

1 19A NCAC 02E. 0604 is proposed for amendment as follows:

2
3 **19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR**
4 **FACILITIES ~~OR PERMIT REQUIREMENTS~~**

5 The following apply to the conditions of selective vegetation removal permit for facilities; ~~facilities or permit~~
6 ~~requirements~~:

- 7 (1) Selected vegetation, within the approved limits ~~as set forth in Rule .0602(c) of this Subchapter~~ may be
8 cut, thinned, ~~pruned~~ pruned, or removed by the permittee in accordance with the standards set out in
9 G.S. 136-133.4;
- 10 (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation,
11 and its employees, attorneys, agents, and contractors against any and all claims or causes of action, and
12 all losses therefrom, arising out of or in any way related to the permittee's operation;
- 13 (3) The permittee shall furnish a ~~Performance and Indemnity Bond or certified check or cashier's check~~
14 Performance and Indemnity Bond, or certified check or cashier's check made payable to North
15 Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The
16 ~~bond, certified check or cashier's check~~ Performance and Indemnity Bond, or certified check or
17 cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of
18 the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted
19 selective vegetation removal. The ~~bond or certified check or cashier's check~~ Performance and
20 Indemnity Bond, or certified check or cashier's check is required before each permit to cut vegetation
21 is issued. The ~~bond~~ Performance and Indemnity Bond, or certified check or cashier's check shall run
22 concurrently with the permit. The ~~bond~~ Performance and Indemnity Bond, or certified check or
23 cashier's check shall be released after a final inspection of the work by ~~NCDOT~~ the Department
24 reveals that all work provided for and specified by the permit is found to be completed and all
25 damages to the right of way, including damage to fencing and other structures within the right-of-way,
26 have been repaired or restored to the condition prior to the occurrence of the damage caused by the
27 permittee or the permittee's agent;
- 28 (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of
29 one hundred thousand dollars (\$100,000) and ~~this~~ that type of bond shall be kept on file by the Utilities
30 Unit of the Department;
- 31 (5) If the work is to be performed by any entity other than the ~~sign owner~~ or permittee, either the permittee
32 or the other entity ~~must~~ shall furnish the ~~required bonding,~~ Performance and Indemnity Bond or
33 certified check or cashier's' check, as described in this ~~Section, Rule,~~ for all work provided for and
34 specified by the permit. Required forms for all bonds are available upon request from the ~~Department.~~
35 Department and can be found on the Department's website www.ncdot.gov. Bonds are to be furnished
36 with the selective vegetation removal ~~Selective Vegetation Removal~~ application form to the

1 ~~appropriate~~ official assigned to receive selective vegetation removal applications at the local ~~NCDOT~~
2 North Carolina Department of Transportation, Division of Highways Office;

3 (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million
4 dollars (\$5,000,000). Whoever performs the work, the permittee, his ~~contractor~~ contractor, or agent,
5 shall maintain all legally required insurance coverage, including ~~worker's compensation~~ workers'
6 compensation and vehicle liability in the amounts required by ~~and according to~~ North Carolina law.
7 The permittee, his contractor and ~~agent~~, agent are liable for any losses due to the negligence or willful
8 misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of
9 liability insurance as described in this ~~paragraph~~, Item, be shown as an additional insured on the
10 general liability policy of the approved contractor or agent to perform the permitted work on condition
11 that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and
12 the permittee provides proof to the Department of the coverage. The permittee or contractor or agent
13 providing the coverage shall also name the Department as an additional insured on its general liability
14 policy and provide the Department with a copy of the certificate showing the Department named as an
15 additional insured. Regardless of which entity provides the proof of general liability insurance, the
16 required limit of insurance may be obtained by a single general liability policy or the combination of a
17 general liability and excess liability or umbrella policy;

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

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

27 (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The
28 applicant shall mark the permitted cutting distances according to Rule .0602(c) of this Subchapter.
29 ~~19A NCAC 02E .0602(d)~~. The two maximum points along the right-of-way boundary (or fence if there
30 is a control of access fence) shall be marked with visible flagging tape. The two maximum points,
31 corresponding to the ~~actual~~ beginning point and the ~~actual~~ ending ~~point~~, point along the edge of the
32 pavement of the travel way, perpendicular to the maximum points marked along the right-of-way
33 boundary, shall be marked with spray paint. If the facility is located next to an acceleration or
34 deceleration ramp, the two corresponding maximum points shall be marked along the edge of the
35 pavement of the travel way of the ramp instead of the mainline of the roadway;

36 (10) The permittee shall tag, with visible material or flagging, ~~those trees~~ trees, according to Rule .0602(b)
37 of this Subchapter, with a diameter of four caliper inches and larger, as measured six inches above

1 ground ~~level, level~~ at the time of the application that are screening the facility from view and are
2 requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone.
3 Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the
4 required sketch of the requested vegetation cut or removal zone;

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

18 (12) If any cutting, thinning, pruning, 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 or conditions affecting the right of way to which the State is subjected or agrees in writing
21 to subject itself and other restrictions agreed upon by the State in writing in the right of way or State or
22 Federal rules, statutes, or permits, the permittee shall comply with applicable easements, rules, statutes,
23 or permits for those portions of vegetation.

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

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

35 (13) The permittee ~~must~~ shall adhere to erosion control requirements, according to the North Carolina
36 General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;

- 1 (14) A Division of Highways Inspector may be present while work is underway. The presence or absence
2 of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for
3 conformity with the requirements of the permit. ~~and all applicable statutes and rules. Should the~~
4 ~~inspector fail~~ When a present inspector fails to point out work that does not conform with the
5 requirements, it does not prevent later notification to the permittee that the work is not in compliance
6 with the permit;
- 7 (15) A selective vegetation removal permit ~~must~~ shall be secured for each applicable facility prior to
8 performing any vegetation removal work. The Permittee or its contractor or agent ~~must~~ shall have a
9 copy of the ~~Selective Vegetation Removal Permit~~ selective vegetation removal permit on the work site
10 at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or
11 planting operations;
- 12 (16) ~~Should~~ When the Division Engineer ("Engineer") or his representative ~~observe~~ observes unsafe
13 operations, ~~activities~~ activities, or conditions, he shall suspend work. Work shall not resume until the
14 unsafe ~~conditions or activities~~ operations, activities, or conditions have been eliminated or corrected.
15 Failure to comply with any of the Federal, State and local laws, ordinances, and regulations governing
16 requirements for safety and traffic control of this permit shall result in suspension of work. The
17 permittee shall adhere to safety requirements, according to the North Carolina General Statutes, Article
18 16, Chapter 95 entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall
19 be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
- 20 (17) The permittee or its contractor or agent shall take ~~appropriate~~ measures to locate and protect utilities
21 within the highway right-of-way within the work area of the selective vegetation removal zone. The
22 permittee shall be responsible for restoration of any losses or damages to utilities caused by any
23 actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- 24 (18) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation
25 more than one time during the permit year. If the applicant applies for and is approved for another
26 permit at the same site during an existing permit year, the previous permit shall become null and void
27 at the same time the new permit is issued;
- 28 (19) The permittee shall provide to the ~~appropriate~~ Department ~~official~~ a 48-hour notification before
29 entering the right-of-way for any work covered by the conditions of the permit. The permittee shall
30 schedule all work with the Department. ~~appropriate Department official.~~ The permittee shall notify the
31 Department in advance of work scheduled for nights, weekends, and holidays. The Department
32 ~~reserves the right to~~ may modify the permittee's work schedule for nights, weekends, and holidays.
33 When the Department restricts construction in work zones for the safety of the traveling public, the
34 Department shall deny access to the right-of-way for selective vegetation removal;
- 35 (20) If work is planned in an active work zone, the permittee shall receive written permission from the
36 contractor or the Department (~~if~~ if the Department's employees are performing the work. ~~work~~). The
37 permittee shall provide the Division Engineer with a copy of the written permission;

- 1 (21) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be
2 restricted to individual and manual-operated power equipment and hand-held tools;
- 3 (22) The Department may allow use of power-driven vegetation removal equipment (such as excavator-
4 based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private
5 property side to the right-of-way. Tree ~~removal~~ ~~removal, which that~~ presents a hazard from falling tree
6 ~~parts, parts~~ shall be performed in accordance with the current edition and subsequent amendments and
7 editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI
8 Z133.1, approved by the American National Standards Institute and published by the International
9 Society of Arboriculture. Copies of the Standard are available for inspection in the office of the State
10 Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may
11 be obtained from the International Society of Arboriculture (ISA) for a \$20.00 cost. The ISA can be
12 contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: [arbor.com/](http://www.isa-</u>
13 <u><a href=).~~Arboriculture standards.~~ Written authorization ~~must~~ shall be obtained from the Department
14 for use of power-driven vegetation removal equipment as well as for access to move resources from
15 the private property to the right-of-way. The applicant ~~must~~ shall provide information on the permit
16 application for which type(s) of equipment and access is requested. The applicant shall also provide
17 contractor qualifications to the Department;
- 18 (23) The Department shall determine the traffic control signage that is required. The permittee shall furnish,
19 erect, and maintain the required signs as directed by the Department in accordance with G.S. 136-30;
- 20 (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding
21 ground level. The work site shall be left in a clean and orderly appearance, leaving no debris at the site
22 as a result of the cutting operation at the end of each workday;
- 23 (25) An applicant for a selective vegetation removal permit for a facility or agritourism activities issued
24 pursuant to Rule .0602 of this Subchapter ~~49A NCAC 02E .0602~~ may appeal a decision of the
25 Department pertaining to the denial or conditioning of a permit for selective vegetation removal
26 ~~pursuant to the provisions of this section. Such an appeal shall be~~ in accordance with the provisions of
27 G.S. 136-133.3; and
- 28 (26) Upon completion of all work, the Department shall notify the ~~Division Engineer who shall notify the~~
29 ~~Permittee~~ permittee in writing of acceptance, terminate the permit, and return the Performance and
30 Indemnity ~~Bond~~ Bond, or certified or cashier's check to the permittee. For replanting work, a different
31 release schedule shall be applicable according to Rule .0611. The permittee may terminate the permit
32 at any time and request return of the Performance and Indemnity Bond, or certified or cashier's check.
33 The termination and request for return of the Performance and Indemnity Bond, or certified or
34 cashier's check shall be made in writing and sent to the Division Engineer.
- 35 (27) ~~Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in~~
36 ~~the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of~~

1 ~~the selective vegetation removal permit, and forfeiture of any or all of the Performance and Indemnity~~
2 ~~Bond or check as determined by the Division Engineer based on conditions stated in this Rule.~~

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4 *History Note:* Authority *136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 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.*