

NORTH CAROLINA



**Known Condemnations
Benefiting Private Parties***

Filed  1

Threatened **None known**

Total **1**

**Known Development
Projects w/Private
Benefit Condemnations***

 1

State Record of Condemnations Filed, for All Purposes:[†] 4,510

Legend  = 1  = 1  = 1

OVERVIEW

North Carolina municipalities rarely condemn property for private parties. From 1998 through 2002, there has been only one reported instance of a condemnation for private benefit. The airport that serves the Greensboro/Winston-Salem/High Point area condemned land for a new Federal Express cargo facility. The North Carolina Supreme Court unfortunately approved this condemnation, and it remains to be seen whether other municipalities will take this as a green light for private condemnations or if they will continue the trend of the past five years and refrain from using eminent domain for private parties.

*These numbers were compiled from news sources. Many cases go unreported, and news reports often do not specify the number of properties against which condemnations were filed or threatened.

[†]North Carolina Court Administrator's Office (includes condemnations for traditional public uses).



PRIVATE USE CONDEMNATION

Guilford County

In 1990, the Piedmont Triad Airport Authority (PTAA) passed a master plan to expand the airport's air cargo facilities. The plan, revised in 1994, called for acquisition of property adjacent to the airport so that the new facilities would be adjacent to existing runways. PTAA would hold title to the property, but lease it to Federal Express Corp., which would pay the construction costs of the new cargo facility and use it as an operational hub. In 1998, PTAA condemned 2.3 acres owned by Kent Urbine. Urbine challenged the condemnation, arguing that it benefited only FedEx, and was not a "public purpose" as required under North Carolina law.

The North Carolina Supreme Court disagreed. According to the court, the purpose of the 1990 master plan had been the future expansion of cargo facilities, a valid public purpose. The taking was permissible, the court held, because it would result in an improved airport for the region, from which the public would receive the primary benefit. While FedEx receives a substantial benefit from the transfer of Urbine's land, its benefit is "incidental," according to the court, to the overall public benefit.⁵³⁶

This was a strange holding, as FedEx will be the only user of the additional cargo facilities. Neither passengers, nor shippers, nor other cargo companies will receive any benefit from the improved airport. One factor that does distinguish this case from many of the others cited in this report is the fact that the property will continue to be owned by the government, even though it will be paid for and used by a private party.

⁵³⁶ See *Piedmont Triad Airport Authority v. Urbine*, 554 S.E.2d 331, 343 (N.C. 2001), cert. denied, 535 U.S. 971 (2002).