

1 19A NCAC 02E. 0610 is proposed for amendment as follows:

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3 **19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR**
4 **OUTDOOR ADVERTISING ~~OR PERMIT REQUIREMENTS~~**

5 The following apply to the conditions of selective vegetation removal permits for outdoor advertising: ~~advertising or~~
6 ~~permit requirements~~:

- 7 (1) Selected vegetation, as defined in G.S. 136-133.1(b), may ~~be allowed to~~ be cut, thinned, pruned or
8 removed in accordance with the standards set out in G.S. 136-133.4;
- 9 (2) The permittee shall indemnify and hold harmless the North Carolina Department of
10 Transportation, its employees, attorneys, agents, and contractors against any and all claims or
11 causes of action, and all losses ~~there from~~, therefrom, arising out of or in any way related to the
12 permittee's operation;
- 13 (3) The permittee shall furnish a Performance and Indemnity ~~Bond~~ Bond, or certified check or
14 cashier's check made payable to North Carolina Department of Transportation for the minimum
15 sum of two thousand dollars (\$2,000). The ~~bond, certified check or~~ Performance and Indemnity
16 Bond, or certified check or cashier's check shall cover all restoration of the right of way to the
17 condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if
18 damage occurs during the permitted selective vegetation removal. The Performance and Indemnity
19 Bond, or certified check or cashier's check ~~bond or certified check or cashier's check~~ is required
20 before each permit to cut vegetation is issued. The bond shall run concurrently with the permit.
21 The bond shall be released after a final inspection of the work by ~~NCDOT~~ the Department reveals
22 that all work provided for and specified by the permit is found to be completed and all damages to
23 the right of way, including damage to fencing and other structures within the right-of-way, have
24 been repaired or restored to the condition prior to the occurrence of the damage caused by the
25 permittee or the permittee's agent;
- 26 (4) Companies that plan to apply for two or more permits may provide continuing bonds for a
27 minimum of one hundred thousand dollars (\$100,000) and ~~this~~ that type of bond shall be kept on
28 file by the Utilities Unit of the Department;
- 29 (5) If the work is to be performed by any entity other than the sign owner or permittee, either the
30 permittee or the other entity ~~must~~ shall furnish the Performance and Indemnity Bond or certified
31 check or cashier's check ~~required bonding~~ as described in this ~~Section~~, Rule, for all work provided
32 for and specified by the permit. Required forms for all bonds are available upon request from the
33 ~~Department~~ Department, or on the Department's website www.ncdot.gov. Bonds are to be
34 furnished with the ~~Selective Vegetation Removal~~ selective vegetation removal application form to
35 the ~~appropriate~~ official assigned to receive selective vegetation removal applications at the local
36 ~~NCDOT~~ North Carolina Department of Transportation, Division of Highways Office;
- 37 (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five
38 million dollars (\$5,000,000). Whoever performs the work, the permittee, his ~~contractor or agent~~,

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

15 (7) The permittee shall provide a document verifying the requested selective vegetation removal site
16 location in relationship to corporate limits of a municipality, per G.S. 136-133.1(a)(5). The
17 document shall be a current geographic information system map of the nearest municipality, with
18 color-coded boundary lines and a corresponding key or legend indicating corporate limit and
19 territorial jurisdiction boundaries and indicating the precise location of the outdoor advertising
20 structure. The permittee shall also provide the property tax identification number for the parcel on
21 which the outdoor advertising structure is located. The Department may require additional
22 information if the boundary or sign location remains in question;

23 (8) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The
24 applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) –
25 (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence)
26 ~~are to~~ shall be marked with visible flagging tape. Points C, D, & E along the edge of the pavement
27 of the travel way ~~are to~~ shall be marked with spray paint, including the actual distances. If the sign
28 is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge
29 of the pavement of the travel way of the ramp instead of the mainline of the roadway;

30 (9) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or
31 flagging all trees, including existing trees and other trees that are, at the time of the selective
32 vegetation removal application, greater than four-inches in diameter as measured six inches from
33 the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the
34 existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned,
35 pruned, or removed with visible material or flagging of a contrasting color. The permittee shall
36 denote on the site plan or on the application the colors of flagging used to mark each category of
37 trees;

- 1 (10) If there are existing trees requested to be removed, before any work can be performed under a
2 selective vegetation removal permit the permittee ~~must~~ shall:
- 3 (A) ~~(a)~~ Submit submit the reimbursement to the Department pursuant to G.S. ~~136-93.2~~ 136-
4 133.1(d) in a cashier's or certified check;
- 5 ~~(B)~~ (b) Fully fully disassemble two non-conforming outdoor advertising signs and their
6 supporting structures and return the outdoor advertising permits tags to the Department
7 pursuant to G.S. 136-133.1(d); or
- 8 ~~(C)~~ (c) Obtain obtain Departmental approval for the replanting plan in accordance with G.S. 136-
9 133.1(e) and 49A NCAC 02E .0611. Rule .0611 of this Subchapter.
- 10 (11) Should the vegetation removal permit be approved and tree removal is scheduled, for all disputed
11 trees the sign owner shall cut such tree stumps in a level, horizontal manner uniformly across the
12 stump at a four inch height, so that tree rings can be counted by the applicant or the Department to
13 determine the age of the tree;
- 14 (12) After a tree is removed and the applicant or the Department discovers, based on the number of
15 rings in the tree stump, an error in the tree survey report or site plan, the Department shall request
16 an amendment to the tree survey report or site plan, and a redetermination pursuant to G.S. 136-
17 133.1(d) and (e) shall be made by the Department and the applicant shall be subject to that
18 redetermination;
- 19 ~~(13) If any cutting, thinning, pruning, or removal of vegetation from any portion but less than the~~
20 ~~entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions~~
21 ~~affecting the right of way to which the State is subjected or agrees in writing to subject itself,~~
22 ~~including conservation agreements, prior to September 1, 2011, or prior to the issuance of an~~
23 ~~outdoor advertising permit for the erection of the applicable outdoor advertising structure,~~
24 ~~whichever date is later, or due to the application at any time of State statutes or Federal statutes or~~
25 ~~rules, including any conditions mandated as part of the issuance of a permit to the Department for~~
26 ~~a construction project by a Federal or State agency with jurisdiction over the construction project~~
27 ~~or due to mitigation within the right of way in the cut zone of a permitted outdoor advertising~~
28 ~~structure so long as trees and other plant materials for mitigation may not be of a projected mature~~
29 ~~height to decrease the visibility of a sign face, the permittee shall comply with applicable~~
30 ~~conditions, mitigation, rules, statutes, or permits for such portion of the cutting or removal zone. If~~
31 ~~applicable conservation agreements, mitigation or conditions affecting the right of way to which~~
32 ~~the State is subjected or agrees to in writing to subject itself and other restrictions agreed upon by~~
33 ~~the State in writing in the right of way, State or Federal rules, statutes, or permits allow certain~~
34 ~~degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the~~
35 ~~permittee shall comply with applicable conservation agreements, mitigation, conditions, State or~~
36 ~~Federal rules, statutes or permits including equipment type for those portions of the cutting or~~
37 ~~removal zone. Portions of the maximum cutting or removal zone not within a conservation or~~
38 ~~mitigation area nor applicable to conditions affecting the right of way to which the State is subject~~

1 ~~or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in~~
2 ~~the right of way, nor regulated by State or Federal rules, statutes, or permits regulating vegetation~~
3 ~~removal and other activities shall be governed by standards set out in G.S. 136-93.~~

4 (13) For purposes of this Rule, portion of the cut or removal zone means less than the entirety of the of
5 cut or removal zone, the permittee shall comply with applicable conditions, mitigation
6 requirements, rules, statutes, or permit requirements related to cutting, thinning, pruning, or
7 removal of vegetation within the right of way, where any portion of the cut or vegetation removal
8 zone is restricted for the following reasons set forth below:

9 (a) the State is subjected to or agrees in writing to subject itself to conditions affecting the
10 right of way, including conservation agreements, prior to September 1, 2011, or prior to
11 the issuance of an outdoor advertising permit for the erection of the applicable outdoor
12 advertising structure, whichever date is later; or

13 (b) applicable State or Federal statutes or rules, including any conditions mandated as
14 part of the issuance of a permit to the Department for a construction project by a Federal
15 or State agency with jurisdiction over the construction project prohibit vegetation
16 removal; or

17 (c) mitigation within the right of way in the cut zone of a permitted outdoor advertising
18 structure prohibits vegetation removal, however, trees and other plant materials for
19 mitigation may not be of a projected mature height to decrease the visibility of a sign
20 face.

21 If the reasons set forth in Subitems (a), (b), and (c) allow certain degrees and methods of cutting,
22 thinning, pruning, or removal for portions of vegetation, the permittee shall comply with the
23 conditions set forth above, including equipment type for those portions of the cutting or removal
24 zone. Vegetation removal for portions of the maximum cutting or removal zone not affected by the
25 reasons set forth above in (a), (b) and (c) shall be governed by standards set out in G.S. 136-93.

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

28 (15) A Division of Highways Inspector may be present while work is underway. The presence or
29 absence of a Division of Highways inspector at the work site does not lessen the permittee's
30 responsibility for conformity with the requirements of the permit and all applicable General
31 Statutes and rules. ~~Should the inspector fail~~ When a present inspector fails to point out work that
32 does not conform with the requirements, it does not prevent later notification to the permittee that
33 the work is not in compliance with the permit;

34 (16) A selective vegetation removal permit ~~must~~ shall be secured for each applicable outdoor
35 advertising site prior to performing any vegetation removal work;

36 (17) ~~Should the Division Engineer or his representative observe unsafe operations, activities or~~
37 ~~conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities~~

1 ~~have been eliminated or corrected. Failure to comply with any of the requirements for safety and~~
2 ~~traffic control of this permit shall result in suspension of work; When the Division Engineer~~
3 ~~("Engineer") or his representative observe observes unsafe operations, activities, or conditions, he~~
4 ~~shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions~~
5 ~~have been eliminated or corrected. Failure to comply with any of the Federal, State and local~~
6 ~~laws, ordinances, and regulations governing safety and traffic control shall result in suspension of~~
7 ~~work. The permittee shall adhere to safety requirements, according to the North Carolina General~~
8 ~~Statutes, Article 16, Chapter 95 entitled: Occupational Safety and Health Act of North Carolina.~~
9 ~~Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;~~

- 10 (18) The applicant ~~must~~ shall certify that he or she has permission from the adjoining landowner(s) to
11 access their private property for the purpose of conducting activities related to the selective
12 vegetation removal permit application;
- 13 (19) The ~~Permittee~~ permittee or its contractor or agent ~~must~~ shall have a copy of the ~~Selective~~
14 ~~Vegetation Removal Permit~~ selective vegetation removal permit on the work site at all times
15 during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting
16 operations;
- 17 (20) The permittee or its contractor or agent shall take ~~appropriate~~ measures to locate and protect
18 utilities within the highway right-of-way within the work area of the selective vegetation removal
19 zone. The permittee shall be responsible for restoration of any losses or damages to utilities
20 caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility
21 owner;
- 22 (21) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove
23 vegetation more than one time during the permit year. If the applicant applies for and is approved
24 for another selective vegetation removal permit at the same site during an existing permit year, the
25 previous permit shall become null and void at the same time the new permit is issued;
- 26 (22) The permittee shall provide to the ~~appropriate~~ Department ~~official~~ a 48-hour notification before
27 entering the right-of-way for any work covered by the conditions of the permit. The permittee
28 shall schedule all work with the Department. ~~appropriate Department official~~. The permittee shall
29 notify the Department in advance of work scheduled for nights, weekends and holidays. The
30 Department ~~reserves the right to~~ may modify the permittee's work schedule for nights, weekends,
31 and holidays. When the Department restricts construction in work zones for the safety of the
32 traveling public, the Department shall deny access to the right-of-way for selective vegetation
33 removal;
- 34 (23) If work is planned in an active work zone, the permittee shall receive written permission from the
35 contractor or the Department (~~if~~ if the Department's employees are performing the work, ~~work~~).
36 The permittee shall provide the Division Engineer with a copy of the written permission;
- 37 (24) An applicant shall be allowed to use individual and manual-operated power equipment and hand
38 held tools at any site during initial cutting or removal of vegetation or while maintaining a site

1 during the duration of a selected vegetation removal permit. The Department may allow use of
2 power-driven vegetation removal equipment (such as excavator-based land clearing attachments,
3 skid-steer cutters, and bucket trucks) if ~~the Department determines the permit applicant can~~
4 ~~demonstrate satisfactorily to the Department with an onsite inspection~~ that the use of such
5 equipment will not cause undue safety hazards, any ~~erosion~~ erosion, or unreasonable damage to
6 the right of way. Access for use of any equipment ~~must~~ shall be gained from the private property
7 side to the right of way for each individual selective removal permit site. Tree removal, which
8 presents a hazard from falling tree parts, shall be performed in accordance with the current edition
9 and subsequent amendments and editions of the American National Standard for Arboricultural
10 Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards
11 Institute and published by the International Society of Arboriculture, Arboriculture Standards.
12 Copies of the Standard are available for inspection in the office of the State Roadside
13 Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be
14 obtained from the International Society of Arboriculture (ISA) for a \$20.00 cost. The ISA can be
15 contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website:
16 <http://www.isa-arbor.com/>. Written authorization ~~must~~ shall be obtained from the Department for
17 use of power-driven vegetation removal equipment as well as for access to move resources from
18 the private property to the right of way. The applicant ~~must~~ shall provide information on the
19 permit application for which type(s) of equipment and access is requested. The applicant shall
20 provide contractor qualifications to the Department.

- 21 (25) The Department shall determine the traffic control signage that is required. The permittee shall
22 furnish, erect, and maintain the required signs as directed by the Department;
- 23 (26) The height of stumps remaining after tree removal shall not exceed four inches above the
24 surrounding ground level. The work site shall be left ~~in a clean and orderly appearance, with no~~
25 debris at the site as a result of the cutting operation at the end of each workday; and
- 26 (27) Upon completion of all work, the Department shall notify ~~the Division Engineer who shall notify~~
27 ~~the Permittee~~ permittee in writing of acceptance, terminate the permit, and return the Performance
28 and Indemnity ~~Bond~~ Bond, or certified or cashier's check to the permittee. For replanting work, a
29 different bond release schedule shall be applicable according to Rule .0611. to 19A NCAC 02E.
30 0611(g)(8); The permittee may terminate the permit at any time and request return of the
31 Performance and Indemnity Bond, or certified or cashier's check. The termination and request for
32 return of the Performance and Indemnity Bond, or certified or cashier's check shall be made in
33 writing and sent to the Division Engineer.
- 34 (28) Pursuant to G.S. 136-133.4(e), ~~willful failure to substantially comply with all the requirements~~
35 ~~specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary~~
36 ~~revocation of the selective vegetation removal permit and forfeiture of any or all of the~~
37 ~~Performance and Indemnity Bond or check as determined by the Division Engineer based on~~
38 ~~conditions stated in this Rule.~~

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History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-130; 136-133.1;
136-133.1 (a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; 136-127;
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