

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0601

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form:

In Box 2, please update the name as you did in the Rule by hyphenating "Right-of-Way"

And in Box 8, you published both "No Fiscal Note Required" and "Approved by OSBM" Should both be checked here? And is this part of a combined analysis? If you need to make a change to this Form, you need to change all of the forms in the packet to conform.

In the Rule:

On line 1, since you are changing the name from what was published in the Register, please state "with changes"

In (a), line 6, what is "legally" erected? In accordance with G.S. 136, Article 11?

On line 8, please remove the extra period between "G" and "S" and just state "G.S."

On line 9, please put "facilities" in quotation marks, as you are defining the term.

Also on line 9, what are "office, institutional, commercial, and industrial" buildings? Does your regulated public know?

In (a)(3), line 17, please delete the comma after "G.S. 136-93(b)"

On line 18, please state "his or her"

In (b), lines 20-23, this is a restatement of the definition in G.S. 99E-30, which you already said was the definition of the term in (a), line 11. Why are you restating it here?

And what is your authority to add the requirement of (b)(1), given the definition is in statute?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

In (b)(2), line 28, what is this “additional documentation”? What will that entail?

And on line 29, “remains in question” to whom?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

1 19A NCAC 02E .0601 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0601 SELECTIVE VEGETATION REMOVAL PERMIT REQUIRED TO REMOVE**
4 **VEGETATION FROM STATE HIGHWAY ~~RIGHT-OF-WAY~~ RIGHT-OF-WAY**

5 (a) Selective cutting, thinning, pruning, or removal of vegetation within highway ~~rights-of-way~~ rights-of-way may be
6 permitted only for opening views to business facilities and legally erected forms of outdoor advertising that are located
7 adjacent to State highway rights-of-way, as described in ~~G.S. 136-93(b)~~, that are located adjacent to State highway
8 ~~rights-of-way. G.S. 136-93(b).~~ For purposes of selective vegetation removal ~~permitting~~ permitting, "business
9 facilities," hereinafter referred to as ~~facilities~~, facilities, are defined as office, institutional, commercial, and industrial
10 buildings. In accordance with G.S. 136-93.3, ~~"agritourism activities"~~ agritourism activities, as defined in ~~G.S. 99E-30~~
11 G.S. 99E-30, are considered ~~facilities~~ facilities under this Section. The following requirements apply to ~~facilities~~
12 facilities under this Section:

- 13 (1) all facilities, except for agritourism ~~activities~~ activities, shall include at least one permanent
14 structural building;
15 (2) the building shall have all required local and State permits, be related to the facility's function, and
16 be open and operational on a year-round basis; and
17 (3) any cutting, thinning, pruning, or removal of vegetation allowed pursuant to G.S. 136-93(b), shall
18 be performed by the permittee or his agent at no cost to the Department of Transportation and shall
19 comply with this Section.

20 (b) For purposes of this Section, ~~agritourism activities~~ agritourism activities include any activity carried out on a farm
21 or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view
22 or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural
23 activities and attractions. The following requirements apply to ~~agritourism activities~~ agritourism activities under this
24 Section:

- 25 (1) the agritourism activities shall be open for business at least four days per week, with a minimum of
26 32 hours per week, and at least 10 months of the year; and
27 (2) the applicant shall certify that the activities for a selective vegetation removal permit qualify as an
28 agritourism activity. The Department may require additional documentation from the applicant if
29 the requested site's compliance as eligible agritourism activities remains in question.

30
31 *History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93(b); 136-93.3;*
32 *Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*
33 *Eff. June 1, 1982;*
34 *Amended Eff. January 1, 2015; November 1, 2012; June 2, ~~1982~~, 1982;*
35 *Readopted Eff. June 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0602

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, please delete or define “appropriate” How will this be known?

On line 7, how are these applications submitted? Does your regulated public know the mailing address and email address?

Consider beginning (a)(1) through (15) with articles, such as “the” and “a”

In (a)(4), is this what is addressed by Paragraph (e)? If not, then what is this?

In (a)(5), line 13, I believe the cross-reference should be updated to .0604(22)

In (a)(6), I do not understand this – will the certified check or cashiers check be in lieu of the bond, or proof of the bond? All G.S. 136-93 allows is the bond itself.

In (a)(7), line 16, you refer to “contractor” (singular) and then “their” (plural) Please make this consistent, perhaps by replacing “their” with “its” or “his or her”

In (a)(8), line 18, do not hyphenate “hundred-dollar”

In (a)(10), line 23, insert a “the” before “facility”

In (a)(12), line 26, I believe the cross-reference should be updated to .0604(10)

In (a)(13), line 28, please be sure to properly remove the comma after “property” by striking the word and the punctuation.

In (b), line 34, consider replacing “such” with “the”

In (b), Page 2, line 4, so that I’m clear – this vegetation won’t be preserved because it is screening the facility from view?

On line 5, who is this? How does your regulated public know?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

On line 7, consider deleting “and subsequent amendments and editions” and then moving that language to line 10, behind “hereby incorporated” So you could state, “hereby incorporated by reference, including subsequent amendments and editions.”

On lines 8-13, please confirm the website, price, and name of the publication are still accurate.

On lines 10-11, you do not need to state that your office has a copy of the material, as that is required by G.S. 150B-21.6.

On line 13, consider replacing “this” before “website” with “the”

In (c), line 23, please properly insert a period after “application”

In (d), what is the purpose of this Paragraph? The request will be made onsite or there may be an inspection before it is granted?

In the History Note, why are you citing to G.S. 136-130? This Rule addresses vegetation removal permits for facilities and agricultural activities, not advertising.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 19A NCAC 02E .0602 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0602 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR A**
4 **FACILITY**

5 (a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall
6 be made by the owner of the facility and sent to the appropriate Division Engineer of the North Carolina Department
7 of Transportation, Division of Highways. Applications shall be submitted in both printed and electronic form.
8 Applications for selective vegetation removal permits shall include the following information:

- 9 (1) applicant contact information;
- 10 (2) name and location of the facility;
- 11 (3) indication of request ~~being~~ for either a business facility or agritourism activity;
- 12 (4) municipal review indication, if applicable;
- 13 (5) requested use of and site access for power-driven equipment in accordance with Rule .0604(22) of
14 this Section;
- 15 (6) performance bond or certified check or cashier's check pursuant to G.S. 136-93;
- 16 (7) if using a contractor for vegetation removal work, identify the contractor and their qualifications if
17 the contractor is not listed on the Department's website directory of qualified transportation firms;
- 18 (8) payment of non-refundable two ~~hundred-dollar~~ hundred-dollar (\$200.00) permit fee, pursuant to
19 G.S. 136-18.7;
- 20 (9) certificate of ~~liability~~ liability, and proof of worker's compensation and vehicle liability insurance
21 coverage;
- 22 (10) geographic information system document and property tax identification number to verify location
23 of facility in relation to municipal limits;
- 24 (11) verification of on-site marking and tree-tagging requirements;
- 25 (12) sketch, or amended sketch of the requested cut zone and information about trees to be cut, thinned,
26 pruned, or removed in accordance with Rule .0604(11) of this Section;
- 27 (13) if applicable, certification that the applicant has permission from the adjoining landowner(s) to
28 access their private property, ~~if applicable~~, for the purpose of conducting selective vegetation
29 removal permit activities;
- 30 (14) certification that the facility qualifies as an agritourism activity as required ~~pursuant to~~ by G.S. 136-
31 93.3; and
- 32 (15) applicant's notarized signature.

33 (b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only
34 for the permittee's facilities adjacent to highway ~~right-of-way~~ right-of-way at locations where such facilities have been
35 constructed or where agritourism activities are carried out as set forth in G.S. 136-93.3 and Rule .0601 of this Section.
36 Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be
37 preserved. Other trees shall be preserved if they that are not screening the facility from ~~view and are~~ view, and when

1 ~~measured at six inches above the ground, shall equal four or more caliper inches and greater in diameter,~~
2 ~~diameter, measured six inches from the ground, shall be preserved.~~ Trees, shrubs, and other vegetation less than four
3 caliper inches in diameter may be removed. Trees, shrubs, and other vegetation that are four or more caliper inches
4 ~~or greater in diameter~~ diameter, as measured ~~at six inches from above the ground~~ ground, and not to be preserved,
5 may be cut, thinned, pruned, or removed ~~according to if approved by the Division Engineer having jurisdiction or that~~
6 ~~Division Engineer's designee, approval of Department personnel designated by the Division Engineer.~~ All vegetation
7 cutting, thinning, pruning, or removal shall be in accordance with the current edition and subsequent amendments and
8 editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1,
9 approved by the American National Standards Institute and published by the International Society of Arboriculture
10 that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside
11 Environmental Engineer, Division of Highways, 1 S. Wilmington St., Raleigh, N.C. Copies of the Standard may be
12 obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA may be
13 contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>.

14 (c) Applications shall be accompanied by a sketch showing the requested limits of the selective cutting, thinning,
15 pruning, or removal of vegetation. For facilities, the limits of selective cutting, thinning, pruning, or removal shall be
16 restricted to one area of right-of-way adjacent to frontage property of the ~~facility~~ facility, but not to exceed 1,000
17 contiguous linear feet. Facilities with frontage property on opposite sides of the State highway right-of-way may split
18 the maximum vegetation removal distance between the two sides of the highway, resulting in a total of two contiguous
19 cutting or removal distances along frontage property, with the total of the two sides not exceeding 1,000 linear feet.
20 The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The
21 applicant shall also include on the sketch the location, species, and caliper inches of all trees desired for cutting,
22 thinning, pruning, or removal, that have ~~with a diameter of four or more caliper inches and greater, inches,~~ as measured
23 six inches above ground level, at the time of the application ~~and desired to be cut, thinned, pruned, or removed.~~

24 (d) The selective vegetation removal request may be reviewed on site by Department personnel and a representative
25 of the applicant.

26 (e) In accordance with G.S. 136-93(d), if the application for vegetation cutting is for a site located within the corporate
27 limits of a municipality and the municipality has previously advised the Division Engineer in writing of its desire to
28 review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to
29 submitting the application to the Department, so the municipality ~~shall~~ may be given the opportunity to review the
30 application. Information regarding whether a municipality desires to review vegetation removal applications may be
31 found on the ~~Department~~ Department's website www.ncdot.gov or by contacting the Division Engineer's office.

32
33 *History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-93.3; 136-130;*
34 *Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*
35 *Eff. June 1, 1982;*
36 *Amended Eff. November 16, 1991; December 1, 1990; August 1, 1985; June 2, 1982;*
37 *Temporary Amendment Eff. November 16, 1999;*

1 *Amended Eff. August 1, 2000;*
2 *Temporary Amendment Eff. March 1, 2012;*
3 *Amended Eff. January 1, 2015; November 1, ~~2012~~2012;*
4 *Readopted Eff. June 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0603

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, the statute requires the Department to make the decision. I take it that the Department has delegated this responsibility to its employee engineers?

On lines 12-13, the sentence "Upon receipt ... application" is simply repeating the sentence on lines 5-6. You do not need to state this twice.

In (b), line 16, you refer to the "Division Engineer" and then in (b)(2) and elsewhere you refer to "Department Personnel" Are these different people?

In (b)(6), line 27, do not state "section" and only say "This Subparagraph"

On line 28, consider stating "Rule .0611 of this Section, except for Paragraph (d) and Subparagraph (g)(11)"

I also recommend that you use the structure of two sentences and not using parenthesis, as you do in Rule .0609(b)(4). I recommend you mirror that language here.

In (b)(7), line 32, I suggest you delete "has" before "failed"

In (b)(9), isn't this already addressed by (a) and (b), line 16? If you are trying to specifically address failure to complete the entire application, why not state "the applicant fails to complete the requirements of the application as set forth in Rule .0602 of this Section;"

In (b)(10), Page 2, line 2, state "State rules, federal regulations, statutes, permits..." If you are concerned that this will be unclear, state "State or federal rules, regulations, statutes..." Or you could use the language in Rule .0609(b)(9).

In (b)(11), line 10, do you mean "Section" as in all of Section .0600, or do you mean "For the purposes of this Subparagraph"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

1 19A NCAC 02E .0603 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0603 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT**
4 **FOR A FACILITY**

5 (a) Pursuant to G.S. 136-133.2, within 30 days following receipt of the application for a selective vegetation removal
6 permit for a facility, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the
7 application. The applicant, as part of the application, shall state in writing the date that he or she has delivered a copy
8 of the ~~application-application~~, with required ~~attachments-attachments~~, to a municipality that has previously advised
9 the Department in writing that it seeks to provide comments regarding such applications. The applicant shall deliver
10 the application to the municipality at least 30 days prior to submitting the application to the Department. The list of
11 municipalities requesting to review applications shall be maintained and updated by the Department on the website
12 www.ncdot.gov. Upon receipt of the application, the Division Engineer shall have 30 days to approve or deny the
13 application. If written notice of approval or denial is not given to the applicant within the 30-day Department review
14 period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise
15 the applicant, in writing, of the reasons for denial.

16 (b) The application shall be denied by the Division Engineer if:

- 17 (1) the application is for the opening of view to a facility that does not meet the requirements of Rule
18 .0601 of ~~the~~ this Section;
- 19 (2) it is determined by ~~Departmental~~ Department personnel that the facility is not screened from view;
- 20 (3) the application is for the opening of view to undeveloped property or to a facility that, due to
21 obstructions off the ~~right-of-way~~, right-of-way, is screened from view from the travel way regardless
22 of the presence or absence of trees and other vegetation on the highway ~~right-of-way~~; right-of-way;
- 23 (4) it is determined by Department personnel that removal of vegetation shall diminish a planting
24 installed for headlight screening and affect the safety of the traveling public;
- 25 (5) the application is solely for providing visibility to on-premise signs;
- 26 (6) the application is for the removal of vegetation planted in accordance with a local, State, or federal
27 beautification project. However, this section Subparagraph shall not apply if a mitigation replanting
28 plan ~~that is~~ related to the site for which the vegetation permit request is made (as set forth in 19A
29 NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is agreed
30 upon in writing by the applicant, the Department, ~~and~~ and, if applicable, the Federal Highway
31 ~~Administration, then this subsection does not apply;~~ Administration;
- 32 (7) on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation
33 removal permit, unless the applicant engages a landscape contractor to perform the current work;
- 34 (8) the application is for removal of vegetation that will open views to junkyards;
- 35 (9) the applicant fails to complete an application, as described in Rule .0602 of this ~~Section~~; Section;
- 36 (10) any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum
37 vegetation cutting or removal zone is prohibited due to conservation ~~easements or~~ easements.

1 conditions affecting the ~~right-of-way~~ right-of-way to which the State is ~~subjected~~ subjected, written
2 agreements, State or Federal rules, statutes, permits, or other restrictions; or agrees in writing to
3 subject itself and other restrictions agreed upon by the State, in writing in the right of way; or State
4 or Federal rules, statutes, or permits; or

- 5 (11) an unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-
6 way to create, increase, or improve a view to the facility from the travel way including acceleration
7 and deceleration ramps. The Department shall not issue a selective vegetation removal permit at the
8 requested site for a period of five years that shall begin on the date the Department resolves the
9 "unlawful destruction" or "illegal cutting" incident by settlement agreement with the responsible
10 party, party, or the Department administratively closes the case. For the purposes of this Section,
11 unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or
12 other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the
13 Department or its authorized agents, or without written permission of the Department.

14
15 *History Note: Authority G.S. 99E-30; 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.3; 136-130;*
16 *Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*
17 *Eff. June 1, 1982;*
18 *Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982;*
19 *Temporary Amendment Eff. March 1, 2012;*
20 *Amended Eff. January 1, 2015; November 1, ~~2012~~ 2012;*
21 *Readopted Eff. June 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0604

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (2), so that I'm clear – the bond is always \$2000, no matter the size of the project?

On line 19, why is the language "shall be caused" written prospectively? Should this read "if damaged is caused..."? I note you do not have conforming language in Rule .0610(2)

In (3), why are you saying what Unit of the Department will keep this on file?

In (4), line 28, what are these "Required forms"?

On line 30, I take it the application referenced is that set forth in Rule .0602? But how does the regulated public know who this official is within the local DOT?

In (5), lines 34, 35, and 36, please state "his or her"

On line 36, do you mean "shall" instead of "may"? Or do you want "may" to remain in case they are found not liable?

On line 37, do you want to use "or" rather than "and" to mirror Rule .0610?

Also on line 37, insert a comma after "permittee"

In (5), Page 2, line 1, this is an Item, so retain the original language.

In (6), line 15, what is "precise" here?

On line 16, replace "on which" with "where"

In (9), line 30, I do not understand this. Tagging is not required by Rule .0602, If you mean that the trees that are identified as being allowed to be cut, thinned, etc. by Rule .0602, then state that.

In (10), Page 3, line 3, you state that the Department may disapprove. You then state on line 7 that the Department "shall make this determination." I thought that these went together, but they don't seem to. What are the criteria for the Department to disapprove on line 3?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

On line 11, you have already said in Rule .0602 that dogwood and redbud trees cannot be removed. So, I suggest you state “trees, if tagged in error.”

On line 13, when does this site review occur? Is this addressed by other rules?

In (11), line 22, please state “State or federal rules, regulations, statutes...” And please make a conforming change to (11)(a), line 29. You will also add “regulations” on lines 23 and 32.

Please end line 23 with a colon, not a semicolon.

In (11)(a), line 30, please insert an “and” or “or” at the end of the line.

In (12), Page 4, line 1, state “G.S. 113A, Article 4”

On lines 2 and 3, why do you need the name of the law?

In (13), what is the purpose of the sentence on lines 4-6?

In (14), line 12, do not insert a comma after “times” Just retain what is currently in the Code.

In (15), line 15, why do you have “(“Engineer”)”? Other than line 16, you use “Division Engineer” everywhere else in the Rule (see Item (19))

Also on line 15, state “his or her”

On line 15, and elsewhere the term is used, what is “unsafe” here?

On line 18, “federal” should not be capitalized.

Also on line 18, please insert “rules” before “regulations”

On line 20, state “G.S. 95, Article 16” I do not think you need to spell out the name of the Article

In (16), line 25, who will determine whether the permittee “may” be responsible?

On line 26, do not insert the comma after “utilities”

In (18), lines 35 and 36, what do you mean by “holidays”? State holidays, federal holidays?

In (19), Page 5, line 5, who is the “contractor” here? A contractor for the DOT who is working on the road, rather than a contractor who is removing vegetation (and thus, being governed by this Rule?)

In (21), line 10, what is “undue” and “unreasonable” here?

On line 14, end the sentence after “Z133.1” As you already incorporated this by Rule .0602, you can delete everything on lines 14-20, starting with “approved by...”

In (22), why do you need this? This basically recites G.S. 136-133.4(c).

If you need to retain it, I prefer the way it was originally written on line 21. If you want to retain the change you made, be sure to insert a period after "signage."

In (23), line 27, end the sentence after "G.S. 136-133.4" This is because you added duplicative language about the end of the workday to line 25.

In (24), why is this here, rather than Rule .0603?

In (25), lines 34 and 37, as well as Page 6, line 1, to be consistent with changes earlier in the Rule (See Item (2)), state "Bond, certified check, or cashier's check"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

19A NCAC 02E .0604 is readopted as published in 34:13 NCR 1251-1253 as follows:

19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR FACILITIES

The following apply to the conditions of selective vegetation removal permit for facilities:

(1) Selected vegetation, within the approved limits as set forth in Rule .0602(c) of this Section may be cut, thinned, pruned, or removed by the permittee in accordance with the standards set out in G.S. 136-133.4;

~~(3)~~(2) The permittee shall furnish a Performance Bond, ~~or certified check check,~~ or cashier's check made payable to North Carolina Department of Transportation for the sum of two thousand dollars (\$2,000). The Performance Bond, ~~or certified check check,~~ or cashier's check shall cover all restoration of the ~~right of way right-of-way~~ to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The Performance Bond, ~~or certified check check,~~ or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The Performance Bond, ~~or certified check check,~~ or cashier's check shall run concurrently with the permit. The Performance Bond, ~~or certified check check,~~ or cashier's check shall be released after a final inspection of the work by the Department reveals that all work provided for and specified by the permit is found to be completed ~~and and, if damage shall be caused by the permittee or the permittee's agent,~~ all damages to the ~~right of way, right-of-way,~~ including damage to fencing and other structures within the right-of-way, have been repaired or ~~restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;~~ restored;

~~(4)~~(3) Companies that plan to apply for two or more permits may provide continuing bonds for the sum of one hundred thousand dollars (\$100,000) and that type of bond shall be kept on file by the Utilities Unit of the Department;

~~(5)~~(4) If the work is to be performed by any entity other than the permittee, either the permittee or the other entity shall furnish the Performance Bond, ~~or certified check check,~~ or cashier's check, as described in this Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department and may be found on the Department's ~~website~~ website: www.ncdot.gov. Bonds ~~are shall~~ shall to be furnished with the selective vegetation removal application ~~form form, and~~ to the official assigned to receive selective vegetation removal applications at the local North Carolina Department of Transportation, Division of Highways Office;

~~(6)~~(5) The permittee shall ~~also~~ provide proof of liability insurance coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor, or agent, shall maintain workers' compensation and vehicle liability insurance coverage. The permittee, his contractor, and agent may be liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee ~~may~~, in lieu of providing proof of liability insurance as described in

1 this ~~Item, Subparagraph,~~ may be shown as an additional insured on the general liability policy of
2 the approved contractor or agent to perform the permitted work ~~on condition that~~ if the contractor
3 or agent's policy ~~is provides coverage of~~ five million dollars (\$5,000,000) ~~in coverage,~~ and the
4 permittee provides ~~proof to the Department~~ with proof of the coverage. The ~~permittee or contractor~~
5 permittee, contractor, or agent providing the coverage shall also name the Department as an
6 additional insured on its general liability ~~policy, policy,~~ and provide the Department with a copy of
7 the certificate showing the Department named as an additional insured. ~~Regardless of which entity~~
8 ~~provides the proof of general liability insurance, the~~ The required limit of insurance may be obtained
9 by a single general liability ~~policy or policy,~~ the combination of a general liability and excess
10 ~~liability liability,~~ or an umbrella policy;

11 ~~(7)(6)~~ The permittee shall provide a document verifying the requested selective vegetation removal site
12 location in relationship to corporate limits of a municipality. The document shall be a current
13 geographic information system map of the nearest municipality, with color-coded boundary ~~lines~~
14 lines, ~~and a~~ corresponding key or legend indicating corporate ~~limit limits~~ and territorial jurisdiction
15 ~~boundaries boundaries,~~ and indicating the precise location of the business facility. The permittee
16 shall also provide the property tax identification number for the parcel on which the facility is
17 located. The Department may require additional information if the boundary or facility location
18 remains in question;

19 ~~(8)(7)~~ Access from the highway main travel way shall be allowed only for surveying or delineation work
20 in preparation for and ~~in the~~ processing of an application for a selective vegetation removal permit;

21 ~~(9)(8)~~ The permittee shall perform site marking of the maximum vegetation cut or removal zone. The
22 applicant shall mark the permitted cutting distances according to Rule .0602(c) of this Section. The
23 two maximum points along the right-of-way boundary (or fence if there is a control of access fence)
24 shall be marked with visible flagging tape. The two maximum points, corresponding to the
25 beginning point and the ending point along the edge of the pavement of the travel way, perpendicular
26 to the maximum points marked along the right-of-way boundary, shall be marked with spray paint.
27 If the facility is located next to an acceleration or deceleration ramp, the two corresponding
28 maximum points shall be marked along the edge of the pavement of the travel way of the ramp
29 instead of the mainline of the roadway;

30 ~~(10)(9)~~ The Pursuant to Rule .0602(b) of this Section, the permittee shall tag with visible material or
31 flagging any trees that screen the facility from view, have been requested to be cut, thinned, pruned,
32 or removed within the maximum vegetation cut or removal zone, and have a diameter of four or
33 more caliper inches, as measured at six inches above the ground and at the time of the application.
34 ~~with visible material or flagging, trees, according to Rule .0602(b) of this Section, with a diameter~~
35 ~~of four caliper inches and larger, as measured six inches above ground level at the time of the~~
36 ~~application that are screening the facility from view and are requested to be cut, thinned, pruned, or~~
37 ~~removed within the maximum vegetation cut or removal zone.~~ Trees tagged for cutting, thinning,

1 pruning, or removal shall match ~~with~~ the trees shown on the required sketch of the requested
2 vegetation cut or removal zone;

3 ~~(11)~~(10) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected
4 trees that do not screen the facility from view from the roadway, and have a diameter of four or
5 more caliper inches, as measured at six inches above the ground, at the time of the application. ~~of~~
6 ~~four caliper inches or greater in diameter, as measured six inches above ground level that are not~~
7 ~~screening the facility from view from the roadway.~~ The Department shall make this determination
8 by allowing selective thinning of tree density that opens the view to the facility or agritourism
9 activities across the entire length of the maximum cut or removal zone, without complete removal
10 of all trees and other vegetation. The Department shall disapprove cutting, thinning, pruning, or
11 removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved
12 for cutting, thinning, pruning, or removal, the Department shall specify those trees to the applicant
13 during the site review. The applicant shall remove the tree flagging for the disapproved trees and
14 submit to the ~~Department~~ Department, by electronic means ~~(including electronic mail or facsimile)~~
15 (including electronic mail or facsimile), an amended version of the original sketch of the ~~site by site,~~
16 indicating the changes on the ~~sketch and initializing sketch, initialing,~~ and dating the changes
17 thereon;

18 ~~(12)~~(11) If any cutting, thinning, pruning, ~~or or~~ removal of vegetation from any portion of ~~but less than~~ the
19 entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation
20 easements, ~~conditions or conditions,~~ other restrictions affecting the ~~right of way~~ right-of-way to
21 which the State is ~~subjected or agrees in writing to subject itself, subjected, written agreements, or~~
22 State or Federal rules, statutes, or permits, the permittee shall comply with applicable easements,
23 rules, statutes, or permits for those portions of vegetation;

24 (a) If applicable ~~easements, rules, statutes, or permits~~ conservation easements, or conditions
25 affecting the right of way to which the State is subjected or agrees in writing to subject
26 itself and other restrictions agreed upon by the State in writing in the right of way, State or
27 Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning,
28 pruning, or removal for portions of vegetation, the permittee shall comply with applicable
29 easements, State or Federal rules, statutes, or ~~permits~~ permits, including equipment type
30 specifications for those portions of ~~vegetation.~~ vegetation;

31 (b) Portions of the maximum cutting or removal zone not within an easement, nor applicable
32 to rules, statutes, or permits ~~a conservation easement nor applicable to conditions affecting~~
33 ~~the right of way to which the State is subjected or agrees in writing to subject itself and~~
34 ~~other restrictions agreed upon by the State in writing in the right of way, nor regulated by~~
35 ~~State or Federal rules, statutes, or permits~~ regulating vegetation removal removal, and other
36 activities shall be governed by standards set out in G.S. 136-93;

- (13)(12) The permittee shall adhere to erosion control requirements, ~~according pursuant to Article 4 of G.S. § 113A, the North Carolina General Statutes, Article 4, Chapter 113A~~ entitled: Sedimentation Pollution Control Act of 1973;
- (14)(13) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. ~~When~~ If a present inspector fails to ~~point out~~ acknowledge or identify work that does not conform with the requirements, ~~it this failure shall does~~ not prevent later notification to the permittee that the work is noncompliant ~~not in compliance~~ with the permit;
- (15)(14) A selective vegetation removal permit shall be secured for each applicable facility prior to performing any vegetation removal work. ~~The Permittee permittee, or its contractor~~ contractor, or agent shall have a copy of the selective vegetation removal permit on the work site at all ~~times~~ times, during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (16)(15) ~~When~~ If the Division Engineer ("Engineer") or his representative observes unsafe operations, activities, or conditions, ~~he the Engineer~~ shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the ~~federal~~ Federal and State laws, ordinances, ~~and or~~ regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, according to ~~the Article 16 of G.S. § 95, North Carolina G.S. 95, Article 16~~, entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
- (17)(16) ~~The permittee or permittee, its contractor~~ contractor, or agent shall take measures to locate and protect utilities located within the highway right-of-way and within the work area of the selective vegetation removal zone. The permittee may be responsible for restoration of any losses or damages to ~~utilities~~ utilities, caused by any actions of the ~~permittee or permittee, its contractors~~ contractors, or ~~agents~~ agents, and to the satisfaction of the utility owner;
- (18)(17) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (19)(18) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the

safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;

~~(20)~~(19) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the ~~Department~~ Department, if the Department's employees are performing the work.

The permittee shall provide the Division Engineer with a copy of the written permission;

~~(21)~~(20) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools;

~~(22)~~(21) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the Department determines that the use of such equipment will not cause undue safety hazards, any erosion, or unreasonable damage to the right-of-way, and may allow access from the private property side to the right-of-way. Tree removal that presents a hazard from falling tree parts shall be performed in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA can be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>;

~~(23)~~(22) The Department shall determine the required traffic control signage ~~that shall be required~~. The permittee shall furnish, erect, and maintain the required signs as directed by the ~~Department~~ Department, and in accordance with G.S. 136-30;

~~(24)~~(23) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. At the end of each workday, all vegetation that has been cut, thinned, or pruned at the site shall be ~~The work site shall be left with all vegetation cut, thinned, or pruned at the site either~~ removed or chipped and spread in accordance with G.S. 136-133.4 at the end of each workday;

~~(25)~~(24) An applicant for a selective vegetation removal permit for a facility or agritourism activities issued pursuant to Rule .0602 of this Section may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal in accordance with the provisions of G.S. 136-133.3; and

~~(26)~~(25) Upon completion of all work, the Department shall notify the permittee in writing of acceptance, terminate the permit, and return the Performance Bond, ~~or certified~~ certified, or cashier's check to the permittee. For replanting work, a different release schedule shall be ~~applicable~~ applicable, according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request that the Department ~~return of the Performance Bond, or certified~~ certified, or cashier's check.

1 The termination and request for return of the Performance Bond, ~~or certified~~ certified, or cashier's
2 check shall be made in writing and sent to the Division Engineer.

3
4 *History Note: Authority 136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 136-133.4; ~~136-133.4(e);~~*
5 *Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*
6 *Eff. June 1, 1982;*
7 *Amended Eff. January 1, 2015; November 1, 2012; August 1, 2000; November 1, 1991; August 1,*
8 *1985; August 1, 1982; June 2, ~~1982~~, 1982;*
9 *Readopted Eff. June 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0608

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), G.S. 136-129 allows certain types of signs. I suggest you retain "sign permitted under" If you think "permitted" is too closely tied to a permit, why not just replace "permitted" with "allowed"?

On lines 7 and 8, who is this "applicable" Division Engineer and how does your regulated public know?

In (a)(3), I take it that the phrase "cut zone" is known to your regulated public?

In (a)(6), line 20, I recommend retaining this as two sentences.

On lines 23-24, what are the contents of this application? Are they what is in (a)(8)?

On line 24, to be consistent with the other rules in this Section, make "website" one word.

In (a)(8), line 28, how is the determination made of the monetary value? Who makes it? Are you relying upon G.S. 136-93.2 for this determination? If so, consider stating that.

In (a)(13), Page 2, line 2, you refer to "contractor" (singular) and then "their" (plural) Please make this consistent, perhaps by replacing "their" with "its" or "his or her"

In (a)(14), line 4, do not hyphenate "hundred-dollar"

In (a)(15), line 16, please properly insert a comma after "liability"

In (a)(18), line 11, please insert a "the" between "if" and "cutting"

In (a)(20), should this state "if applicable" as it states in Rule .0602(a)(13)?

In (b), lines 19-20, isn't this addressed by (a)(4)? Why are you restating it here?

In (c), what is the purpose of this Paragraph? The request will be made onsite or there may be an inspection before it is granted?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

In the History Note, why are you citing to G.S. 136-129(4) and (5)? How do those statutes confer rulemaking authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

1 19A NCAC 02E .0608 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR**
4 **OUTDOOR ADVERTISING**

5 (a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made
6 by the owner of an outdoor advertising sign, pursuant to ~~permitted under G.S. 136-129(4) or (5)~~ G.S. 136-129(4)
7 or (5), to the applicable county's Division Engineer of the North Carolina Department of Transportation, Division of
8 Highways. Applications shall be submitted in both printed and electronic form. For sites within the corporate limits
9 of a municipality that has previously advised the Department in writing that it seeks to review such applications, the
10 applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the
11 Department. Applications for selective vegetation removal permits shall include the following information consistent
12 with G.S. 136-133.1:

- 13 (1) applicant contact information;
- 14 (2) outdoor advertising permit tag number and location of the sign;
- 15 (3) ~~for a if the sign is located on a ramp, the application shall indicate whether cut zone is modified or~~
16 ~~normal; indication of application being for a modified cut zone or normal cut zone;~~
- 17 (4) ~~for applications if an application is eligible for municipal review, the application shall indicate the~~
18 ~~year an indication of the year the sign was erected;~~
- 19 (5) indication of appropriate maximum cutting distance;
- 20 (6) applicant's desire to remove existing trees, if ~~present~~ present; and ~~if~~ if existing trees are to be
21 removed, such trees require compensation by either monetary ~~reimbursement or reimbursement~~,
22 removal of two nonconforming outdoor advertising signs, or a beautification and replanting plan as
23 set out in Rule .0611 of this ~~Section~~ Section, and by submitting the Existing Tree Compensation
24 Agreement form found on the Department web ~~site~~ site; www.ncdot.gov;
- 25 (7) site plan, if existing trees are to be cut, thinned, pruned, or removed;
- 26 (8) if existing trees are to be cut, thinned, pruned, or removed, the additional required form includes
27 applicant contact information, permit tag number, sign location, the ~~number and number~~ number, caliper
28 ~~inches~~ inches, and monetary value of existing trees to be cut, thinned, pruned, or removed, and
29 indication of compensatory choice;
- 30 (9) the additional form for existing tree removal, based on the compensatory choice made, also requires
31 submittal of either a payment check in the amount of the tree loss monetary value, ~~or~~ or indication of
32 the two nonconforming outdoor advertising signs to be surrendered, or agreement to submit a
33 beautification replanting plan to the Department. Compliance with the compensatory choice shall
34 be required before the selective vegetation removal permit can be approved;
- 35 (10) municipal review indication, if applicable;
- 36 (11) requested use of and site access for power-driven equipment in accordance with ~~Rule .0610(24)~~
37 Rule .0610(23) of this Section;

- (12) performance bond or certified check or cashier's check pursuant to G.S. 136-93;
- (13) if using a contractor for vegetation removal work, identify the contractor and their qualifications if the contractor is not listed on the Department's website directory of qualified transportation firms;
- (14) payment of non-refundable two-hundred-dollar hundred-dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (15) certificate of liability, ~~and proof of worker's~~ workers' compensation, and vehicle liability insurance coverage;
- (16) geographic information system ~~document and document~~, property tax identification number to verify location of sign in relation to municipal ~~limits~~ limits, and territorial jurisdiction boundary;
- (17) verification of on-site marking and tree-tagging requirements;
- (18) if cutting request is for a modified cut zone along a highway ramp, a diagram of the cut zone is required unless the diagram is included on a site ~~plan~~ plan, and calculations are required comparing the modified cut zone to the normal cut zone;
- (19) if the Department disputes the site plan, the Department may request additional information ~~per~~ pursuant to G.S. 136-133.1(c);
- (20) certification that the applicant has permission from the adjoining landowner(s) to access their private property for the purpose of conducting selective vegetation removal permit activities; and
- (21) applicant's notarized signature.
- (b) For signs eligible for municipal review, the applicant shall include on the ~~application~~ application, and, as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign was originally erected. Upon request, the Department shall furnish the year of sign erection to the applicant. The Department may require additional proof if the year of the sign erection remains in question.
- (c) The selective vegetation removal request may be reviewed on site by Department personnel and a representative of the applicant.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-130; 136-133.1; 136-133.2;
Temporary Adoption Eff. March 1, 2012;
Eff. November 1, 2012;
Amended Eff. January 1, ~~2015~~ 2015;
Readopted Eff. June 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0609

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 5, do you not want to use mirror language of Rule .0603 and begin the sentence, "Pursuant to G.S. 136-133.2,"?

line 6, the statute requires the Department to make the decision. I take it that the Department has delegated this responsibility to its employee engineers?

In (b), line 7, you refer to the "Division Engineer" and then in (b)(2) and elsewhere you refer to "Department Personnel" Are these different people?

In (b)(2), line 10, declared illegal by whom? By a court?

On line 10, delete the "or" before "whose permit"

In (b)(4), line 27, line 14, please capitalize "state" assuming you mean NC here.

In (b)(5), line 21, I suggest you delete "has" before "failed"

In (b)(9), isn't this already addressed by (a)? If you are trying to specifically address failure to complete the entire application, why not state "the applicant fails to complete the requirements of the application as set forth in Rule .0608 of this Section,"?

In (b)(9), line 33, please state "State statutes or rules or federal statutes or regulations...:

Please make "Federal" lowercase on lines 33 and 34.

In the History Note, Page 2, line 6, please replace the comma after G.S. 136-133.1(a1) with a semicolon.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

1 19A NCAC 02E .0609 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0609 ISSUANCE OR DENIAL OF SELECTIVE VEGETATION REMOVAL PERMIT**
4 **FOR OUTDOOR ADVERTISING**

5 (a) Within 30 days following receipt of the application for a selective vegetation removal permit for outdoor
6 advertising, including the fee set out in G.S. 136-18.7, the Division Engineer shall approve or deny the application.

7 (b) The application shall be denied by the Division Engineer if:

- 8 (1) the application is for an outdoor advertising location where the outdoor advertising permit is less
9 than two years old pursuant to G.S. 136-133.2;
- 10 (2) the application is for the opening of a view to a sign that has been declared illegal, or whose permit
11 has been ~~revoked~~revoked, or is currently involved in litigation with the Department;
- 12 (3) it is determined by Department personnel that removal of vegetation shall diminish a planting
13 installed for headlight screening and affect the safety of the traveling public;
- 14 (4) the application is for the removal of vegetation planted in accordance with a local, state, or federal
15 beautification project prior to September 1, 2011 or prior to the issuance of an outdoor advertising
16 permit for the erection of the applicable outdoor advertising structure, whichever date is later, unless
17 a mitigating replanting plan related to the site for which the vegetation permit request is ~~made~~made,
18 as set forth in Rule .0611 of this Section, except for the provisions in Paragraph (d) and
19 Subparagraph (g)(11); and is agreed upon in writing by the applicant, the Department, and, if
20 applicable, the Federal Highway Administration;
- 21 (5) on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation
22 removal permit, unless the applicant engages a landscape contractor to perform the current work;
- 23 (6) the application is for removal of vegetation that will open views to junkyards;
- 24 (7) the requested site is subject to a five-year moratorium for willful failure to substantially comply with
25 all requirements specified in a prior selective vegetation removal permit pursuant to G.S. 136-
26 133.4(e);
- 27 (8) the applicant fails to complete an application, as described in Rule .0608 of this Section;
- 28 (9) any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum
29 vegetation cutting or removal zone is prohibited due to conditions affecting the ~~right-of-way~~ right-
30 of-way to which the State is subjected or agrees in writing to subject itself, including conservation
31 agreements, prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for
32 the erection of the applicable outdoor advertising structure, whichever date is later, or due to the
33 application at any time of State statutes or Federal statutes or rules, including any conditions
34 mandated as part of the issuance of a permit to the Department for a construction project by a Federal
35 or State agency with jurisdiction over the construction project. The Department may mitigate within
36 the ~~right-of-way~~ right-of-way in the cut zone of a permitted outdoor advertising structure so long as
37 trees and other plant materials for mitigation may not be of a projected mature height to decrease

1 the visibility of a sign face, and such mitigation vegetation may not be cut or removed pursuant to
2 a selective vegetation removal permit; or

- 3 (10) a modified vegetation removal zone application request along acceleration or deceleration ramps is
4 not in accordance with G.S. 136-133.1(a1) or Rule .0612 of this Section.

5
6 *History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.1(a1), 136-133.2; 136-*
7 *133.3; 136-133.4; ~~136-93~~;*

8 *Temporary Adoption Eff. March 1, 2012;*

9 *Eff. February 1, 2013;*

10 *Amended Eff. January 1, ~~2015~~2015;*

11 *Readopted Eff. June 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0610

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (2), so that I'm clear – the bond is always \$2000, no matter the size of the project?

On line 14, this differs from Rule .0610 and should this refer to the Performance Bond, certified check, or certified check?

On line 15, should this be "Performance Bond"?

In (3), why are you saying what Unit of the Department will keep this on file?

In (4), line 28, what are these "Required forms"?

On line 29, I take it the application referenced is that set forth in Rule .0608? But how does the regulated public know who this official is within the local DOT?

In (5), line 35, insert a comma after "permittee"

On line 36, this is an Item, so retain the original language.

On Page 2, this language does not track the changes you made to Rule .0604(5). Is this on purpose?

I suggest you do track the language, and replace "on condition that" on line 1 with "if"

And on line 2, should you add "in coverage" after (\$5,000,000)?"

In (6), line 13, I believe you mean "limits" (plural)

On line 13, what is "precise" here?

On line 15, replace "on which" with "where"

In (7), lines 20 and 22, please replace & with "and"

In (8), line 26, remove the hyphen from "four inches"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: April 30, 2020

On line 28, what do you mean by the language, “(the exact same existing trees as on the site plan)”? What does that add here?

In (9)(a), line 35, to be consistent with the rest of the Rule, I suggest stating “cashier’s check or certified check,”

In (12), Page 3, line 17, replace “reasons, as set forth below” with “reasons in this Item,”

In (12)(a), line 22, please remove the errant hyphen between “State” and “is” As this is not in the Code, you will not show it as a change; simply do it.

In (12)(b), line 26, please make “federal” lowercase and please add “regulations” so it reads “State or federal statutes, rules, or regulations, including...”

On line 27, please make “federal” lowercase.

In (12)(d), line 33, this is a Sub-Item. Please note the same for Page 4, line 1.

On line 35, consider replacing “set forth above” with “of this Item”

In (13), Page 4, line 4, state “G.S. 113A, Article 4”

On line 4, why do you need the name of the law?

In (14), what is the purpose of the sentence on lines 5-6?

This language does not track the exact language of Rule .0604(13). Is this difference intentional? Even if it is, I recommend making a conforming change here on line 9 to change “not in compliance” with “noncompliant”

In (16), line 12, why do you have “(“Engineer”)? Other than line 16, you use “Division Engineer” everywhere else in the Rule (see Item (22))

Also on line 12, state “his or her”

On line 12, and elsewhere the term is used, what is “unsafe” here?

Also on line 15, please insert “rules” before “regulations”

On line 17, state “G.S. 95, Article 16” I do not think you need to spell out the name of the Article.

On line 18, do not insert the symbol after G.S.

In (18), to mirror the changes to Rule .0604(14), line 22, state “The permittee, its contractor, or agent”

In (19), line 25, state “The permittee, its contractor, or agent”

On line 26, should this mirror Rule .0604(16) and state “right-of-way and within...”?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

On line 27, who will determine whether the permittee “may” be responsible?

On line 28, state “the permittee, its contractors, or agents,” and consider adding an “and” before “to the satisfaction” to mirror Rule .0604(16).

In (20), line 31, I note that you use “selective vegetation removal” here before “permit” but you do not do so in Rule .0604(17). Is this difference intentional?

In (21), lines 36 and 37, what do you mean by “holidays”? State holidays, federal holidays?

In (22), Page 5, line 4, who is the “contractor” here? A contractor for the DOT who is working on the road, rather than a contractor who is removing vegetation (and thus, being governed by this Rule?)

In (23), line 10, what is “undue” and “unreasonable” here?

On line 15, end the sentence after “Z133.1” As you already incorporated this by Rule .0602, you can delete everything on lines 14-20, starting with “approved by...”

In (24), why do you need this? This basically recites G.S. 136-133.4(c).

In (25), line 24, I believe “workday” is one word.

On line 26, end the sentence after “G.S. 136-133.4” This is because you added duplicative language about the end of the workday to line 24.

In (26), this language differs slightly from the changed language in Rule .0604(25). Is this intentional?

In the History Note line 36, why are you citing to G.S. 136-133.5?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

1 19A NCAC 02E .0610 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR**
4 **OUTDOOR ADVERTISING**

5 The following apply to the conditions of selective vegetation removal permits for outdoor advertising:

- 6 (1) Selected vegetation, as defined in G.S. 136-133.1(b), may be cut, thinned, pruned, or removed in
7 accordance with the standards set out in G.S. 136-133.4;
- 8 (2) The permittee shall furnish a Performance Bond, ~~or certified check-check,~~ or cashier's check made
9 payable to North Carolina Department of Transportation for the sum of two thousand dollars
10 (\$2,000). The Performance Bond, ~~or certified check-check,~~ or cashier's check shall cover all
11 restoration of the ~~right-of-way-right-of-way~~ to the condition prior to the occurrence of the damage
12 caused by the permittee or the permittee's agent, if damage occurs during the permitted selective
13 vegetation removal. The Performance Bond, ~~or certified check-check,~~ or cashier's check shall be
14 paid with the application before each permit to cut vegetation is issued. The bond shall run
15 concurrently with the permit. The bond shall be released after a final inspection of the work by the
16 Department reveals that all work provided for and specified by the permit is found to be completed
17 and all damages to the right-of-way, including damage to fencing and other structures within the
18 right-of-way, have been repaired or ~~restored; restored to the condition prior to the occurrence of the~~
19 ~~damage caused by the permittee or the permittee's agent;~~
- 20 (3) Companies that plan to apply for two or more permits may provide continuing bonds for the sum of
21 one hundred thousand dollars (\$100,000) and that type of bond shall be kept on file by the Utilities
22 Unit of the Department;
- 23 (4) If the work is to be performed by any entity other than the sign owner or permittee, either the
24 permittee or the other entity shall furnish the Performance Bond, ~~or certified check-check,~~ or
25 cashier's ~~check-check,~~ as described in this Rule, for all work provided for and specified by the
26 permit. Required forms for all bonds are available upon request from the Department, or on the
27 Department's ~~website-website:~~ www.ncdot.gov. Bonds ~~are to~~ shall be furnished with the selective
28 vegetation removal application form to the official assigned to receive selective vegetation removal
29 applications at the local North Carolina Department of Transportation, Division of Highways
30 Office;
- 31 (5) The permittee shall ~~also~~ provide proof of liability insurance coverage of five million dollars
32 (\$5,000,000). Whoever performs the work, the permittee, ~~his~~ contractor, or agent shall maintain
33 ~~worker's~~ workers' compensation and vehicle liability insurance coverage. The permittee, ~~his~~
34 contractor, or ~~agent,~~ agent may be liable for any losses due to the negligence or willful misconduct
35 of ~~his~~ the permittee's agents, assigns, ~~and or~~ employees. The permittee ~~may,~~ in lieu of providing
36 proof of liability insurance as described in this ~~Item, Subparagraph,~~ may be shown as an additional
37 insured on the general liability policy of the approved contractor or agent to perform the permitted

work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The ~~permittee-permittee, or contractor-contractor,~~ or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. ~~Regardless of which entity provides the proof of general liability insurance, the~~ The required limit of insurance may be obtained by a single general liability ~~policy-policy,~~ or the combination of a general liability and excess ~~liability-liability,~~ or an umbrella policy;

- (6) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, ~~per pursuant to~~ G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary ~~lines-lines,~~ and a corresponding key or legend indicating corporate ~~limit limit,~~ and territorial jurisdiction ~~boundaries-boundaries,~~ and indicating the precise location of the outdoor advertising structure. The permittee shall ~~also~~ provide the property tax identification number for the parcel on which the outdoor advertising structure is located. The Department may require additional information if the boundary or sign location remains in question;
- (7) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way shall be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
- (8) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four-inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or contrasting colored flagging. ~~flagging of a contrasting color.~~ The permittee shall denote on the site plan or ~~on the~~ application the colors of flagging used to mark each category of trees;
- (9) If there are existing trees requested ~~to be removed,~~ for removal, the permittee shall satisfy the following before any work ~~can may be performed; performed under a selective vegetation removal permit the permittee shall:~~
 - (a) submit the reimbursement to the Department pursuant to G.S. 136-133.1(d) in a cashier's or certified check;

- (b) fully disassemble two non-conforming outdoor advertising ~~signs—signs,—and~~ their supporting ~~structures—structures,~~ and return the outdoor advertising permits tags to the Department pursuant to G.S. 136-133.1(d); or
- (c) obtain Departmental approval for the replanting plan in accordance with G.S. 136-133.1(e) and Rule .0611 of this Section;
- (10) Should the vegetation removal permit be approved and tree removal is scheduled, the sign owner shall cut for all disputed trees the sign owner shall cut such tree stumps in a level, horizontal ~~manner~~ manner, uniformly across the ~~stump-stump,~~ and at a four inch height, so that tree rings ~~can may be counted-counted,~~ by the applicant or the ~~Department-Department,~~ to determine the age of the tree;
- (11) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, ~~and a redetermination shall be made by the Department,~~ pursuant to G.S. 136-133.1(d) and ~~(e)-(c), shall be made by the Department~~ and the applicant shall be subject to that redetermination;
- (12) For purposes of this Rule, the portion of the cut or removal zone means that the cut or removal zone shall be less than the entirety of the cut or removal zone. Where any portion of the cut or vegetation removal zone is restricted for the following reasons, set forth below. ~~The~~ the permittee shall comply with applicable conditions, mitigation requirements, rules, statutes, or permit requirements related to cutting, thinning, pruning, or removal of vegetation within the right-of-way; ~~right-of-way, where any portion of the cut or vegetation removal zone is restricted for the following reasons set forth below;~~
- (a) the State-is subjected to or agrees in writing to subject itself to conditions affecting the right-of-way, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later;
- (b) applicable State or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project prohibit vegetation removal; ~~or~~
- (c) mitigation within the right-of-way in the cut zone of a permitted outdoor advertising structure prohibits vegetation ~~removal,—removal;~~ however, trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face; or
- (d) ~~If the reasons set forth in Sub-items~~ Subparagraphs (12)(a), (b), and (c) of this Rule allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with the conditions set forth above, including equipment type for those portions of the cutting or removal zone. Vegetation removal for portions of the maximum cutting or removal zone not affected by the reasons set forth in

~~Sub-items~~ Subparagraph (12)(a), (b) and (c) of this Rule shall be governed by standards set out in G.S. ~~136-93-136-93~~:

- (13) The permittee shall adhere to erosion control requirements, according to ~~General Statutes, Article 4, Chapter 113A~~ Article 4 of G.S. § 113A, entitled: Sedimentation Pollution Control Act of 1973;
- (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. ~~When~~ If a present inspector fails to point out work that does not conform with the requirements, it does such a failure shall not prevent later notification from the Department to the permittee that the work is not in compliance with the permit;
- (15) A selective vegetation removal permit shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;
- (16) When the Division Engineer ("Engineer") or his representative observes unsafe operations, activities, or conditions, ~~he~~ the Engineer shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the federal and State laws, ordinances, and regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, ~~according pursuant~~ to Article 16 of G.S. § 95, Article 16, entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. § 136-30 and 19A NCAC 02B .0208;
- (17) The applicant shall certify that he or she has permission from the adjoining landowner(s) to access ~~their~~ the private property for the purpose of conducting activities related to the selective vegetation removal permit application;
- (18) The permittee or its contractor or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (19) The permittee or its contractor or agent shall take measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee may be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or ~~agents~~ agents, to the satisfaction of the utility owner;
- (20) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (21) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the

safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;

(22) If work is planned in an active work zone, the permittee shall receive written permission from the contractor or the Department if the Department's employees are performing the work. The permittee shall provide the Division Engineer with a copy of the written permission;

(23) An applicant shall be allowed to use individual and manual-operated power equipment and hand held tools at any site during initial cutting or removal of vegetation or while maintaining a site during the duration of a selected vegetation removal permit. The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) if the Department determines that the use of such equipment will not cause undue safety hazards, any erosion, or unreasonable damage to the right-of-way, and may allow access from the private property side to the right-of-way. Tree removal that presents a hazard from falling tree parts shall be performed in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars (\$20.00) cost. The ISA ~~can~~ may be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: <http://www.isa-arbor.com/>;

(24) The Department shall determine the traffic control signage that shall be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department;

(25) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. At the end of the work day, The the work site shall be left with all vegetation cut, thinned, or pruned at the site either removed or chipped and spread in accordance with G.S. 136-133.4 at the end of each workday; and

(26) Upon completion of all work, the Department shall notify the permittee in writing of acceptance, terminate the permit, and return the Performance Bond, ~~or~~ certified check-check, or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to Rule .0611 of this Section. The permittee may terminate the permit at any time and request return of the Performance Bond, ~~or~~ certified check-check, or cashier's check. The termination and request for return of the Performance Bond, ~~or~~ certified check, or cashier's check shall be made in writing and sent to the Division Engineer.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-127; 136-130; 136-133.1; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5;
Temporary Adoption Eff. March 1, 2012;

- 1 *Eff. February 1, 2013;*
- 2 *Amended Eff. January 1, ~~2015~~2015;*
- 3 *Readopted Eff. June 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Transportation

RULE CITATION: 19A NCAC 02E .0611

DEADLINE FOR RECEIPT: Thursday, May 14, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b), lines 8-9, I believe "one-for-one" should be hyphenated.

In (d), line 14, do not insert a comma after "applicant"

On line 16, please insert an apostrophe in "Departments"

In (e), line 23, what authority are you relying upon to give local governments only 15 days? G.S. 136-93(d) establishes a 30-day timeframe.

On line 24, replace "does provide" with "provides"

On line 26, what is an "appropriate" request? Do you even need the word here?

In (f), lines 31 through Page 2, line 3, muddles the incorporation by reference. Why not state "The Department's written approval shall be based upon the current edition of the American Standard for Nursery Stock ANSI Z60.1 for a minimum of ...site. If plant material... inches. The American Standard for Nursery Stock ANZI60.1, approved by the American National Standards Institute and published by the American Horticulture Association is hereby incorporated by reference, including subsequent amendments and editions. The document may be accessed at no cost at americanhort.org."

There is no need to state that you have this material at your office, as it is required by statute. And why are you providing the mailing address? If you want to retain it, then use the language from (g)(1) and state "may be contacted at...":

In (g), line 8, replace the period after "required" with a colon.

In (g)(1), please simplify the incorporation by reference language as suggested above.

On line 13, you have "Association, Inc." twice.

And what do you mean by "except as stipulated in the rules of this Section" on lines 13-14? Stipulated where?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

On line 23, remove the errant hyphen between “that” and “are” Since it is not in the Code, do not show it as a change – simply do it.

Also on line 23, defined where “in these Rules”? Do you mean defined in Subparagraph (7) of this Paragraph? If so, state that.

In (g)(2), please just state “G.S. 113A, Article 4” And I do not think you need the name of the law.

In (g)(3), line 30, end the sentence after “ANSI Z60.1.” as you already incorporated this standard in Paragraph (f).

In (g)(4), line 32, why do you have the “and” after “inspection”? It seems to me the sentence should read “All work is subject to Division of Highways inspection, scheduled with the Department...”

In (g)(7), Page 3, line 9, delete the “and” after “plan,”

On line 12, insert a colon after “include” so it reads “Establishment shall include: cutting...”

In (g)(8), line 32, by “rules of this Section” do you mean “Subparagraph (5) of this Paragraph”? If so, state that.

In (g)(10), please simplify this incorporation by reference language, using the suggestions above. Also, on Page 4, line 1, you have “Association, Inc.” repeated twice.

In (g)(11), Page 4, line 4, isn’t this also not applicable to Rule .0603(b)(6)? If it is applicable, you need to change Rule .0603.

Also on delete the comma after “Department”

On line 6, I suggest you end the sentence after “plants.” Then state, “The permittee shall exercise care to prevent: windburn; injury to or drying out of the trunk, branches, or roots; or freezing of the plant roots.”

On (g)(12), line 12, isn’t this also not applicable to Rule .0603(b)(6)? If it is applicable, you need to change Rule .0603.

On line 22, end the sentence after “(Part 1)” as you have already incorporated this standard by reference.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 30, 2020

1 19A NCAC 02E .0611 is readopted as published in 34:13 NCR 1251-1253 as follows:

2
3 **19A NCAC 02E .0611 BEAUTIFICATION AND REPLANTING REQUIREMENTS FOR SELECTIVE**
4 **VEGETATION REMOVAL PERMITS**

5 (a) Any site with a valid selective vegetation removal permit issued pursuant to G.S. 136-93(b) qualifies for a
6 beautification and replanting plan as set forth in G.S. 136-133.1(e).

7 (b) For future selective vegetation removal applications at replanted sites, replanted materials may be removed only
8 if partially blocking the view to a sign face. In this case, the Department shall require plant substitutions on a one for
9 one basis. All requests for plant substitutions shall be approved by the Department and installed according to the rules
10 in this Section.

11 (c) Submittal of a site plan shall be in accordance with G.S. 136.133.1(c).

12 (d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rules .0603(b)(6)
13 and .0609(b)(4) of this Section. The caliper inches of existing trees to be removed, according to the applicant's site
14 ~~plan-plan,~~ shall equal the caliper inches to be ~~replanted-replanted,~~ by the ~~applicant-applicant,~~ at the outdoor advertising
15 ~~site-site, and~~ from which existing trees are requested to be removed. If the caliper inches of existing trees from the
16 site plan exceed the density of the Departments replanting site design, the excess caliper inches of trees shall be
17 delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule.
18 If plant material other than trees is proposed, the Department may consider such substitution for the required caliper
19 inches.

20 (e) For sites that qualify according to the replanting criteria described in this Rule, the Department shall consult with
21 the applicant and any local government that has requested to review and provide comments on selective vegetation
22 removal applications pursuant to G.S. ~~136-93(d)~~ 136-93(d), or has notified the Department of its desire to review and
23 provide comments on beautification and replanting plans. The local government shall be given 15 days to review and
24 provide comments on beautification and replanting plans. If the local government does provide comments on a
25 beautification and replanting plan, the Department shall take the comments into consideration. If the local government
26 does not make appropriate request for a review, the criteria stated in the rules in this Section shall be followed for
27 replanting determination.

28 (f) In consideration of differences in outdoor advertising sign structure heights, business facilities, or agritourism
29 activities, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for
30 applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan
31 prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval, based on
32 the current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1
33 approved by the American National Standards Institute and published by the American Horticulture Association that
34 is hereby incorporated for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and
35 maintenance plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning, or removal
36 at the site. If plant material other than trees is proposed, the Department may consider such substitution for the required
37 caliper inches. Copies of the Standard are available for inspection in the office of the State Roadside Environmental

Engineer, Division of Highways, 1 S. Wilmington St., Raleigh, N.C. Copies of the Standard may be obtained free of charge from this website of the American Horticulture Association: www.americanhort.org. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All permit requirements shall continue to apply until all replanting and establishment requirements are satisfied and accepted in writing by the Department. The Department shall approve the replanting portion of the selective vegetation removal permit in writing and detail the requirements of the beautification and replanting plan. The following shall be required. ~~requirements include the following:~~

- (1) The work for initial plantings and all future replacements by the permittee or any of their employees, agents, or assigns shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. that is hereby incorporated, Association, Inc., except as stipulated in the rules in this Section. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, 1 S. Wilmington St., Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollars (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. Initial and replacement planting may be considered acceptable if the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species that are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants that are not in a living and healthy condition as defined in these Rules;
- (2) The permittee shall adhere to erosion control requirements, according to ~~North Carolina General Statutes, Article 4, Chapter 113A~~ of G.S. § 113A, entitled: Sedimentation Pollution Control Act of 1973;
- (3) All plant materials shall be approved in writing by the Department prior to arrival at the site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Nursery and Landscape Association Horticulture Association that is hereby incorporated;
- (4) All work is subject to Division of Highways inspection and ~~shall be~~ scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements;
- (5) Grinding or other mechanical removal of all cut stumps (to a minimum depth of four inches below ground level) shall be completed in the area of replanting during the preparation of the site, prior to initial planting;

- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) shall apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, and the permittee shall establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee shall be requested in writing to the Department. The Department shall notify the permittee in writing of the approved changes to the replacement plantings;
- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the bond. Then a one-year observation period shall begin during which the permittee shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The permittee is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period. Replacement shall occur in accordance with the dates of planting as stated in the rules in this Section;
- (9) After the one-year observation period concludes, the Department shall notify the permittee if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry

Association Inc. that is hereby incorporated, Association Inc., however, topping of trees or other vegetation is not allowed;

(11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rule .0609(b)(4) of this Section. Excess plants or trees furnished and delivered to the Department, shall receive care and handling in accordance with digging, loading, transporting, unloading, planting, or otherwise handling plants, and the permittee shall exercise care to prevent windburn; injury to or drying out of the trunk, branches, or roots; and to prevent freezing of the plant roots. The solidity of the plant ball shall be preserved. Delivery of excess plant material shall be scheduled with the Department, allowing a minimum three days notification for each delivery. The permittee's responsibility for the furnished excess plants or trees ends at the time the plant material is delivered to, inspected by, and accepted by the Department;

(12) For mitigating replanting plans according to Rule .0609(b)(4) of this Section, trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign faces. As an alternative to replanting, mitigation by pruning for vegetative crown reduction at an existing beautification project may be allowed, if mutually agreed upon in writing by the Department and permittee. All pruning shall be performed by removing the fewest number of branches necessary to accomplish the desired objective but in consideration of normal seasonal regrowth for the type of vegetation. All pruning for purposes of mitigation shall be in accordance with the current edition and subsequent amendments and editions of the American National Standards for Tree Care Operations-Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. In the case of vegetation mortality caused by pruning, replacement plantings shall be required according to this Rule;

(13) Should the outdoor advertising structure related to the selective vegetation permit be sold or transferred, the new owner or permit holder is subject to the requirements in the General Statutes and rules in this Section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation; and

(14) Willful failure to substantially comply with the requirements of this Rule for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

History Note: Authority G.S. 99E-30; 136-93; ~~136-93(b)~~; 136-93.3; 136-130; 136-133.4; ~~136-93.3~~;
Temporary Adoption Eff. March 1, 2012;
Eff. November 1, 2012;
Amended Eff. January 1, 2015-2015;
Readopted Eff. June 1, 2020.