

FISCAL NOTE

Rule Citation: 19A NCAC 02E .0200 Outdoor Advertising
19A NCAC 02E .0600 Selective Vegetation Removal Policy

Rule Topic: Revision of the Permitting Requirements and Vegetation Removal for Outdoor Advertising

NCDOT Division: Division of Highways

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Impact Summary: Federal government: No
State government: Yes
Local government: Yes
Private sector: Yes
Substantial economic impact: Yes

Authority: G.S. § 136 Article 11 Outdoor Advertising Act, G.S. § 136-93, G.S. 136-93.2

Necessity: The proposed rule revisions presented in Appendix A are necessary to comply with state requirements, clarify existing rule requirements, reorganize existing rules to improve usability, and comply with SL 2011-397 (\$183).

Summary: The NC Department of Transportation last amended the State’s outdoor advertising vegetation removal permitting regulations in 2000. In 2011, the NC General Assembly enacted legislation that had major impacts on the Outdoor Advertising Act and applicable parts of the NC Administrative Code. Numerous clarifications and changes are required to comply with the legislative changes. The vegetation removal and permit rules have been amended to meet the requirements and to improve the usability of the rules.

The proposed rules will enable Department staff to focus time and resources on ensuring vegetation is removed properly and with minimal environmental impact. The NC Department of Transportation estimates the total gross economic impact of these rules (benefits plus costs) at approximately \$1.3 million in the first 12-month period following the adoption of the temporary rules on March 1, 2012. The proposed rule changes will result in costs and benefits to the private sector, local governments, and state government.

In future years, the NC Department of Transportation anticipates declining impacts because the majority of vegetation in front of outdoor advertising structures will be removed shortly after the effective date of the proposed rules. The expected annual reduction in new permits each year following the implementation of the new rules will result in lower annual impacts in future

years. The gross costs and benefits of the proposed rule changes exceed \$500,000 the first five years. The anticipated effective date of the proposed rules revisions is December 1, 2012, but the first year includes the impact of the temporary rules, which the Department adopted on March 1, 2012.

Costs and Benefits to Affected Parties					
Year*	1	2	3	4	5
Costs					
NCDOT	260,000	220,000	190,000	150,000	110,000
Local Government	70,000	60,000	49,000	38,000	26,000
Private Sector	770,000	670,000	560,000	450,000	340,000
Total Costs	\$1,100,000	\$950,000	\$800,000	\$640,000	\$480,000
Benefits					
NCDOT	160,000	140,000	110,000	87,000	62,000
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	\$160,000	\$140,000	\$110,000	\$87,000	\$62,000
Net Benefit	-\$940,000	-\$820,000	-\$690,000	-\$550,000	-\$410,000
NPV (5years)	-\$3,100,000				
Total Impact (Costs + Benefits)	\$1,300,000	\$1,100,000	\$910,000	\$730,000	\$540,000

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

I. Introduction and Description of Proposed Rules Changes

North Carolina General Statute § 136-128 defines outdoor advertising as: “any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.”

The Outdoor Advertising Act of 1967 established the public policy and statutory basis for the regulation and control of outdoor advertising. The Outdoor Advertising Act requires the NC Department of Transportation to establish rules regulating outdoor advertising permitting and vegetation removal. These rules are codified in 19A NCAC 02E .0200, known as the Outdoor Advertising Rules, and in 19A NCAC 02E .0600, known as the Selective Vegetation Removal (SVR) Policy.

The outdoor advertising rules affect visibility for road-adjacent businesses as well as permitted outdoor advertising structures. The number of permitted signs has remained around 8,000 for the past 10 years. One type of permit is required to post an outdoor advertising structure and a different type permit is required for vegetation removal in front of or around an outdoor advertising structure or business.

Overview of Rule Revisions

Since the State's outdoor advertising rules were last amended, the General Assembly has dramatically changed the North Carolina General Statutes regarding vegetation removal. Therefore, the Department must revise North Carolina's outdoor advertising and selective vegetation rules to match these statutory changes. Other proposed revisions will improve the usability and clarity of the rules and reduce the regulatory burden of permit requirements, all of which are consistent with the regulatory principles outlined in Executive Order 70 and G.S. § 150B-19.1. Other proposed revisions separate the selective vegetation removal process for outdoor advertising structures from business facilities (Proposed rules .0601, .0602, .0603, .0604). The two different types of outdoor advertising classifications (structures and facilities) will each have rules that contain all permitting, monitoring, operating, and reporting requirements applicable to that type of outdoor advertising. This organizational structure will make it easier for a user to find the applicable regulatory requirements.

The changes are based on state mandates set forth in Session Law 2011-397 (S183) and input generated through an interest-based stakeholder process. NC Department of Transportation staff prepared initial draft rule documents for internal and external stakeholders, whose comments were incorporated into subsequent draft rule documents that were presented to stakeholders representing citizen interests, industry professionals, and local governments. The NC Department of Transportation had a public comment period and a public hearing to try to resolve numerous issues and concerns. The proposed rule revisions received a great deal of input from stakeholders, some of whom were actively involved in writing some of the proposed rule requirements. All stakeholders communicated their interests or objectives and also provided solutions to proposed rule revisions. Differences of opinion were often tied to the legislation and it was not within the authority of the NC Department of Transportation to resolve them through the rule-making process or otherwise.

Session Law 2011-397 (S183)

The proposed 19A NCAC 02E .0200 and .0600 rule revisions and fiscal note have been developed in accordance with the requirements of Session Law 2011-397 (S183). All rule revisions and proposed new rules were developed in accordance with the findings and policy, scope and authority of the Outdoor Advertising Act codified in General Statute 136, Article 11, and General Statutes 136-93 and 136-93.2. The rules being amended to conform to NC General Statute changes include:

- 19A NCAC 02E .0210
- 19A NCAC 02E .0211
- 19A NCAC 02E.0601
- 19A NCAC 02E.0602
- 19A NCAC 02E.0603

- 19A NCAC 02E.0604
- 19A NCAC 02E.0608
- 19A NCAC 02E.0609
- 19A NCAC 02E.0610
- 19A NCAC 02E.0611

Assumptions and Rule Impact

Each proposed rule is listed below with a description of the rule, the proposed changes, and the economic impact expected for various public and private entities. The requirements under Article 9 and Article 11 of Chapter 136 of the North Carolina General Statutes serve as the baseline for all of the proposed rule changes. Session Law 2011-397 made significant changes to these statutes, including an expansion of the maximum cut or removal zone for vegetation under G.S. § 136-133.1. Although the impact of these statutory changes is outside the scope of the impact of the proposed rules, Appendix B includes an estimate of the asset value of the trees that the Department projects will be cut or removed as a result of the expanded maximum cut or removal zone.

The majority of the estimated costs or benefits stem from the review process of the SVR permits. Future costs and benefits, with the exception of permit fees, are presumed to grow at a 2-percent annual inflation rate. Each 12-month period begins on the first of March, which is the 2012 date the Department adopted the temporary rules. All estimates of time-related opportunity costs and hourly rates are based on information provided by the affected entities.

Proposed Rule 19A NCAC 02E .0210 Revocation of Outdoor Advertising Permit and .0211 Denial of Permit

Proposed rules 19A NCAC 02E .0210 and .0211 are proposed for revisions but do not have any associated economic impact. These proposed rule revisions were developed to be consistent with the requirements of SL 2011-397.

Proposed Rule 19A NCAC 02E .0601 Permit to Remove Vegetation and .0602 Requests for Permits for a Facility

Proposed Rule .0601 and .0602 Costs and Benefits to Affected Parties					
Year*	1	2	3	4	5
Costs					
NCDOT	300	300	300	300	300
Local Government	1,700	1,700	1,700	1,800	1,800
Private Sector	12,000	12,000	12,000	12,000	12,000
Total Costs	\$14,000	\$14,000	\$14,000	\$14,000	\$14,000
Benefits					
NCDOT	12,000	12,000	12,000	12,000	12,000
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
Net Loss/Benefit	-\$2,000	-\$2,000	-\$2,000	-\$2,100	-\$2,100
NPV (5 years)	-\$8,900				

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

* Each year in the table begins on March 1, with year 1 beginning in 2012.

Business Selective Vegetation Removal Permits					
Year*	1	2	3	4	5
Estimated number of permits	61	61	61	61	61

*Each year in the table begins on March 1, with year 1 beginning in 2012.

North Carolina G.S. § 136-18.7 requires a fee of \$200 for a vegetation removal permit per site. 19A NCAC 02E.0602 specifies that the fee is non-refundable. Selective vegetation cutting, thinning, pruning, or removal shall be permitted only for the permittee’s facilities adjacent to highway right of way at locations where such facilities have been constructed in accordance with the rules of the North Carolina Department of Transportation (NCDOT). It requires that the owner of a business facility make the request for a permit for selective vegetation removal to the appropriate person in the Division of Highways office on a form required by the NCDOT. The proposed rules requires that a permit may not be issued to provide visibility to on-premise signs and provides that if the site is inside city limits, the municipality has 30 days to review and provide comments on the application if the municipality has previously advised the Department in writing of the desire to review applications and the name of the local official to whom notice of application should be directed.

NCDOT used an average projection based on the history of business permits issued from 2006-2011, since the actual number of permits to be issued is unknown. A ten-year history period was not utilized because, in the last five years, there has been a consistent increase in the number of business SVR permits issued. It is expected business SVR permits to remain similar from previous years since there was no increase in cutting distances. The average number of permits from 2006-2011 is 61 per year. This number is assumed to remain constant in the next five years. (See Appendix C)

Estimated costs and benefits to municipalities to review business SVR Applications and Replanting Plans:

- NCDOT conducted a survey of 34 municipalities that are signed up for comment. A total of 11 municipalities responded with a range of SVR application review cost of \$75 to \$500.
- The average for the 11 municipalities is \$275 to review the applications.
- NCDOT estimates that 10% of business applications per year will have municipal reviews based on permit history.
- Per estimate above, 10% of total permits have municipal reviews: 61 anticipated business SVR permits times 0.1 equals 6 permits per year, at estimated cost of \$1,650 (6 permits times \$275 per permit), unadjusted for inflation.
- Municipalities benefit from being able to provide comments to NCDOT on the SVR applications.

Estimated cost to NCDOT to review municipalities' comments:

- This process is expected to take one hour per permit for six municipal reviews per year. The rate is \$51.02 per hour for a NCDOT engineer, putting the annual cost at approximately \$300. This is a NCDOT standard total compensation rate, including salaries and benefits, for engineers that will administer the proposed rules. The assumptions are based on past municipality review experience.

Proposed Rule 19A NCAC 02E.0603 Issuance or Denial of Permit for a Facility and .0604 Conditions of Selective Vegetation Removal Permit for Facilities.

Proposed Rule .0603 and .0604 Costs and Benefits to Affected Parties					
Year*	1	2	3	4	5
Costs					
NCDOT	19,000	19,000	19,000	20,000	20,000
Local Government	0	0	0	0	0
Private Sector	85,000	87,000	89,000	91,000	92,000
Total Costs	\$100,000	\$110,000	\$110,000	\$110,000	\$110,000
Benefits					
NCDOT	0	0	0	0	0
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	0	0	0	0	0
Net Benefit	-\$100,000	-\$110,000	-\$110,000	-\$110,000	-\$110,000
NPV (5 years)	-\$470,000				

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

NCDOT is expected to incur direct costs associated with implementing proposed rules .0603 and .0604. The proposed rules require the approval or denial of a business SVR permit to be issued within 30 days from the time NCDOT receives all required documents. NCDOT is to specify in writing the reasons for denial, and the proposed rules set out the permissible basis for denial. After 30 days the application is approved automatically if NCDOT does not issue a written decision. Proposed rules .0603 and .0604 specify the process to verify, monitor, and enforce the SVR permits.

Estimated cost to NCDOT to review business SVR applications:

- NCDOT estimates it will take three hours of an engineer’s time and six hours of an engineering technician’s time for each business permit. This is based on past experience to review and process SVR applications.
- A NCDOT engineer’s time equals \$51.02 per hour and a NCDOT engineering technician’s time equals \$20.57 per hour. These are NCDOT standard total compensation rates, including salaries and benefits, for engineers and engineering technicians that will administer the proposed rules. NCDOT estimates that a standard pickup up truck will be used for 4.5 hours per permit for site reviews. An average hourly rental rate for NCDOT pickup trucks is \$6.50 per hour. Fuel costs are

unknown because the distance traveled to each permitted location will vary, but fuel costs are expected to be minor relative to other NCDOT costs.

Estimated costs to businesses to complete requirements for SVR applications:

- A NCDOT survey of outdoor advertising companies estimated an average cost of \$600 per permit for all requirements to submit an SVR application. It is assumed the estimated costs for businesses are the same since they have the same requirements to submit an SVR application as the outdoor advertising companies. The companies surveyed account for over 50% of all billboards in North Carolina.
- Proposed rule 19A NCAC 02E .0604 (3) states that businesses must furnish performance and indemnity bonds or a certified check for a minimum of \$2,000 to the NCDOT. Businesses that apply for two or more permits are required to provide a continuing bond of \$100,000. This is assumed to be rare since businesses will only apply for a single permit for their location. It is anticipated that most businesses will not pay for bonds but utilize the certified check option. The business will be refunded the amount of the certified check if all work is found to be in compliance. Past experience has found that nearly all sites are found to be in compliance. Thus the business will incur no costs except for small administrative costs to furnish the certified check.
- A NCDOT survey of outdoor advertising companies estimated an average cost increase of \$800 per year for all permits for the additional liability insurance requirements per proposed rule 19A NCAC 02E .0604 (6). For the cost estimate above, the Department assumed that businesses will incur the same average additional liability costs per facility. The outdoor advertising companies surveyed account for over 50% of all billboards in North Carolina.

Proposed Rule 19A NCAC 02E.0601 Permit to Remove to Vegetation and .0608 Requests for Selective Vegetation Removal Permits for Outdoor Advertising

Proposed Rule .0601 and .0608 Costs and Benefits to Affected Parties					
Year*	1	2	3	4	5
Costs					
NCDOT	13,000	11,000	8,800	6,700	4,600
Local Government	68,000	58,000	47,000	36,000	25,000
Private Sector	150,000	130,000	100,000	75,000	50,000
Total Costs	\$230,000	\$190,000	\$160,000	\$120,000	\$80,000
Benefits					
NCDOT	150,000	130,000	100,000	75,000	50,000
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	\$150,000	\$130,000	\$100,000	\$75,000	\$50,000
Net Loss/Benefit	-\$81,000	-\$69,000	-\$56,000	-\$43,000	-\$29,000
NPV (5 years)	-\$250,000				

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

Billboard Selective Vegetation Removal Permits					
Year*	1	2	3	4	5
Estimated number of permits	750	625	500	375	250

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

North Carolina G.S. § 136-18.7 requires a fee of \$200 for a vegetation removal permit per site. 19A NCAC 02E .0608 specifies that the fee is non-refundable. It prohibits, except as specified in new G.S. § 136-133.1 (g), planting, cutting, trimming, removing, or pruning any tree, shrub, or underbrush in or on the right-of-way of a state road or highway without a written selective vegetation removal permit issued under G.S. § 136-133.2 and in accordance with the rules of the North Carolina Department of Transportation (NCDOT). The proposed rules require that the owner of an outdoor advertising sign make the request for a permit for selective vegetation removal to the appropriate person in the Division of Highways office on a form required by the NCDOT. The proposed rules provides that a permit may not be issued to provide visibility to on-premise signs and provides that if the site is inside city limits, the municipality has 30 days to review and provide comments on the application if the municipality has previously advised the Department in writing of the desire to review applications and the name of the

local official to whom notice of application should be directed. SL 2011-397 prohibits local governments from regulating removal of vegetation within the city limits of interstate or primary highway rights-of-way by any permit holder or anyone otherwise authorized by the NCDOT.

To estimate the costs and benefits associated with proposed rule .0608, NCDOT projected future-year permits based on the history of billboard permits issued from 2000-2010, since the actual number of permits to be issued is unknown. (See Appendix C)

- During March of 2012, the first month after the effective date of the new program under temporary rules promulgated by the Department, NCDOT received 127 applications.
- Presuming the 127 permit-applications in the first month will continue for the entire 6-month “cutting season” period for 2012 equals 762 permits. The cost and benefit estimates use a rounded figure of 750 permits in the first year. (NOTE: From 2000 – 2010, under the previous SVR program, the Department issued an average of 250 billboard permits per year, or about 3% of 8,000 permitted signs).
- The Department issued 125 permits in 2000. The number of permits then spiked to 305 permits in 2001 as a result of the Department issuing new rules expanding the cutting distance for selective vegetation removal (an increase of 2.4 times over the prior year).
- A projection of 750 permits issued in 2012 is equivalent to an increase of 3 times the average of 250 per year for years 2000 – 2010 (and 2.3 times the number of permits issued in 2010-11), which is reasonable based on the history stated. The Department expects the increase in permits to taper off to the long-run average over the course of the four years after year 1. NCDOT expects the permits to taper off gradually since there is a significant increase in the cutting distances for billboards. Due to the large number of billboards likely to be impacted by the increased cutting distances, the Department assumes billboard companies will spread the increase in SVR activities over the next four years.

Estimated costs and benefits to municipalities to review billboard SVR Applications and Replanting Plans as specified in G.S. § 136-93 Section 1 (d):

- NCDOT conducted a survey of all 34 municipalities that are signed up for comment. A total of 11 municipalities responded with a range of SVR application review costs of \$75 to \$500.
- The average for the 11 municipalities is \$275 to review the applications.
- At present, about one third of all outdoor advertising sign applications have been municipal reviews. In March 2012, NCDOT received a total of 127 applications wherein 44 were municipal reviews or 33%.
- Per estimate above, 33% of total permits have municipal reviews: 750 anticipated SVR permits times 0.33 equals 248 permits, at estimated cost of 248 permits times \$275 per permit.

- Municipalities benefit from being able to provide comments on the SVR applications.

Estimated cost to NCDOT to review municipalities' comments as specified in G.S. § 136-93 Section 1 (d):

- This process is expected to take one hour per permit. The rate is \$51.02 per hour for a NCDOT engineer. This is a NCDOT standard total compensation rate, including salaries and benefits, for engineers that will administer the proposed rules. These assumptions are based on past municipality review experience.

Proposed 19A NCAC 02E.0609 Issuance or Denial of Selective Vegetation Removal Permit for Outdoor Advertising and .0610 Conditions of Selective Vegetation Removal Permit for Outdoor Advertising or Permit Requirements

Proposed Rule .0609 and .0610 Costs and Benefits to Affected Parties					
Year*	1	2	3	4	5
Costs					
NCDOT	230,000	190,000	160,000	120,000	83,000
Local Government	0	0	0	0	0
Private Sector	520,000	440,000	360,000	280,000	190,000
Total Costs	\$750,000	\$640,000	\$520,000	\$400,000	\$270,000
Benefits					
NCDOT	0	0	0	0	0
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	\$0	\$0	\$0	\$0	\$0
Net Benefit	-\$750,000	-\$640,000	-\$520,000	-\$400,000	-\$270,000
NPV (5 years)	-\$2,300,000				

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

NCDOT is expected to incur direct costs associated with implementing Sections 5 through 8 of SL 2011-397. This law enacts new G.S. § 136-133.2 to provide that permits to remove vegetation may only be granted for outdoor advertising locations that have been permitted for at least two years. The law requires the approval or denial for a permit to be issued within 30 days from the time NCDOT receives all required documents. NCDOT is to specify in writing the reasons for denial, and the legislation sets out the permissible basis for denial. After 30 days the application is approved automatically if NCDOT does not issue a written decision. Sections 5 through 8 of the law specify the process to verify, monitor, and enforce the SVR permits.

Estimated cost to NCDOT to review billboard SVR applications:

- NCDOT estimates it will take three hours of an engineer's time and six hours of an engineering technician's time for each permit. This is based on past experience to review and process SVR applications.
- A NCDOT engineer's time equals \$51.02 per hour and a NCDOT engineering technician's time equals \$20.57 per hour. These are NCDOT standard total compensation rates for engineers and engineering technicians that will administer the proposed rules, which include the value of benefits.
- NCDOT estimates that a standard pickup up truck will be used for 4.5 hours per permit for site reviews. An average hourly rental rate for NCDOT pickup trucks is \$6.50 per hour. Fuel costs are unknown because the distance traveled to each permitted location will vary, but fuel costs are expected to be minor relative to other NCDOT costs.

Estimated costs to outdoor advertising companies to complete requirements for SVR applications:

- A NCDOT survey of outdoor advertising companies estimated an average cost of \$600 per permit for all requirements to submit an SVR application. The companies surveyed account for over 50% of all billboards in North Carolina.
- Proposed rule 19A NCAC 02E .0610 states that outdoor advertising companies must furnish performance and indemnity bonds or a certified check for a minimum of \$2,000 to the NCDOT. Companies that apply for two or more permits are required to provide a continuing bond of \$100,000. The Department has been unable to gather the information necessary to predict which option companies will utilize to satisfy this proposed rule requirement.
- A NCDOT survey of six outdoor advertising companies estimated an average cost increase of \$800 per year for all permits for the additional insurance requirements per proposed rule 19A NCAC 02E.0610 (6). NCDOT records show that an average of 30 companies per year apply for SVR permits. Based on the ten-year average of 250 permits per year, the Department estimates that the number of companies conducting SVR each year will average 12 percent of the total number of outdoor advertising SVR permits issued. The companies surveyed account for over 50% of all billboards in North Carolina.

Proposed 19A NCAC 02E.0611 Requirements for Beautification and Replanting Conditions of Selective Vegetation Removal Permit for Outdoor Advertising and Business Facilities

This rule describes the requirements for replanting to compensate for existing trees that have been removed. Replanting will be rare since the permittee has the option to pay for the existing trees or remove two non-conforming signs per G.S. § 136-133.1 (d). Per the proposed rule, the applicant will be required to replant equal caliper inches of trees. Permittees would likely only choose the replanting option in cases where they would benefit relative to the option of paying for existing trees or removing

two non-conforming signs. However, the Department was unable to obtain sufficient information to quantify the costs or benefits from this proposed rule change.

Cost & Benefit Summary

Costs and Benefits to Affected Parties					
Year*	1	2	3	4	5
Costs					
NCDOT	260,000	220,000	190,000	150,000	110,000
Local Government	70,000	60,000	49,000	38,000	26,000
Private Sector	770,000	670,000	560,000	450,000	340,000
Total Costs	\$1,100,000	\$950,000	\$800,000	\$640,000	\$480,000
Benefits					
NCDOT	160,000	140,000	110,000	87,000	62,000
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	\$160,000	\$140,000	\$110,000	\$87,000	\$62,000
Net Benefit	-\$940,000	-\$820,000	-\$690,000	-\$550,000	-\$410,000
NPV (5years)	-\$3,100,000				
Total Impact (Costs + Benefits)	\$1,300,000	\$1,100,000	\$910,000	\$730,000	\$540,000

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

The summary table above presents the total costs and savings of the proposed rule changes. (Note annual inflation was assumed to be 2 percent.) Some of these proposed rule changes would increase costs to state, local governments, and the private sector. The only quantified benefits involve transfers from the private sector to the Department in the form of fee revenue. Overall state, local governments, and the private sector will experience significant costs from these rules.

In the first year of implementation, the net quantified loss would be approximately -\$820,000. After five years of implementation, the net present value would be approximately -\$2.6 million. The aggregate impact of the rule package is \$1.1 million in the first year of implementation and decreases to less than \$400,000 in year five. In future years the NCDOT anticipates benefits from fee revenues to decrease because billboard companies will apply for fewer permits. However, the anticipated reduction in annual permits will result in lower costs to local, state, and private entities from expending less time submitting and reviewing SVR permit applications.

The gross economic impact of these rule changes exceeds \$500,000 in four of the next five years. The anticipated effective date of the proposed rules revisions is December 1, 2012, but the first year includes the impact of the temporary rules, which the Department adopted on March 1, 2012.

Risk Analysis

Proposed rules .0601, .0608, .0609, and .0610 contain the majority of costs and benefits. One major driver of the costs and benefits of these rules is the Department’s projection for the number of billboard SVR permits issued in future years. If the increase in SVR permits resulting from the changes associated with SL 2011-397 returns to the historical average of permits occurs over a shorter time period, the costs and benefits to all parties associated with the proposed rules would be significantly lower. The municipalities have the option to review applications which could increase or decrease costs depending on their level of participation and the number of applications submitted to them.

If permits return to the historical average after one year the net present value would be approximately -\$1.7 million versus -\$2.6 million under the preferred assumption of a gradual return to the historical average used in the fiscal note. The figures in the table below represent estimates based on the billboard SVR permit historical average returning to 250 permits per year after year one.

Risk Analysis of Proposed Rules .0601, .0608, .0609, and .0610					
Costs and Benefits to Affected Parties – All Proposed Rules					
Year*	1	2	3	4	5
Costs					
NCDOT	260,000	100,000	100,000	82,000	82,000
Local Government	70,000	25,000	25,000	23,000	23,000
Private Sector	770,000	330,000	330,000	340,000	340,000
Total Costs	\$1,100,000	\$450,000	\$460,000	\$470,000	\$480,000
Benefits					
NCDOT	160,000	62,000	62,000	62,000	62,000
Local Government	0	0	0	0	0
Private Sector	0	0	0	0	0
Total Benefits	\$160,000	62,000	62,000	62,000	62,000
Net Benefit	-\$940,000	-390,000	-400,000	-410,000	-410,000
NPV (5 years)	-\$2,300,000				

Note: All values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

Alternatives to Proposed Rule

In the case of these proposed rules, there were three rulemaking alternatives: maintaining the status quo, making rules more restrictive, and making rules less restrictive. All three alternatives were used in these rules. The proposed rule requirements largely consist of reorganizing existing rule requirements to make them easier to understand and implement SL 2011-397.

Alternatives to rulemaking were not considered a viable option because the proposed rule requirements largely consist of updating the rules to meet the intent of SL 2011-397. For example, an alternative to rulemaking for permitting, by rule, the cutting distances allowed for outdoor advertising companies is not possible. SL 2011-397 requires the Department to approve or deny an application submitted once all required documentation is received within 30 days of the receipt of an SVR application. The legislation explicitly states that, if written notice of approval or denial is not given to the applicant within the 30 day period, then the application shall be deemed approved.

Internal and external stakeholders considered various options throughout the rule making process. One option for permitting by rule related to vegetation removal (proposed rule .0610) was not to allow the use of power-driven vegetation-removal equipment (such as excavator-based land clearing attachments, skid steer cutters, and bucket trucks) which presents a hazard from falling tree parts. However, representatives participating in the stakeholder process were able to contribute technical details and standards of practice to allow the use of mechanized vegetation removal equipment with several conditions. Tree removal must be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications to the Department.

An alternative to rule .0611, as proposed, was to require the permittee to be permanently responsible for the maintenance of replanting plans. The Department rejected this option as being unnecessarily burdensome. The proposed rule requires the permittee to have a one-year establishment period followed by a one-year observation period. The establishment period will be for one year from the date of the initial planting acceptance for the entire replanting plan. The permittee must establish all plant materials according to proposed rule .0611. At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work. Then a one-year observation period shall begin in 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 a living and healthy condition during the observation period. The work for the initial plantings or any replacement plantings must adhere to the International Society of Arboriculture standards, except as specified in the proposed rule.

Appendix A.

19A NCAC 02E. 0210 REVOCATION OF OUTDOOR ADVERTISING PERMIT

The appropriate district engineer shall revoke a permit for a lawful outdoor advertising structure based on any of the following:

- (1) mistake of facts by the issuing District Engineer for which had the correct facts been known, he would not have issued the outdoor advertising permit;
- (2) misrepresentations of any facts made by the permit ~~holder/sign holder or sign~~ owner and on which the District Engineer relied in approving the outdoor advertising permit application;
- (3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit ~~holder/sign holder or sign~~ owner, the permit applicant or the owner of property on which the outdoor advertising structure is located;
- (4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207(c) of this Section;
- (5) failure to construct the outdoor advertising structure except all sign faces within 180 days from the date of issuance of the outdoor advertising permit;
- (6) a determination upon ~~initial~~ inspection of a newly erected outdoor advertising structure that it fails to comply with the Outdoor Advertising Control Act or the rules in this Section;
- (7) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act or the rules adopted ~~by the Board of Transportation~~ pursuant thereto;
- (8) alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause other than reasonable repair and maintenance as defined in Rule .0225(c). For purposes of this subsection, alterations include, ~~but are not limited to:~~
 - (a) enlarging a dimension of the sign facing, or raising the height of the sign;
 - (b) changing the material of the sign structure's support;
 - (c) adding a pole or poles; or
 - (d) adding illumination;
- (9) failure to affix the emblem ~~within~~ as required by Rule .0208 of this Section or failure to maintain the emblem so that it is visible and readable from the main-traveled way or controlled route;
- (10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be ~~clearly~~ visible as required by Rule .0208 of this Section;
- ~~(11) destruction or cutting of trees, shrubs, or other vegetation located on the state owned or maintained right of way where an investigation by the Department of Transportation reveals that the destruction or cutting:~~
 - ~~(a) occurred on the state owned or maintained right of way within 500 feet on either side of the sign location along the edge of pavement of the main traveled way of the nearest controlled route;~~
 - ~~(b) was conducted by a person or persons other than the Department of Transportation or its authorized agents or assigns, or without permission from the Department of Transportation; and~~

~~(c) was conducted by one or more of the following: the sign owner, the permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents or assigns, including, but not limited to, independent contractors hired by the permit holder/sign owner, the lessee/agents or advertiser employing the sign, or the owner of the property upon which the sign is located;~~

- (11) unlawful destruction or illegal cutting of trees, shrubs or other vegetation within the right-of-way of any State-owned or State-maintained highway as specified in G.S. 136-133.1(i);
- (12) unlawful use of a controlled access facility for purposes of repairing, maintaining or servicing an outdoor advertising sign where an investigation reveals that the unlawful violation:
 - (a) was conducted actually or by design by the sign ~~owner/permit~~ owner or permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including, ~~but not limited to,~~ independent contractors hired by any of the above persons; and,
 - (b) involved the use of highway right of way for the purpose of repairing, servicing, or maintaining a sign including stopping, parking, or leaving any vehicle whether attended or unattended, on any part or portion of the right of ~~way;~~ way except as authorized by the Department of Transportation, including activities authorized by the Department for selective vegetation removal pursuant G.S. 136-131.1, G.S. 136-131.2 and G.S. 136-133.4. Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit; or
 - (c) involved crossing the control of access fence to reach the sign ~~structure;~~ structure, except as authorized by the Department, including those activities referenced in (b) of this item;
- (13) maintaining a blank sign for a period of 12 consecutive months;
- (14) maintaining an abandoned, dilapidated, or discontinued sign;
- (15) a sign that has been destroyed or significantly damaged as determined by ~~Rules~~ Rule .0201(8) and (29) of this Section;
- (16) moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which changes the location of the sign as determined by Rule .0201(27) of this Section;
- (17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising Control Act, codified in G.S. 136, Article 11, and the rules-adopted ~~by the Board of Transportation;~~ pursuant thereto; and
- (18) willful failure to substantially comply with all the requirements specified in a vegetation removal permit if such willful failure meets the standards of G.S. 136-133.1(i) as specified in G.S. 136-133.4(e).

History Note: Authority ~~G.S. 105-86(e); 136-130; 136-93;~~ 136-133; 136-133.1(i), 136-133.4(e)
Eff. July 1, 1978;
Temporary Amendment Eff. March 1, 2012
Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993; March 1, 1993;
October 1, 1991; December 1, ~~1990-1990;~~ November 1, 2012.

19 NCAC 02E .0211 is proposed for repeal as follows:

19A NCAC 02E.0211 DENIAL OF PERMIT

~~(a) Should the appropriate district engineer determine that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act or the rules in this Section, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.~~

~~(b) When such noncompliance of the Outdoor Advertising Control Act or these Rules has been determined, the district engineer shall notify the permit applicant by certified mail, return receipt requested, in the form of a letter setting forth the factual and statutory or regulatory basis for the denial, and include a copy of the Act and rules.~~

~~(c) The Department of Transportation shall not issue permits for new outdoor advertising signs at a sign location (as defined by Rule .0201 of this Section) as follows:~~

~~(1) — for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location, and as measured along the edge of pavement of the main traveled way of the nearest controlled route. For purposes of this paragraph only:~~

~~(A) — "Unlawful destruction or illegal cutting" is the destruction or cutting of trees, shrubs, or other vegetation on the state owned or maintained right of way which was conducted by a person or persons other than the Department of Transportation or its authorized agents or without the permission of the Department of Transportation;~~

~~(B) — The Department of Transportation's investigation shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main traveled way of the nearest controlled route;~~

~~(C) — The five year period shall run from the date on which the Department of Transportation has actual knowledge of the unlawful destruction or illegal cutting to be documented by the appropriate district engineer;~~

~~(D) — The five year prohibition period for a new sign permit shall apply equally to all sign locations including the following examples:~~

~~(i) — sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location;~~

~~(ii) — sign locations where a revocation of an existing permit has been upheld and a sign has been removed;~~

~~(iii) — sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit application; and~~

~~(iv) — sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to final issuance of the permit by the Department of Transportation.~~

~~(2) — Where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. For purposes of this subsection only:~~

- (A) ~~"Existing trees" are those trees four inches or greater in diameter measured six inches from the ground;~~
- (B) ~~"Average mature size" shall be determined by reference to the most recent edition of *Hortus 3rd, A Concise Dictionary of Plants Cultivated in the United States and Canada*, McMillan Publishing Co., Inc., New York, NY, published in 1976 or *Manual of Woody Landscape Plants*, Michael Dirr, Stipes Publishing Company.~~
- (C) ~~Viewing Zone is the area which is 500 feet as measured along the edge of the main traveled way of the controlled route on each side of the proposed sign structure which will have a sign face.~~
- (3) ~~Where the zoning is not part of comprehensive zoning or was zoned primarily to permit outdoor advertising structures or constitutes spot zoning or strip zoning as defined in 19 NCAC 2E .0201(4)(b)(iii).~~
- (4) ~~For a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed.~~
- (5) ~~On a route designated as a scenic byway.~~

History Note: Authority G.S. 136-130

Eff. July 1, 1978;

Temporary Repeal Eff. March 1, 2012

Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, ~~1981~~; November, 2012.

19A NCAC 02E .0601 is proposed for amendment as follows:

19A NCAC 02E .0601 PERMIT TO REMOVE VEGETATION

(a) In recognition of the State of North Carolina's desire to assure that high quality and aesthetically pleasing views are provided highway users, along with recognizing that, within certain specified limitations, business facilities, hereinafter referred to as facilities, defined as office, institutional, commercial, and industrial buildings and certain outdoor advertising are legitimate commercial uses of property adjacent to the highways and are an integral part of the State's business and marketing economy, selective vegetation removal permits for opening views to facilities ~~office, institutional, commercial, and industrial developments~~ and legally erected forms of outdoor advertising, which border State highways, are provided by this Section.

(b) Selective cutting, thinning, pruning, ~~replacement, relocation~~, or removal of vegetation within highway rights of way may be permitted only for opening views to a facility building ~~office, institutional, commercial and industrial facilities~~ and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. For purposes of selective vegetation removal permitting, facilities shall include at least one structural building. The building must have all required local and State permits, be related to the facility's function, and be open and operational on a year-round basis. When such cutting, thinning, pruning, ~~replacement, relocation~~, or removal of vegetation is allowed, it shall be performed by the permittee or his agent at no cost to the Department of Transportation and shall comply with this Section.

History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982; Authority G.S. 136-18(5); G.S. 136-18(7); G.S. 136-18(9); Eff. June 1, 1982; November 1, 2012. Amended Eff. June 2, 1982.

19 NCAC 02E .0602 is proposed for amendment as follows:

19A NCAC 02E .0602 REQUESTS FOR PERMITS FOR A FACILITY

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall be made by the owner of the facility business or advertisement to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications with all required documentation shall be submitted in both printed and electronic form. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the Permittee's permittee's facilities adjacent to highway right of way at locations where such facilities have been constructed. The provisions shall not be used to provide visibility to undeveloped property. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other trees, which are not screening the facility from view and are four caliper inches and greater in diameter, measured six inches from the ground, shall be preserved. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other vegetation, which are four caliper inches or greater in diameter as measured six inches from the ground and not to be preserved, may be cut, thinned, pruned, or removed according to approval of Department personnel designated by the Division Engineer. All vegetation cutting, thinning, pruning, or removal shall be in accordance with accepted International Society of Arboriculture (ISA) standards.

(c) The provisions shall not be used to provide visibility to undeveloped property or to on-premise signs.

~~(e)~~(d) Applications must be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For commercial, industrial, institutional, and office facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to the area of right-of-way immediately adjacent to frontage property of the facility but not to exceed 1,000 contiguous linear feet. The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The applicant shall also include on the sketch the location, species, and caliper inches of all trees with a diameter of four caliper inches and greater, as measured six inches above ground level, at the time of the application and desired to be cut, thinned, pruned, or removed.

~~For outdoor advertising displays, these limits shall be restricted to a maximum cutting area for each sign face which shall be determined as follows:~~

- ~~(1) — The point located on the edge of the right of way which is the closest point to the center line of the sign face shall be point A;~~
- ~~(2) — The point located 100 feet down the right of way line in the direction of the sign viewing zone shall be point B;~~
- ~~(3) — The point on the edge of pavement of the travelway (not paved shoulder) which is the closest to the center line of the sign shall be point C;~~
- ~~(4) — The point 50 feet down the edge of pavement in the direction of the sign viewing zone from point C shall be point D;~~
- ~~(5) — The point 250 feet down the edge of pavement in the direction of the sign viewing zone from point C shall be point E; and~~
- ~~(6) — Lines drawn from point A to point D and from point B to point E shall define the limits of the cutting area (see diagrams that follow as examples of the application of this subsection).~~

~~The Department of Transportation shall determine compensatory tree replanting to be performed by the sign owner as a result of the ABED removal zone versus the previous 125-foot rectangular zone. Compensatory tree planting is required to replace trees removed in the new portion of the ABED zone. This replanting shall be inch for inch based on the caliper inches of trees removed in the ABED zone which are four inches and greater measured six inches above the ground. Location of replanting shall be areas of old 125-foot zone now not allowable to be cut by new ABED zone and locations within right of way on same route within one mile as designated by the Department where sign faces are blocked or will be blocked by existing trees in the 125-foot zone the ABED removal zone shall not be implemented. For commercial, industrial, institutional and office facilities, the limits of selective clearing or thinning shall be restricted to the area of right of way immediately adjacent to frontage property of the facility but not to exceed 1,000 linear feet.~~

~~(d)(c) Applications for permits for vegetation cutting to be performed on State Highway right of way must be accompanied by written authorizations(s) by the underlying fee owner(s) of all property upon which cutting is to take place, provided that where the right of way was secured in fee simple by the Department, such authorization shall not be required. The application must also be accompanied by written authorization of all owners of property abutting the area to be cut. The applicant must certify that permission has been obtained from the adjoining landowner(s) to access their private property, if applicable, for the purpose of conducting activities related to the selective vegetation removal permit application.~~

~~(e)(f) The selective vegetation control removal request shall may be investigated on site by Maintenance and Roadside Environmental Department personnel and a representative of the applicant.~~

~~(f)(g) If the application for vegetation cutting is for a site located within the corporate limits of a City or Town, municipality and if the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so that local officials shall be given the opportunity to review the application. application if the City or Town has previously advised the Division Engineer of their its desire to review such applications.~~

*History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Authority G.S. 136-130; 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93;
Eff. June 1, 1982;
Amended Eff. November 16, 1991; December 1, 1990; August 1, 1985; June 2, 1982;
Temporary Amendment Eff. November 16, 1999;
Temporary Amendment Eff. March 1, 2012
Amended Eff. August 1, ~~2000~~, 2000, November 2012.*

19 NCAC 02E .0603 is proposed for amendment as follows:

19A NCAC 02E .0603 ISSUANCE OR DENIAL OF PERMIT FOR A FACILITY

(a) ~~Within 30 days following receipt of the application, the Division Engineer shall approve or deny the application. If the application for vegetation cutting is for a site located within the corporate limits of a municipality and if the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so that local officials shall be given the opportunity to review the application. The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. After the 30-day municipal review period has concluded and all required documentation has been received by the Department, including the fee set out in G.S. 136-18.7, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.~~

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

- ~~(1)~~ ~~It requires removal of trees that were in existence before the business or advertisement was established. An existing tree shall be one that is four inches in diameter as measured six inches from the ground.~~
- ~~(2)~~ (1) The application is for the opening of view to a facility sign or business which has been declared illegal or is currently involved in litigation with ~~the department.~~ Local, State, or Federal governments.
- ~~(3)~~ (2) It is determined by Departmental personnel that the facility ~~or advertisement~~ is not screened from view.
- ~~(4)~~ (3) The application is for the opening of view ~~to an outdoor advertising sign which was obscured from view at the time of erection of the sign.~~ to undeveloped property or to a facility that, due to obstructions off the right of way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right of way.
- ~~(5)~~(4) Removal of vegetation will adversely affect the safety of the traveling public.
- (5) The application is solely for providing visibility to on-premise signs.
- (6) ~~Trees, shrubs, or other vegetation of any sort were planted in accordance with a local, State, or Federal beautification project. The application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project. However, if a mitigation replanting plan which is related to the site for which the vegetation permit request is made (as set forth in 19A NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is approved by the applicant, the Department, and if applicable, the Federal Highway Administration then this subsection does not apply.~~
- ~~(7)~~ ~~Planting was done in conjunction with a designed noise barrier.~~
- ~~(8)~~(7) ~~The applicant has not performed satisfactory work on previous requests under the provisions of the Rules in this Section (this may not be cause for denial if the applicant engages a landscape contractor to perform the work).~~ On two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. This is not cause for denial if the applicant engages a landscape contractor to perform the current work.
- ~~(9)~~(8) It involves opening of views to junkyards.

- (10) ~~The application is contrary to ordinances or rules and regulations enacted by local government, within whose jurisdiction the work has been requested to be performed.~~
- (9) The applicant fails to provide all documentation required by statute and rule.
- (10) If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or State or Federal rules, statutes, or permits.
- (11) If unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-way to create, increase, or improve a view to the facility from the travel way including acceleration and deceleration ramps, the Department shall not issue a selective vegetation removal permit for a period of five years. For the purposes of this section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;

Authority G.S. 136-130; 136-18(5); 136-18(7); 136-18(9);136-93.

Eff. June 1, 1982;

Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, ~~1982.~~

1982; November 1, 2012.

Temporary Amendment Eff. March 1, 2012.

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

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

- ~~(a) Selected vegetation within the approved limits shall be thinned, pruned, or removed by the Permittee or his agent in accordance with accepted horticultural practices recommended by North Carolina State University. Roadside environmental personnel shall identify specific trees, shrubs, and other vegetation which may be pruned, thinned, or removed.~~
- ~~(b) The Permittee may be required to furnish a performance bond or check in an amount determined by the Division Engineer to run concurrently with the permit, as deemed necessary to restore the right of way to the original condition if damage occurs.~~
- ~~(c) A Division of Highways Roadside Inspector shall be present while work is underway.~~
- ~~(d) Permits may be issued for multiple sites; however, a permit must be secured prior to performing any vegetation control work. Routine maintenance by the Permittee or his agent shall not be permitted.~~
- ~~(e) The Permittee or his agent shall not impede traffic on the highway in performing the work. Access to the work site on controlled access highways must be gained without using the main travelway of the highway. The Division Engineer shall determine traffic control signing which may be required. The Permittee shall furnish, erect and maintain the required signs as directed by the Division Engineer.~~
- ~~(f) Any damage to vegetation which is to remain, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the Permittee to the satisfaction of the Division Engineer. All trimmings, laps, and debris shall be removed from the right of way and disposed of in areas provided by the Permittee. No burning or burying shall be permitted on the highway right of way. When chipping is used to dispose of trimmings, chips may be neatly spread on right of way at locations which the Division Engineer determines will not be harmful to the environment or traffic safety.~~
- ~~(g) Upon satisfactory completion of all work, the Roadside Inspector shall notify the Division Engineer who shall notify the Permittee in writing of such acceptance, terminate the permit, and return the performance bond or check.~~
- ~~(h) Failure to comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate revocation of the permit and forfeiture of any or all of the performance bond or check as determined by the Division Engineer based on conditions stated in Paragraph (b) of this Rule.~~

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

- (1) Selected vegetation, within the approved limits may be cut, thinned, pruned or removed by the permittee in accordance with the standards set out in G.S. 136-133.4.
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses therefrom, arising out of or in any way related to permittee's operation.
- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the 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 bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the 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.
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department.
- (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office.
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are 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 this paragraph, be shown as an additional 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 or 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 required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy.
- (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel on which the facility is located. The Department may require additional information if the boundary or facility location remains in question.
- (8) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit.
- (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to 19A NCAC 02E .0602(d). The two maximum

- points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the actual beginning point and the actual ending point, along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway.
- (10) The permittee shall tag, with visible material or flagging, those trees with a diameter of four caliper inches and larger, as measured six inches above ground level, at the time of the application that are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone. Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the required sketch of the requested vegetation cut or removal zone.
- (11) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees of four caliper inches or greater in diameter, as measured six inches above ground level, which are not screening the facility from view from the roadway. The Department will make this determination by allowing selective thinning of tree density which opens the view to the facility across the entire length of the maximum cut or removal zone, without complete removal of all trees and other vegetation. The Department shall disapprove cutting, thinning, pruning, or removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved for cutting, thinning, pruning or removal, the Department shall specify those trees to the applicant during the site investigation. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department by electronic means an amended version of the original sketch of the site by indicating the changes on the sketch and initialing and dating the changes thereon. Failure to amend the sketch of the site according to this rule shall be considered failure to provide required documentation.
- (12) If any conservation easements or State or Federal rules, statutes or permits restrict an applicant from cutting, thinning, pruning or removing any vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone, the permittee shall comply with applicable rules, statutes or permits for those portions of vegetation. If applicable easements, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with State or Federal rules, statutes, or permits including equipment type for those portions of vegetation, including conservation easements. Portions of the maximum cutting or removal zone not within a conservation easement nor regulated by State or Federal environmental rules, statutes or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93.
- (13) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 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 and all applicable General Statutes and rules. Should the

- inspector fail to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit.
- (15) A selective vegetation removal permit must be secured for each applicable facility site prior to performing any vegetation removal work. The Permittee or its contractor or agent must 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.
- (16) Should the Division Engineer ("Engineer") or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work.
- (17) The permittee or its contractor or agent shall take appropriate measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner.
- (18) 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 during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued.
- (19) The permittee shall provide to the appropriate Department official 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 appropriate Department official. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department reserves the right to 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) 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.
- (21) 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) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications for the Department.

- (23) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department.
- (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday.
- (25) An applicant for a selective vegetation removal permit for a facility issued pursuant to 19A NCAC 02E .0602 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section. Such an appeal shall be in accordance with the provisions of G.S. 136-133.3.
- (26) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee.
- (27) Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

*History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. June 1, 1982;*

Amended Eff. August 1, 2000; November 1, 1991; August 1, 1985; August 1, 1982; June 2, ~~1982~~ 1982; November 1, 2012.

19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5) to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications with all required documentation shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality which has previously advised the Department in writing that it seeks to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.

(b) Applications which include existing trees to be cut, thinned, pruned or removed, must be accompanied by a site plan in accordance with G.S. 136-133.1(c).

(c) For signs eligible for municipal review the applicant must include on the application and as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign was originally erected. The applicant must also furnish documentation of proof from the Department to verify the year of sign erection shown on the application. The Department reserves the right to require additional proof if the year of the sign erection remains in question either to the municipality or the Department.

(d) The selective vegetation removal request may be investigated 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;
Filed as a Temporary Rule Eff. March 1, 2012
Eff. November 1, 2012.

19 NCAC 02E .0609 is proposed for adoption as follows:

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

(a) Within 30 days following receipt of the application for a selective vegetation removal permit for outdoor advertising, including the fee set out in G.S. 136-18.7 and all required documentation set out in G.S. 136-133.2 and these rules, the Division Engineer shall approve or deny the application. The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. Once all required documentation has been received by the Department, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, then the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

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

- (1) The application is for an outdoor advertising location where the outdoor advertising permit is less than two years old pursuant to G.S. 136-133.2.
- (2) The application is for the opening of a view to a sign which has been declared illegal or whose permit has been revoked or is currently involved in litigation with the Department.
- (3) Removal of vegetation will adversely affect the safety of the traveling public.
- (4) The application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project unless a mitigating replanting plan related to the site for which the vegetation permit request is made as set forth in 19A NCAC 02E.0611, except for the provisions in (d) and (g)(11); and is approved by the applicant, the Department, and if applicable, the Federal Highway Administration.
- (5) On two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. This is not cause for denial if the applicant engages a landscape contractor to perform the current work.
- (6) It involves opening of views to junkyards.
- (7) The requested site is subject to a five-year moratorium for willful failure to substantially comply with all requirements specified in a prior selective vegetation removal permit pursuant to G.S. 136-133.4(e).
- (8) The applicant fails to provide all documentation required in applicable General Statutes and rules.
- (9) If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or State or Federal rules, statutes, or permits.

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

19 NCAC 02E .0610 is proposed for adoption as follows:

19A NCAC 02E .0610 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR OUTDOOR ADVERTISING OR PERMIT REQUIREMENTS

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

- (1) Selected vegetation, as defined in 136-133.1(b) may be allowed to be cut, thinned, pruned or removed in accordance with the standards set out in G.S. 136-133.4.
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses therefrom, arising out of or in any way related to permittee's operation.
- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the 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 bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the 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.
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department.
- (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office.
- (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are 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 this paragraph, be shown as an additional 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 or 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 required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy.

(7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per GS 136-133.1 (a) (5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction 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.

(8) 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 GS 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) are to be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way are to 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.

(9) 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 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.

(10) If there are existing trees requested to be removed, before any work can be performed under a selective vegetation removal permit the permittee must:

(A) Submit the reimbursement to the Department pursuant to G.S. 136-93.2 in a cashier's or certified check;

(B) Fully disassemble two non-conforming outdoor advertising signs and their supporting structures and return the outdoor advertising permits tags to the Department; or

(C) Obtain Departmental approval for the replanting plan in accordance with 2E NCAC.0611.

(11) Should the vegetation removal permit be approved and tree removal is scheduled, for all disputed trees the sign owner shall cut such tree stumps in a level, horizontal manner uniformly across the stump at a four inch height, so that tree rings can be counted by the applicant or the Department to determine the age of the tree.

(12) 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 pursuant to G.S. 136-133.1(d) and (e) shall be made by the Department and the applicant shall be subject to that redetermination.

(13) If any conservation easements or State or Federal rules, statutes or permits restrict an applicant from cutting, thinning, pruning or removing any vegetation from any portion but less than the entirety of the maximum

vegetation cutting or removal zone, the permittee shall comply with applicable rules, statutes or permits for those portions of vegetation. If applicable easements, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with State or Federal rules, statutes, or permits including equipment type for those portions of vegetation, including conservation easements. Portions of the maximum cutting or removal zone not within a conservation easement nor regulated by State or Federal rules, statutes or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-133.4.

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

(15) 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 and all applicable General Statutes and rules. Should the inspector fail to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit.

(16) A selective vegetation removal permit must be secured for each applicable outdoor advertising site prior to performing any vegetation removal work.

(17) Should the Division Engineer ("Engineer") or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work.

(18) The applicant must certify that he or she has permission from the adjoining landowner(s) to access their private property for the purpose of conducting activities related to the selective vegetation removal permit application.

(19) The Permittee or its contractor or agent must 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.

(20) The permittee or its contractor or agent shall take appropriate measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner

(21) 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 during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued.

(22) The permittee shall provide to the appropriate Department official, 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 appropriate Department official. The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department reserves the right to 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.

(23) 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.

(24) 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.

(25) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications for the Department.

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

(27) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday.

(28) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee. For replanting work, a different bond release schedule shall be applicable according to 19A NCAC 02E. 0611(g)(8).

(29) Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130; 136-133.4
Temporary Adoption Eff. March 1, 2012
Eff. November 1, 2012

19 NCAC 02E .0611 is proposed for adoption as follows:

19A NCAC 02E .0611 REQUIREMENTS FOR BEAUTIFICATION AND REPLANTING CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING AND BUSINESS FACILITIES.

(a) Any site qualifies for a beautification and replanting plan.

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

(c) Submittal of a selective vegetation removal application shall be in accordance with GS 136.133.1 (c).

(d) This paragraph applies to all replanting plans except mitigating replanting plans as specified in 19A NCAC 02E.0609(b)(4). The caliper inches of existing trees to be removed, according to the applicant's site plan shall equal the caliper inches to be replanted by the applicant at the outdoor advertising site from which existing trees are requested to be removed. If the caliper inches of existing trees from the site plan exceed the density of the Department's replanting site design, the excess caliper inches of trees shall be delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. The excess trees shall be planted and maintained by the Department at sites to be determined by the Department.

(e) For sites that qualify according to the replanting criteria described in this rule, the Department shall consult with the applicant and any local government that has requested to review and provide comments on selective vegetation removal applications pursuant to GS 136-93(d) or has notified the Department of its desire to review and provide comments on beautification and replanting plans for outdoor advertising sites. If the local government does provide comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make appropriate request for a review, the criteria stated in the rules in this section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval, based on the American Standard for Nursery Stock for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and maintenance plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning or removal at the outdoor advertising site. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to GS 136-93(b) and 136-133.1(e). All applicable requirements of the permit, including the performance

bond and insurance, 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 detailing the requirements of the beautification and replanting plan. The requirements include the following:

(1) The work for initial plantings and all future replacements must be adhered to by the permittee or any or their employees, agents, or assigns according to International Society of Arboriculture standards except as stipulated in the rules in this section. Initial and replacement planting will be considered acceptable when the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species, which 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 which are not in a living and healthy condition as defined in these rules.

(2) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 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 outdoor advertising site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the American Standard for Nursery Stock.

(4) All work is subject to NCDOT 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 of all cut stumps (to a minimum depth of four inches below ground level) must 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) 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, the permittee must establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin immediately 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 must be requested in writing to the Department. The Department shall notify the permittee in writing of 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 applicable bond. Then a one-year observation period shall begin in which the permittee or sign owner shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The sign owner is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period and 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 sign owner if the permit requirement conditions have been met successfully.

(10) Replanted materials may be pruned according to the International Society of Arboriculture standards; 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 19A NCAC 02E .0609(b)(4). Excess plants or trees furnished and delivered to the Department, shall receive care and handling in accordance with the following: In digging, loading, transporting, unloading, planting, or otherwise handling plants, 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 19A NCAC 02E .0609 (b) (4), 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.

(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.

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

History Note: Authority G.S. 136-93; 136-130; 136-133.4;

Temporary Adoption Eff. March 1, 2012

Eff. November 1, 2012

Appendix B.

Annual Asset Loss (not included in fiscal impact of rules)

Estimate of Tree Buffer Loss					
Year*	1	2	3	4	5
Estimated Permits	750	625	500	375	250
Average # trees to be cut per permit	28	28	28	28	28
Total trees cut	21,000	17,500	14,000	10,500	7,000
Average caliper in. per permit	292	292	292	292	292
Total caliper inches cut	219,000	182,500	146,000	109,500	73,000
Annual Buffer Loss	\$16,000,000	\$14,000,000	\$11,000,000	\$8,700,000	\$5,900,000
NPV (5 yr)	\$56,000,000				

Note: All dollar values rounded and, except Net Present Value (NPV), in current-year dollars. Cost and benefit line items may not sum to total due to rounding.

*Each year in the table begins on March 1, with Year 1 beginning in 2012.

The Department conducted 35 site tests at billboard locations statewide to get an estimate of the number of trees and caliper inches of trees that may be cut. Each test site ranged from hundreds of trees to one tree. Only trees four inches in diameter or greater were counted in the estimates. Based on the test sites, NCDOT estimates an average of 28 trees per site will be cut, with an average of 292 caliper inches. The 5-year total tree buffer loss is estimated to be 70,000 trees with estimated total caliper inches of 730,000. The monetary value of trees is determined per G.S. § 136-93.2 in which trees are currently valued at \$75 per caliper inch. The 5-year net present value of tree buffer loss for the first five years is estimated to be \$56 million.

In addition to the asset values listed above, roadside trees also generate significant – but unquantified – aesthetic benefits to motorists and provide valuable environmental services to area residents by removing pollution from air and water and sequestering carbon dioxide.

Appendix C.

Selective Vegetation Removal Permit History

Billboard SVR Permits	
Fiscal Year	Permits Issued
2000-2001	125
2001-2002	305
2002-2003	168
2003-2004	181
2004-2005	198
2005-2006	203
2006-2007	248
2007-2008	324
2008-2009	352
2009-2010	312
2010-2011	327

Business SVR Permits	
Fiscal Year	Permits Issued
2000-2001	30
2001-2002	38
2002-2003	39
2003-2004	34
2004-2005	35
2005-2006	39
2006-2007	64
2007-2008	51
2008-2009	74
2009-2010	57
2010-2011	57