

November 19, 2014

Fiscal Note – Revised

Agency: North Carolina Department of Transportation

Session Law 2013-413 (House Bill 74) – Regulatory Reform Act, *amendment for selective vegetation removal (SVR) permits only at outdoor advertising (ODA) sites located along highway ramps.*

Proposed NCAC Rule Changes:

- **19A NCAC 02E .0608:** minor technical changes to (a) – (d) to clarify submittal of the SVR application including a listing of all requirements on the application and when SVR requests are to be reviewed by the Department and the applicant.
- **19A NCAC 02E .0609:** one addition to paragraph (b), reasons to deny a SVR permit at ODA sites, when request is not in compliance with G.S. 136-133.1 (a1). In addition, several minor formatting corrections in paragraphs (a) and (b).
- **19A NCAC 02E .0610:** Minor formatting and technical changes to several rule parts, for clarification and consistency and to comply with citing authorities and incorporating material in a rule by reference.
- **19A NCAC 02E .0611:** minor and technical changes to several rule parts for clarification, consistency, and to comply with citing authorities and incorporating material in a rule by reference.
- **19A NCAC 02E .0612 (new rule proposed instead of the previous proposed addition to .0610, which serves the same purpose):** To define specific SVR permit requirements for a modified vegetation cut or removal zone at ODA sites along highway ramps.

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NCDOT Governance Office – Deputy Director

Statutory Authority: G.S. 136-133.1 (a1) and (f)

Impact Summary: Federal Government: No
State government: Yes
Local government: No
Substantial impact: No

Necessity:

NCDOT is proposing to revise 19A NCAC 02E .0609 (b) and add a new Rule 19A NCAC 02E .0612 to comply with outdoor advertising vegetation removal amendments to G.S. 136-133.1 (a1) and (f) enacted during the 2013 regular session of the NC General Assembly by Session Law (S.L.) 2013-413. The proposed rule changes and existing statutory authority can be found in Appendices 1 and 2, respectively. The proposed rule changes are merely minor revisions to comply with statutory amendments. The Department has determined, by its own analysis informed by a survey of outdoor advertising (ODA) industry representatives, that the rule

change, involving vegetation cutting only along highway ramps, will **not** create a substantial economic impact.

The agency is proposing additional changes to paragraphs (f) and (g) of 19A NCAC 02E .0611, which are either technical or minor changes. These changes are of two purposes, the first being to provide for inclusive language regardless of the type of SVR permit considered (either “ODA site,” “business facility site,” or “agritourism activity site”). The agritourism part complies with G.S. 136-93.3 as an additional eligible entity for selective vegetation removal permits. The second purpose involves changes to paragraph (g) in .0611 to broaden the specific types of mechanical stump removal allowed as well as allowing for pruning as a mitigation alternative to replanting when a roadside beautification planting project is being disturbed due to permitted selective vegetation removal.

Note that the agritourism part of the proposed rule change does not require a fiscal note in accordance with an explicit exemption granted in Section 45 of S.L. 2013-413 (now codified as G.S. 136-93.3). The proposed rule change related to agritourism is only mentioned in this fiscal note due to the overlap of the three types of SVR permits described above that are governed by 19A NCAC 02E .0611.

There are also numerous general formatting and clarification adjustments included in the proposed rule changes for 19A NCAC 02E .0608, .0609, .0610, and .0611. These adjustments do not affect the impact from the proposed rule changes, and thus the content of this fiscal note.

Background:

The 2011 General Assembly enacted Session Law 2011-397 (Senate Bill 183), resulting in a major expansion of the vegetation removal zone in advance of outdoor advertising (ODA) structures along the highway system in North Carolina. Prior to the 2011 legislation, vegetation removal permits at ODA sites had been governed only by NCAC rules. The 2011 legislation overhauled the previous version of the selective vegetation removal (SVR) policy rules at ODA sites that had been in place since 2000, resulting in major changes or additions to 19A NCAC 02E section .0600 rules.

The General Assembly in S.L. 2013-413 amended only a small component of the 2011 legislation for the vegetation removal permit program, specifically only for ODA sites along highway ramps. Based on this amendment, G.S. 136-133.1 (a1) now allows the vegetation removal permittee to modify the boundaries of the defined vegetation removal zone that the 2011 legislation put in place to improve the view only for sign faces next to highway ramps. Such modified cuts however cannot result in an overall increase in the measured area of the vegetation removal zone. Therefore, the legislative amendment results in no net gain of vegetative removal area beyond the 2011 legislation.

Due to the opportunity for permits for boundary modifications, clarifications and minor procedural changes are required to comply with the S.L. 2013-413 legislative amendments. The proposed selective vegetation removal permit rules have been revised to meet the requirements of the legislation.

Impact Summary

Analysis by the Department indicates that the economic impact of the proposed rules will be relatively minor and is not expected to exceed the \$1 million per year threshold to be considered a substantial economic impact. The rule affects only a small number of outdoor advertising sites, each of which is unlikely to significantly increase total vegetation removal. Based on information from an NCDOT survey of the members of the NC ODA Association, there are very few ramp signs for which a modified cut would be requested (25-35 over the next five years). Additionally, to the extent the owner of a sign on a deceleration or acceleration ramp was going to apply for SVR permit, regardless of the latest change, there would be only a minor impact from the amendment.

The major revamping of the .0600 section rules (mentioned in the ‘Background’ section), brought about by the 2011 ODA vegetation removal legislation, was accompanied by a comprehensive fiscal note that included extensive analysis of all projected impacts. The fiscal note related to the changes from S.L. 2011-397, adopted and accepted as part of that rulemaking effort, provides additional background information and is available on the website of the NC Office of State Budget and Management.¹

Analysis:

To estimate correctly the impact from the proposed change, it is important to keep in mind that “ramp” signs have already been eligible for the same vegetation removal permits as signs along the highway mainline since enactment of S.L. 2011-397. The only change resulting from S.L. 2013-413, and consequently the proposed rules, is the ability of a sign owner to tailor the cutting zone to the characteristics of each site as long as the aggregate cutting area does not exceed the maximum area laid out in the 2011 law.

In practice, there may be a few cases where the sign owner has not removed – or is not planning to remove - the maximum area allowed under the 2011 legislative changes but would remove vegetation to the maximum allowable area under the proposed rules. In these cases, it is possible that slightly more vegetation would be removed as a result of this latest amendment. This analysis assumes little change in the aggregate cut area given: 1) the relatively low interest in modifying cutting zones along ramps, 2) the small number of sign owners who have not already removed vegetation to the maximum extent allowed under the 2011 legislation, and 3) the lack of detailed information on this matter.

The total quantity of validly permitted and NCDOT-regulated outdoor advertising sign structures along North Carolina highways is approximately 8,000 (plus another approximately 1,000 signs projected to be added per federal Public Law [P.L.] 112-141, the Moving Ahead for Progress in the 21st Century Act [MAP-21]). These figures include all signs along both mainline highway sections and acceleration and deceleration ramps.

¹ NC Office of Budget and Management website. Economic Analysis. Regulatory Analysis. OSBM Approved Rule Changes and Analyses. http://www.osbm.state.nc.us/files/pdf_files/DOT06192012.pdf

The vegetation removal rules resulting from the enactment of S.L. 2011-397 took effect in March, 2012, and the NCDOT began accepting vegetation removal applications and approving SVR permits. The expanded cut-zone program was immediately very popular, with over 900 SVR permits issued during the first 12 months of the new program, which represents an increase of roughly 260 percent when compared to the previous average of about 250 vegetation removal permits per year prior to S.L. 2011-397. The number of permits has since decreased, with only about 300 permits approved in the ten months since the end of the first year period. Assuming the same rate of permit requests holds for the rest of the year, about 375 approved permits can be projected for the full second year period. The NCDOT does not maintain records denoting how many of the SVR permits have been issued for ramp signs, but under S.L. 2011-397, there are no differences in the in measured SVR zones or in the application/approval process for mainline versus ramp cuts.

A recent review by NCDOT's ODA Statewide Administration contractor estimates there are 285 ODA signs located along highway ramps on regulated routes in the State, prior to M.A.P. 21 additions. A further survey of ODA industry representatives surmised that the "modified" ramp cuts will be few in number. Of the 12 firms that provided responses, nine respondents listed zero to five of the ramp sites to be cut, and only one respondent estimated ten or more sites for cutting. The ODA industry estimates that sign owners would request modified vegetation removal for a total of only 25-35 ramp-adjacent signs. This estimate represents about 9-12% of the eligible ramp-adjacent signs. So compared to a total of 9,000 signs and normal annual vegetation removal permits of no more than 375, the modified cuts along ramps will be a very small percentage of the total selective vegetation removal program. The modified ramp cuts will be a one-time only alteration of the cut zone boundaries, so after the modified zone is established and initial vegetation is cut, such sites will revert back to requiring only periodic permitted maintenance of vegetative growth.

The common consensus throughout the survey indicated the modified cut zone along ramps will be used sparingly. It is unlikely, based on past experiences, that all signs would have modified vegetative cut permits requested the first year of the effective new legislation. The section below attempts to provide some estimates based on the information presented above assuming that modified vegetation removal requests would be made for 35 signs.

Example using 35 signs as the total quantity:

It is unclear if the modified vegetation removal requests for all signs would occur in the first year or not. Therefore, this analysis assumes the following based on trends in data for SVR applications since the 2012 rule change:

- First year: Estimated 80% = 28 ramp signs with modified vegetative cuts.
- Second year: Estimated 15% = 5 ramp signs with modified vegetative cuts.
- Third year: Estimated 5% = 2 ramp signs with modified vegetative cuts.

There is no information to ascertain how many of the applicants who would request a modified cutting or removal zone would have applied for the SVR permit regardless of the latest change and how many would be prompted to apply only because of the latest

legislative change. Based on best professional judgment, the agency assumes 25% of the applications would be new, or seven (7) in the first year and one (1) each in the second and third year, although this is probably an overestimate of the number of additional applications.

A) Recurring applicants opting for a modified cut zone

For the 75% of applications who would have applied for an SVR permit regardless of the latest change but would opt now for the modified cutting zone, there is not significant change in the permitting costs aside from a couple of extra hours to complete the permit – a total cost of about \$110 for an engineer’s time (assuming an hourly cost per engineer mirrors NCDOT engineer cost of \$55 / hour).

For reviewing the additional documentation submitted by the 75% of applicants discussed above, the NCDOT will have minimal extra cost. This cost is estimated at \$89 per application for reviewing “ramp” cuts for billboard SVR applications, when considering the cost in addition to the previous cost of the defined cut zone at ramp sites already allowed under the 2011 legislation, as detailed below:

- NCDOT estimates it would take one extra (1) hour of an engineer’s time and one (1) extra hour of an engineering technician’s time for each permit. This is based on past experience and projections to review and process SVR applications;
- The opportunity cost of an NCDOT engineer’s time equals about \$55 per hour and a NCDOT engineering technician’s time equals about \$34 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.

B) Additional applicants

The other 25% of applicants, who would not have applied for the SVR if it were not for the latest legislative change, would incur about \$600 in application costs, composed of the following:

- the permit fee of \$200,
- the time to prepare the application, estimated at about \$400 based on a previous survey of ODA companies (see fiscal note for previous change in section .0600 rules),
- the performance bond for \$2,000 or the certified check – since most applicants would opt for the latter, which has minimal cost, or, in the case of larger companies, for a continuous indemnity bond that covers multiple sites, no cost is assumed for the purposes of this analysis, and

- potential increases in insurance premiums – given the lack of information and NCDOT’s assumption that any increase would be minor, no increases are assumed in this analysis.

Aside from the fee revenue of \$200 per new application, NCDOT would incur \$326 in cost from reviewing “ramp” cuts for billboard SVR applications:

- NCDOT estimates it will take three (3) hours of an engineer’s time and six (6) hours of an engineering technician’s time for each permit. This is based on past experience and projections to review and process SVR applications.
- NCDOT estimates that a standard pickup truck will be used for four and a half (4.5) hours per permit for site reviews. An average hourly rental rate for NCDOT pickup trucks is \$6.50 per hour. Fuel costs will vary because the different distances traveled to each permitted location, but fuel costs are expected to be minor – about \$15 per round trip, if not less.

Based on the analysis above, the three-year NCDOT and industry impacts are estimated as follows:

Table 1. Summary of Impact

	FY 2014	FY 2015	FY 2016
<i>NCDOT</i>			
NCDOT cost for regular applicants	\$1,869	\$356	\$89
NCDOT cost for new applicants	\$2,893	\$413	\$413
Total NCDOT cost	\$4,762	\$769	\$502
NCDOT fee revenue	\$1,400	\$200	\$200
<i>Private</i>			
Permitting cost for regular applicant	\$2,310	\$440	\$110
Permitting cost for new applicant	\$4,200	\$600	\$600
Total Private cost¹	\$6,510	\$1,040	\$710
Private benefit from modified cutting zone¹	unquantified		

¹ The table above does not include that cost of cutting the modified zone or the incremental benefit the industry would derive from opting for a modified vegetation cut or removal area versus the regular cut area, given uncertainties with estimating incremental impacts.

Uncertainties and Indirect Impacts

The ODA survey mentioned in the section above also asked for projected costs of cutting vegetation and additional revenue projections. Some respondents indicated \$1,000 – 4,000 as costs per site, with individual responses as high as \$20,000 per site. Based on the information provided, the median cost per site may be around \$3,000. In terms of total additional revenue from the proposed changes, most responses ranged from zero (\$0) to \$45,000 per year, with some respondents indicating an inability to estimate the impact of improved advertising visibility. Based on the information provided, the median annual increase in revenue may be around \$9,000 per site.

Again, it is important to note that the appropriate measure of the cost-side impact of allowing modified ramp-site cuts would be the incremental additional costs compared to the cost of unmodified ramp-site cuts under S.L. 2011-397. Based on NCDOT's assessment of typical per-side costs of vegetation removal, it appears that many survey respondents included the entire cost of modified cuts, not the incremental difference. Therefore, it is likely that the costs and benefits presented above are an overstatement of the impacts that would solely result from this rule change.

Aside from the incremental costs from actually performing a modified cut versus a regular cut and the incremental benefit from improving visibility, this analysis does not take into consideration some indirect impacts from the proposed changes:

- If this rule change would result in additional permit applications, then local governments may see an increase in workload if they choose to provide comments on those SVR applications, as allowed under the 2011 legislative changes. They may also see a benefit as well from being able to provide comments. Based on the previous analysis for the SVR application process, the review may have a cost of \$270 per application for local governments.
- If local governments provide comments on additional SVR applications, NCDOT may also incur additional costs related to staff taking time to evaluate those comments, about one extra hour of an engineer's time (or \$55).
- Businesses purchasing advertising on affected outdoor advertising structures may see an indirect net benefit from the outdoor advertising industry being able to opt for a modified cut that would increase the visibility of the sign.

Other Proposed Amendments

As mentioned in the "Necessity" section above, the changes proposed for rule .0611 are not considered significant. The change in paragraph (g)(5), allowing other mechanical methods of removing cut tree stumps other than grinding, would provide some flexibility to the permittee and account better for different tree types and locations. While this relaxation would provide some relief to the permittee, there would not be any significant savings from the change as the cost of different methods only varies to a small extent.

The addition in (g)(12) of the alternative of pruning trees to planting would have a net positive effect for both the agency and the permittee: pruning would be less costly for the permittee, and the agency would not lose (temporarily) the value of a mature tree. The agency does not expect this change overall to have a significant impact. First, it is unclear how many times this alternative would be used. Second, from the perspective of the permittees, if the pruning alternative is used, they would probably have to prune the tree more often, or eventually still need to cut the tree, thereby offsetting some of the initial cost savings. Third, in the case of cutting and replanting a tree, the agency incurs only temporarily the loss of a mature tree while the replanted tree grows.

As earlier stated, numerous general formatting and clarification changes are included in the proposed rule changes. Such changes, related to this fiscal note, are included in .0608, .0609, .0610, and .0611. These changes do not affect the impact from the proposed changes, and thus the content of this fiscal note.

NOTE on G.S. 136-133.1 (f):

This item was a technical correction in the S.L. 2013-413 to reflect what was originally intended in the earlier Session Law 2011-397 and which has already been interpreted and implemented in actual practice at permitted sites. No NCAC rule changes are necessary or proposed for this correction.

APPENDIX 1:

Proposed Rule Changes as a result of HB 74.

Begins on next page.

Note that the highlighted text below represents rule text changes made since the proposed rules were published in the *North Carolina Register*.

19A NCAC 02E .0608 IS AMENDED WITH CHANGES AS PUBLISHED IN 29:06 NCR 650 AS FOLLOWS:

**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~~ applicable county's Division Engineer of the North Carolina Department of Transportation, Division of Highways. ~~Applications with all required documentation~~ Applications shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality ~~which~~ that 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 shall accompany each application.~~ Applications for selective vegetation removal permits shall include the following information consistent with G.S. 136-133.1:

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

- (12) performance ~~and indemnity~~ bond or certified check or cashier's check pursuant to G.S. 136-93;
- (13) if using a contractor for vegetation removal work, identify the contractor and their qualifications if contractor is not listed on the Department's website directory of qualified transportation firms;
- (14) payment of non-refundable \$200 permit fee, pursuant to G.S. 136-18.7;
- (15) certificate of liability and ~~proof of [all legally required insurance coverage, including]~~ worker's compensation and vehicle liability ~~insurance coverage; [in the amounts required and according to North Carolina law];~~
- (16) geographic information system document and property tax identification number to verify location of sign in relation to municipal limits and territorial jurisdiction boundary;
- (17) verification of on-site marking and tree-tagging requirements;
- (18) if cutting request is for a modified cut zone along a highway ramp, a diagram of the cut zone is required unless diagram is included on a site plan and calculations are required comparing the modified cut zone to the normal cut zone;
- (19) if the Department disputes the site plan, the Department may request additional information per G.S. 136-133.1(c);
- (20) certification that applicant has permission from the adjoining landowner(s) to access their private property for the purpose of conducting selective vegetation removal permit activities; and
- (21) applicant's notarized signature.

~~(b) 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).~~

~~(b)~~ (b) For signs eligible for municipal review the applicant ~~must~~ must include on the application and, as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign was originally erected. Upon request, the Department ~~will~~ shall furnish the year of sign erection to the applicant. The Department ~~reserves the right to~~ may require additional proof if the year of the sign erection remains in question.

~~(c)~~ (c) The selective vegetation removal request may be ~~investigated~~ reviewed on site by Department personnel and a representative of the applicant.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-130; 136-133.1; 136-133.2;

Temporary Rule Eff. March 1, 2012;

Eff. November 1, 2012.

Amended Eff. January 1, 2015.

19A NCAC 02E .0609 IS AMENDED WITH CHANGES AS PUBLISHED IN 29:06 NCR 652 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, ~~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 [or she] 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~~ 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~~ the application is for the opening of a view to a sign ~~which~~ that 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; it is determined by Department personnel that removal of vegetation may~~ adversely affect the safety of the traveling public;
- (4) ~~The~~ the application is for the removal of vegetation planted in accordance with a local, state, or Federal beautification project prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, 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, Rule .0611 of this Section~~, Paragraph (d) and Subparagraph (g)(11); and is approved agreed upon in writing by the applicant, the Department, and, if applicable, the Federal Highway Administration;
- (5) ~~On~~ 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~~ permit, unless the applicant engages a landscape contractor to perform the current work;
- (6) ~~It involves opening of views to junkyards; the application is for removal of vegetation that will open views to junkyards;~~
- (7) ~~The~~ 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~~ the applicant fails to ~~provide [a completed]~~ complete an application, as described in Rule .0608 of this Section; ~~all documentation required in applicable General Statutes and rules;~~
- (9) ~~Any~~ any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011 or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project. The Department may mitigate within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, and such mitigation vegetation may not be cut or removed pursuant to a selective vegetation removal ~~permit.~~ permit; or
- (10) a modified vegetation removal zone application request along acceleration or deceleration ramps is not in accordance with G.S. 136-133.1(a1) or Rule .0612 of this Section.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-130; 136-133.1 (a1), 136-133.2; 136-133.3; 136-133.4, 136-93;
Temporary Adoption Eff. March 1, 2012;
Eff. February 1, 2013.
Amended Eff. January 1, 2015.

19A NCAC 02E .0610 IS AMENDED WITH CHANGES AS PUBLISHED IN 29:06 NCR 652 AS FOLLOWS:

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

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

- (1) Selected vegetation, as defined in G.S. 136-133.1(b), may ~~be allowed to~~ be cut, thinned, ~~pruned~~ pruned, or removed in accordance with the standards set out in G.S. 136-133.4;
- ~~(2)~~ (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 there from, [therefrom,] arising out of or in any way related to [the] permittee's operation;~~
- ~~(3)~~ (2) The permittee shall furnish a Performance ~~and Indemnity Bond~~ 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 Performance [and Indemnity] Bond, or 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 Performance [and Indemnity] Bond, or certified check or cashier's check ~~bond or certified check or cashier's check~~ is required shall be paid with the application 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~~ the Department 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)~~ (3) 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~~ that type of bond shall be kept on file by the Utilities Unit of the Department;
- ~~(5)~~ (4) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity ~~must~~ shall furnish the Performance and Indemnity Bond or certified check or cashier's check ~~required bonding~~ as described in this ~~Section,~~ Rule, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the ~~Department.~~ Department, or on the Department's website www.ncdot.gov. Bonds are to be furnished with the ~~Selective Vegetation Removal~~ selective vegetation removal application form to the ~~appropriate~~ official assigned to receive selective vegetation removal applications at the local NCDOT North Carolina Department of Transportation, Division of Highways Office;
- ~~(6)~~ (5) 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,~~

contractor, or agent shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability insurance coverage, in the amounts required by and according to North Carolina law. The permittee, his contractor or agent, contractor, or agent, may be 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, Item, 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)(6) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per G.S. 136-133.1(a)(5). The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines 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)(7) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the proper permitted cutting distances according to G.S. 136-133.1(a)(1) – (6). Points A & B along the right-of-way boundary (or fence if there is a control of access fence) are to shall be marked with visible flagging tape. Points C, D, & E along the edge of the pavement of the travel way are to shall be marked with spray paint, including the actual distances. If the sign is located at an acceleration or deceleration ramp, points C, D, & E shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;

(9)(8) The permittee shall perform tagging of trees. The permittee shall tag with a visible material or flagging all trees, including existing trees and other trees that are, at the time of the selective vegetation removal application, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The applicant shall tag the existing trees (the exact same existing trees as on the site plan) that are desired to be cut, thinned, pruned, or removed with visible material or 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; The permittee shall tag, with visible material or flagging trees, according to Rule .0602(b) of

this Section, with a diameter of four caliper inches and larger, as measured six inches above ground level at the time of the application that are screening the facility from view and are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zones. 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:

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

(A) ~~(a)~~ Submit ~~submit~~ the reimbursement to the Department pursuant to G.S. ~~136-93.2~~ 136-133.1(d) in a cashier's or certified check;

~~(B)~~ (b) ~~Fully~~ fully disassemble two non-conforming outdoor advertising signs and their supporting structures and return the outdoor advertising permits tags to the Department pursuant to G.S. 136-133.1(d); or

~~(C)~~ (c) ~~Obtain~~ obtain Departmental approval for the replanting plan in accordance with G.S. 136-133.1(e) and 19A-NCAC 02E-.0611- Rule .0611 of this Section.

(41)(10) 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;

(42)(11) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, and a redetermination 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 cutting, thinning, pruning, or removal of vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later, or due to the application at any time of State statutes or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project or due to mitigation within the right of way in the cut zone of a permitted outdoor advertising structure so long as trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face, the permittee shall comply with applicable conditions, mitigation, rules, statutes, or permits for such portion of the cutting or removal zone. If applicable conservation agreements, mitigation or conditions affecting the right of way to which the State is subjected or agrees to in writing to subject itself and other restrictions agreed upon by~~

~~the State in writing in the right of way, 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 applicable conservation agreements, mitigation, conditions, State or Federal rules, statutes or permits including equipment type for those portions of the cutting or removal zone. Portions of the maximum cutting or removal zone not within a conservation or mitigation area nor applicable to conditions affecting the right of way to which the State is subject or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, 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. 136-93.~~

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

- (a) he State is subjected to or agrees in writing to subject itself to conditions affecting the right of way, including conservation agreements, prior to September 1, 2011, or prior to the issuance of an outdoor advertising permit for the erection of the applicable outdoor advertising structure, whichever date is later; or
- (b) applicable State or Federal statutes or rules, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a Federal or State agency with jurisdiction over the construction project prohibit vegetation removal; or
- (c) mitigation within the right of way in the cut zone of a permitted outdoor advertising structure prohibits vegetation removal, however, trees and other plant materials for mitigation may not be of a projected mature height to decrease the visibility of a sign face.

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

(13) The permittee ~~must~~ shall 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~~ When a present inspector fails 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)~~(15) A selective vegetation removal permit ~~must~~ shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;

~~(17)~~(16) ~~Should the Division 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; When the Division Engineer ("Engineer") or his representative observes unsafe operations, activities, or conditions, he shall suspend work. Work shall not resume until the unsafe operations, activities, or conditions have been eliminated or corrected. Failure to comply with any of the Federal, State and local laws, ordinances, and regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, according to the North Carolina General Statutes, Article 16, Chapter 95 entitled: Occupational Safety and Health Act of North Carolina. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;~~

~~(18)~~(17) The applicant ~~must~~ shall 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)~~(18) The ~~Permittee~~ permittee or its contractor or agent ~~must~~ shall have a copy of the ~~Selective Vegetation Removal Permit~~ 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)~~(19) 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~~ may 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)~~(20) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;

~~(22)~~(21) 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 Department, ~~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~~ may modify the permittee's work schedule for nights, weekends,

and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;

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

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

(25)(24) 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;

(26)(25) 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,~~ in a clean appearance, [with] leaving no debris at the site as a result of the cutting operation at the end of each workday; and

(27)(26) Upon completion of all work, the Department shall notify ~~the Division Engineer who shall notify~~ the ~~Permittee~~ permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity ~~Bond~~ Bond, or certified or cashier's check to the permittee. For replanting work, a

different bond release schedule shall be applicable according to Rule .0611 of this Section. ~~to~~
~~19A NCAC 02E. 0611(g)(8);~~ The permittee may terminate the permit at any time and request
return of the Performance and Indemnity Bond, or certified or cashier's check. The termination
and request for return of the Performance and Indemnity Bond, or certified or cashier's check shall
be made in writing and sent to the Division Engineer.

(28) ~~Pursuant to G.S. 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; 136-93.2; 136-130; 136-133.1;
136-133.1 (a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; 136-127;
Temporary Adoption Eff. March 1, 2012;
Eff. February 1, 2013.
Amended Eff. January 1, 2015.

19A NCAC 02E .0611 IS AMENDED WITH CHANGES AS PUBLISHED IN 29:06 NCR 656 AS FOLLOWS:

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

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

(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~~ shall 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~~ site plan shall be in accordance with G.S. 136.133.1(c).

(d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in ~~19A NCAC 02E Rules .0603(b)(6) and .0609(b)(4) of this Section. .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 Departments 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 G.S. 136-93(d) or has notified the Department of its desire to review and provide comments on beautification and replanting plans. The local government shall be given 15 days to review and provide comments on beautification and replanting plans. 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~~ Section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, business facilities, or agritourism activities, 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 current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Horticulture Association 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. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained free of charge from this website of the American Horticulture Association: www.americanhort.org. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All ~~applicable permit 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 and detail~~ 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~~ of their employees, agents, or assigns ~~according to~~ shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc., ~~International Society of Arboriculture standards~~ except as stipulated in the rules in this Section. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a \$20.00 cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. Initial and replacement planting ~~will~~ may be considered acceptable ~~when~~ if the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species that ~~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~~ that are not in a living and healthy condition as defined in these Rules;
- (2) The permittee ~~must~~ shall 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 current edition and subsequent amendments and editions of the American Standard for Nursery ~~Stock~~; Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Nursery and Landscape Association Horticulture Association. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained free of charge from this website of the American Horticulture

Association: www.americanhort.org. The mailing address for AmericanHort is 2130 Stella Ct, Columbus, OH 43215;

- (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 or other mechanical removal of all cut stumps (to a minimum depth of four inches below ground level) ~~must~~ shall be completed in the area of replanting during the preparation of the site, prior to initial planting;
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) 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~~ shall 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~~ shall be requested in writing to the Department. The Department shall notify the permittee in writing of the approved changes to the replacement plantings;
- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the ~~applicable~~ bond. Then a one-year observation period shall begin ~~in~~ during 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~~ permittee is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation ~~period and in~~ period. Replacement shall occur in accordance with the dates of planting as stated in the rules in this Section;

- (9) After the one-year observation period concludes, the Department shall notify the ~~sign owner~~ permittee if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry Association Inc., however, topping of trees or other vegetation is not allowed. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a \$20.00 cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org;
- (11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in Rule .0609(b)(4) of this Section. ~~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 Rule .0609(b)(4) of this Section,~~ trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign ~~faces:~~ faces. As an alternative to replanting, mitigation by pruning for vegetative crown reduction at an existing beautification project may be allowed, if mutually agreed upon in writing by the Department and permittee. All pruning shall be performed by removing the fewest number of branches necessary to accomplish the desired objective but in consideration of normal seasonal regrowth for the type of vegetation. All pruning for purposes of mitigation shall be in accordance with the current edition and subsequent amendments and editions of the American National Standards for Tree Care Operations-Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care

Industry Association, Inc. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a \$20.00 cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. In the case of vegetation mortality caused by pruning, replacement plantings shall be required according to Rule .0611 of this subchapter;

- (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~~, Section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation; and
- (14) Willful failure to substantially comply with the requirements of this ~~Paragraph~~ Rule for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

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

19A NCAC 02E .0612 IS ADOPTED WITH CHANGES AS PUBLISHED IN 29:06 NCR 659 AS FOLLOWS:

19A NCAC 02E .0612 MODIFIED VEGETATION CUT OR REMOVAL ZONE FOR OUTDOOR ADVERTISING

(a) In accordance with G.S. 136-133.1(a1), at the request of an selective vegetation removal permit applicant, the Department may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone along acceleration and deceleration ramps. Upon approval of this modified cut zone, the conditions of the initial permit as set forth in Rule .0604 and Rule .0610 of this Section, in addition to the following requirements shall apply:

- (1) the request for a modified vegetation cut or removal zone along acceleration or deceleration ramps shall be noted on the selective vegetation removal application at the time the application is submitted. The same application requirements as set forth in Rule .0608 of this Section shall apply to a modified vegetation cut or removal zone request.
- (2) the application shall include a diagram of the modified cut zone request to clearly indicate the relocated point A to point D line and the relocated point B to point E line. If the request includes removal of existing trees as defined in G.S. 136-133.1(b)-(e), the applicant may indicate the relocated points on the required site plan in lieu of a separate diagram. The applicant shall provide calculations showing that the total aggregate area of cutting or removal equals the maximum allowed in G.S. 136-133.1(a). The applicant shall mark the modified points A, B, D, and E, as applicable, at the site for review by the Department. Modified points A and 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. Modified points C, D, & E along the edge of the pavement of the ramp are to be marked with spray paint, including the actual distances. Such markings for a modified vegetation cut or removal zone under G.S. 136-133.1(a1) shall represent and equal the maximum cut or removal area along the surface of the ground allowed in G.S. 136-133.1(a).
- (3) the Department may authorize a one-time modification of the maximum vegetation cut or removal zone for each requested sign face when the view to the outdoor advertising sign face will be improved. The modified area of vegetation cutting or removal shall cause the point A to point D line and the point B to point E line as set forth in G.S. 136-133.1(a) to be relocated as long as the total aggregate area of cutting or removal does not exceed the maximum allowed for the defined cut or removal zone in G.S. 136-133.1(a). Points A and B shall always remain on the right-of-way line and points D and E shall always remain on the edge of the pavement of the ramp. G.S. 136-133.1(g) regarding cutting vegetation from the private property side along a controlled access fence shall remain applicable from relocated point A of the modified cut zone to relocated point B of the modified cut zone.

- (4) the Department shall establish and document the modified cut or removal zone as the permanent view [zone, which] that shall not be altered for future selective vegetation removal permits.
- (5) If an outdoor advertising site has previously been cut under a valid selective vegetation removal permit, in accordance with G.S. 136-93 (b), to the extent that the requirement of not exceeding the total aggregate area of cutting or removal allowed in G.S. 136-133.1(a) cannot be met, the applicant may apply for a modified cut or removal zone no sooner than one year after the most recent cutting activity at the site. Within the one year period, the applicant may, to the extent that the maximum cut or removal zone defined in G.S. 136-133.1(a) was not previously cut, apply that uncut area towards determining the limits of the one-time modified cut request as defined in G.S. 136-133.1(a1) and the Rules of this Subchapter.
- (6) Should the outdoor advertising structure subject to a modified cut or removal zone for a selective vegetation removal permit be sold or transferred, the new owner or outdoor advertising permit holder shall be subject to G.S. 136-133.1(a1), and the Rules of this Subchapter and shall not alter the modified cut zone as established and documented for a previous sign owner or permit holder.
- (7) Upon denial or conditioning by the Department of Transportation of a modified vegetative cut or removal zone under GS 136-133.1(a1), the applicant may file an appeal pursuant to GS 136-133.3.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-130; 136-133.1; 136-133.1 (a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; 136-127;
Eff. January 1, 2015

APPENDIX 2:

**OUTDOOR ADVERTISING AMENDMENTS
SESSION LAW 2013-413, HOUSE BILL 74 PART II SECTION 8.(a) G.S. 136-133.1
READS AS REWRITTEN:**

"§ 136-133.1. Outdoor advertising vegetation cutting or removal.

...

(a1) Notwithstanding any law to the contrary, in order to promote the outdoor advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of Transportation, at the request of a selective vegetation removal permittee, may approve plans for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone defined in subsection (a) of this section along acceleration or deceleration ramps so long as the view to the outdoor advertising sign will be improved and the total aggregate area of cutting or removal does not exceed the maximum allowed in subsection (a) of this section.

...

(f) Tree branches within a highway right-of-way that encroach into the zone created by points A, C, ~~and DB~~, D, and E may be cut or pruned. Except as provided in subsection (g) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

..."

NOTES:

- 1) Section 8.(b) is an additional amendment concerning modernization of outdoor advertising devices and is not included as a part of this revised fiscal note submittal.
- 2) Amended G.S. 136-133.1 (f) was a technical correction made by S.L. 2013-413. No related NCAC rules changes are necessary.