



CHAPTER 40A

ARTICLE 6 - CONDEMNATION OF PROPERTY ENCUMBERED BY A CONSERVATION EASEMENT

N.C.G.S. § 40A-82.

Demonstration of no prudent and feasible alternative required in certain actions; judicial determination.

SOURCE	LAST AMENDMENT IN THIS TEXT	RETRIEVED	SOURCE FINGERPRINT
General Statutes of North Carolina, as published by the General Assembly	No amendment history on record	21 September 2026, 03:35 UTC	0d5801d6e402d7066ee7f82d - 11b324116df5dbc4c98b917d - bd4db029c9fe2145

§ 40A-82(a)

If a holder of a conservation easement contests an action to condemn property encumbered by a conservation easement on the basis that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer to the complaint within 30 days from the date of service of the complaint as to that issue. If the holder of the conservation easement does not assert that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer within 120 days from the date of service of the complaint.

§ 40A-82(b)

If the holder of a conservation easement contests an action pursuant to subsection (a) of this section, the judge shall hear and determine whether or not a prudent and feasible alternative exists to condemnation of the property. The burden of persuasion on this issue is on the condemnor if the holder of the conservation easement, after discovery, has identified at least one alternative. If no alternative identified by the holder of the conservation easement is adjudged prudent and feasible, then the condemnation action shall proceed under the provisions of Article 3 of this Chapter, or Article 9 of Chapter 136 of the General Statutes, as applicable. If the judge determines that a prudent and feasible alternative does exist to condemnation of the property, the court shall dismiss the action and award the holder of the conservation easement costs, disbursements, and expenses in accordance with G.S. 40A-8(b) or G.S. 136-119,

as applicable, except that attorneys' fees may not be awarded. The procedure for this hearing shall be as set forth in G.S. 40A-47 or G.S. 136-108, as applicable.

§ 40A-82(c)

A determination as to whether a prudent or feasible alternative exists to condemnation of the property as set forth in subsection (b) of this section shall not be required for actions meeting all of the following criteria:

- (1) The Department of Transportation or the North Carolina Turnpike Authority is the condemnor.
- (2) Prior to filing the condemnation action, a review of the project for which the property is being condemned was conducted that considered the alternatives to the condemnation of the property encumbered by the conservation easement and mitigation measures to minimize the impact. The condemnor shall, in the complaint filed with the court, identify the alternatives and mitigation measures considered with regard to condemnation of the property encumbered by the conservation easement.
- (3) The review was conducted pursuant to any of the following:
 - a.The State Environmental Policy Act (SEPA), G.S. 113A-1, et seq.
 - b.The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq.
 - c.49 U.S.C. § 303. (2009-439, s. 1.)

END OF SECTION TEXT

APPARATUS FOLLOWS — DERIVED, NOT ENACTED

APPARATUS II
5 AUTHORITIES

Authorities referenced

Every G.S. cross-reference appearing in the text of this section, in order of first appearance. Nothing is characterized; the operative language is quoted from the section itself.

REFERENCE	APPEARS IN	OPERATIVE LANGUAGE IN THIS SECTION
G.S. 40A-8(b)	(b)	"disbursements, and expenses in accordance with"
G.S. 136-119	(b)	"in accordance with G.S. 40A-8(b) or"
G.S. 40A-47	(b)	"shall be as set forth in"
G.S. 136-108	(b)	"set forth in G.S. 40A-47 or"
G.S. 113A-1	(c)	"The State Environmental Policy Act (SEPA),"

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 40A-82 (2026).

PINPOINT

N.C. Gen. Stat. § 40A-82(a) (2026).

Pinpoint keys are set in the left margin of the text rather than line numbers: subsection designators are stable across editions and paper sizes, line numbers are not.

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