radio Program Manager (RPM) via the bureau Radio Liaison Officer (RLO), the authority to use RF equipment. Being the RLO, I can tell you if the equipment is authorized for use, the frequencies that are authorized and whether or not a Radio Frequency Authorization (RFA) has already been generated for that frequency (or if one needs to be generated). Using one that already exists cuts down on the wait time. Your equipment supplier should know the process of programming the equipment for use on the federal frequencies. That supplier may request documentation authorizing the use of the frequency. I can supply that info if requested.

The 410 MHz to 430 MHz frequency band is a federal band. Our DGPS frequencies are between 410 MHz and 420 MHz. Authorized frequencies are dependent upon the equipment characteristics and the geographic location of the user.

If you can send me your equipment info and location, I can tell you the specifics on the frequencies that are authorized. Often, adjoining states like to share equipment and/or information and want to be on the same frequency. With shared frequencies, that is usually pretty easy.

Regarding the existing frequencies and whether or not they are authorized, I can look into that as well, just let me know the equipment and frequencies.

Please feel free to let me know if you have any questions. I've included Jerry Godbey in this response. He is the USGS Radio Program Manager."