19A NCAC 02E .0201 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0201  DEFINITIONS FOR OUTDOOR ADVERTISING CONTROL

In addition to the definitions set forth in G.S. 136-128, the following definitions shall apply for purposes of outdoor advertising control:

1. Abandoned Sign: A sign that is not being maintained as required by the rules in this Section. The absence of a valid lease is one indication of an abandoned sign. An outdoor advertising sign structure shall be considered to be abandoned if for a period of 12 months the sign has been without a message, contains obsolete advertising matter, or is significantly damaged or dilapidated.

2. Automatic Changeable Facing Sign: A sign, display, or device which changes the message or copy on the sign facing electronically by movement or rotation of panels or slats, or by digital means.

3. Blank Sign: A sign structure on which all faces contain no message, or which contains only a telephone number advertising its availability.

4. Comprehensive Zoning: Zoning by local zoning authorities of each parcel of land under the jurisdiction of the local zoning authority placed in a zoning classification pursuant to a comprehensive plan, or reserved for future classification;

   (a) A comprehensive plan means a development plan which guides decisions by the local zoning authority relating to zoning and the growth and development of the area;

   (b) Even if comprehensively enacted, the following criteria shall determine whether such zoning is enacted primarily to permit outdoor advertising:

      (i) The zoning classification provides for limited commercial or industrial activity only incidental to other primary land uses;

      (ii) The commercial or industrial activities are permitted only by variance or special exceptions; or

      (iii) The zoning constitutes spot or strip zoning. "Spot zoning" or "strip zoning" is zoning designed primarily for the purpose of permitting outdoor advertising signs in an area which would not normally permit outdoor advertising.

5. Conforming Sign: A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current legal requirements for erecting a new sign at that site.

6. Controlled Access Highway: A highway on which entrance and exit accesses are permitted only at designated points.

7. Controlled Route: Any interstate or federal-aid primary highway as it existed on June 1, 1991, and any highway which is or becomes a part of the National Highway System (NHS).

8. Destroyed Sign: A sign no longer in existence due to factors other than vandalism or other criminal or tortious acts. An example of a destroyed sign includes a sign which has been blown down by the wind and sustains damage in excess of 50 percent as determined by the criteria in 19A NCAC 02E .0225(f).
Dilapidated Sign: A sign which is shabby, neglected, or in disrepair, or which fails to be in the same form as originally constructed, or which fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include, but are not limited to, structural support failure, a sign not supported as originally constructed, panels or borders missing or falling off, intended messages cannot be interpreted by the motoring public, or a sign which is blocked by overgrown vegetation outside the highway right of way.

Directional Sign: A sign which contains directional information about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Directional and other official signs and notices include, but are not limited to, public utility signs, service club and religious notices, or public service signs.

(a) Public Service Sign: A sign located on a school bus stop shelter which meets all the following requirements:
   (i) identifies the donor, sponsor or contributor of said shelter;
   (ii) is located on a school bus shelter which is authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved;
   (iii) contains only safety slogans or messages which shall occupy not less than 60 percent of the area of the sign;
   (iv) does not exceed 32 square feet in area; and
   (v) contains not more than one sign facing in any one direction.

(b) Public Utility Sign: A warning sign, informational sign, notice or other marker customarily erected and maintained by publicly or privately owned utilities, which are essential to their operations.

(c) Service Club and Religious Notices: Any sign or notice authorized by law which relates to meetings of nonprofit service clubs, charitable associations, or religious services. These signs shall not exceed eight square feet in area.

Discontinued Sign: A sign no longer in existence. A discontinued sign includes a sign of which any part of a sign face is missing more than 180 days. In some cases, a sign may be both discontinued and dilapidated.

Fully Controlled Access Highway: Freeway: A divided arterial highway for through traffic with full control of access.

Highway: A highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System. A highway shall be a part of the National Highway System on the date the location of the highway has been approved finally by the appropriate federal authorities.
Lease: An agreement, in writing, by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a valid contract under North Carolina laws.

Main Traveled Way or Traveled Way: Part of a highway on which through traffic is carried, exclusive of paved shoulders. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a traveled way. It does not include frontage roads, turning roadways, or parking areas.

Nonconforming Sign: A sign which was lawfully erected but which does not comply with the provisions of State law or rules passed at a later date or which later fails to comply with State law or rules due to changed conditions. Also includes a sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or National Highway System in a zoned or unzoned commercial or industrial area which does not meet all current standards for erecting a new sign at that site. For purposes of the outdoor advertising rules, nonconforming signs also include those signs which have become nonconforming pursuant to 19A NCAC 02E .1002(d) on scenic byways which were part of the interstate or federal-aid primary highway system as of June 1, 1991, or which are or become a part of the National Highway System.

Official Sign/Notice: A sign or notice erected and maintained by public officers or public agencies within their territorial or zoning jurisdictions and pursuant to and in accordance with federal, state, or local law for the purpose of carrying out an official duty or responsibility. Official signs and notices include, but are not limited to, historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies.

On-premise/On-property Sign: A sign which advertises the sale or lease of property upon which it is located or which advertises an activity conducted or product for sale on the property upon which it is located. An on-premise sign may not be converted to a permitted outdoor advertising sign unless it meets all rules in effect at the time of the conversion request. An on-premise sign must be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include, but are not limited to:

(a) Tracts of land separated by a federal, state, city, or public access maintained road;
(b) Tracts of land not under common ownership; or
(c) Tracts of land held in different estates or interests.

Parkland: Any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

Permit Holder: A permit holder shall be the sign owner, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the permit holder is a person or entity other than the actual owner of the sign. In this case, the actual sign owner’s name, mailing address, and telephone number must be declared.
Salvageable Sign Components: Components of the original sign structure prior to the damage that can be repaired or replaced on site by the use of labor only. If any materials, other than nuts, bolts, nails or similar hardware, are required in order to repair a component, the component is not considered to be salvageable.

Scenic Area: Any area of particular beauty or historical significance as determined by the federal, state, or local official having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation and enhancement of beauty.

Scenic Byway: A scenic highway or scenic byway designated by the Board of Transportation, regardless of whether the route so designated was part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System.

Sign: Any outdoor sign, sign structure, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other object which is designed, intended, or used to advertise or inform. A sign includes any of the parts or material of the structure, such as beams, poles, posts, and stringers, the only eventual purpose of which is to ultimately display a message or other information for public view. For purposes of these rules, the term "sign" and its definition shall be interchangeable with the following terms: outdoor advertising, outdoor advertising sign, outdoor advertising structure, outdoor advertising sign structure, sign structure, and structure.

Sign Conforming by Virtue of the "Grandfather Clause:" A sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or NHS in a zoned or unzoned commercial or industrial area which does not meet all current standards for erecting a new sign at that site.

Sign Face: The part of the sign, including trim and background, which contains the message or informative contents. For purposes of measuring the maximum area or height of a sign, embellishments or extended advertising shall be excluded.

Sign Location/Site: A sign location or site for purposes of these rules shall be measured to the closest 1/100th of a mile, in conformance with Department of Transportation methods of measurement for all state roads—the latitude and longitude as determined by recreational grade global position system (GPS) equipment. The location or site shall be determined and listed on each outdoor advertising permit application by DOT personnel.

Sign Owner: A sign owner shall be the permit holder of record, and for purposes of the rules in this Section the terms and definitions shall be interchangeable, unless the Department of Transportation, through the appropriate district office, has been notified in writing that the sign owner is a person or entity other than the actual holder of the permit. In this case, the actual sign owner's name, mailing address, and telephone number must be declared.
Significantly Damaged Sign: A sign which has been damaged or partially destroyed due to factors other than vandalism or other criminal or tortious acts to such extent that the damage to the sign is greater than fifty percent as determined by the criteria in 19A NCAC 02E .0225(d).

Unzoned Commercial or Industrial Area: An area which is not zoned by state or local law, regulation, or ordinance, and which is within 660 feet of the nearest edge of the right of way of the interstate or federal-aid primary system or NHS, in which there is at least one commercial or industrial activity that meets all requirements specified in 19A NCAC 02E .0203(5).

Zoned Commercial or Industrial Area: An area which is zoned for business, industry, commerce, or trade pursuant to a state or local zoning ordinance or regulation. Local zoning action must be taken pursuant to the state's zoning enabling statute or constitutional authority in accordance therewith. Zoning which is not part of comprehensive zoning or which is created primarily to permit outdoor advertising structures shall not be recognized as valid zoning for purposes of the Outdoor Advertising Control Act and the rules promulgated thereunder, unless the land is developed for commercial or industrial activity as defined under 19A NCAC 02E .0203(5).

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; December 1, 1993; March 1, 1993; December 1, 1990; January 1, 1984.
19A NCAC 02E .0202 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0202 AGREEMENT

(a) The Department of Transportation has entered into an agreement with the United States Department of Transportation relating to the control of outdoor advertising in areas adjacent to the interstate and federal-aid primary highway systems or NHS in accordance with Section 131(b), and Section 104 of Title 23 of the United States Code and Part 750 of Title 23 of the Code of Federal Regulations. To the extent that these federal regulations and subsequent amendments and editions are more restrictive than North Carolina Department of Transportation rules, these federal regulations are expressly incorporated by reference as part of this section. Copies of Title 23 of the United States Code are available from the Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328. The Code of Federal Regulations, Title 23, is available from the same address.

(b) A copy of this agreement is on permanent file in the Office of the Chief Engineer.

History Note: Authority G.S. 136-138; 143B-350(f); 150B-21.6;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.
19A NCAC 02E .0203 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0203  OUTDOOR ADVERTISING ON CONTROLLED ROUTES

The following standards shall apply to the erection and maintenance of outdoor advertising signs in all zoned and unzoned commercial and industrial areas located within 660 feet of the nearest edge of the right of way of the controlled route. The standards shall not apply to those signs enumerated in G.S. 136-129(1), (2), (2a) and (3), which are directional and other official signs and notices, signs advertising the sale or lease of property upon which they are located, signs advertising the sale of crops at roadside stands, and signs which advertise activities conducted on the property upon which they are located.

(1) Configuration and Size of Signs:

(a) The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, embellishments, extended advertising space, supports, and other structural members.

(b) The area shall be calculated by measuring the outside dimensions of face, excluding any apron, embellishments, or extended advertising space.

(c) The maximum size limitations shall apply to each side of a sign structure; the signs may be placed back-to-back, side-by-side; or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

(d) Side-by-side signs shall be structurally tied together to be considered as one sign structure.

(e) V-type and back-to-back signs shall not be considered as one sign if located more than 15 feet apart at their nearest points.

(f) The height of any portion of the sign structure, excluding cutouts or embellishments, as measured vertically from the adjacent edge of pavement of the main traveled way shall not exceed 50 feet.

(g) Double-decking of sign faces so that one is on top of the other is prohibited.

(2) Spacing of Signs:

(a) Signs may not be located in a manner to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, or to obstruct or physically interfere with the driver’s view of approaching, merging, or intersecting traffic.

(b) Controlled Routes with Fully Controlled Access (Freeways):

(i) No two structures shall be spaced less than 500 feet apart.

(ii) Outside the corporate limits of towns and cities, no structure may be located within 500 feet of an interchange, collector distributor, intersection at grade, safety rest area or information center regardless of whether the main traveled way is within or outside the town or city limits. The 500 feet spacing shall be measured from the point at which the pavement widens and the direction of measurement...
shall be along the edge of pavement away from the interchange, collector distributor, intersection at grade, safety rest area or information center. In those interchanges where a quadrant does not have a ramp, the 500 feet for the quadrant without a ramp shall be measured along the outside edge of main traveled way for freeways/highways as follows:

(A) Where a route is bridged over a freeway fully controlled access highway, the 500 foot measurement shall begin on the outside edge of pavement of the freeway fully controlled access highway at a point directly below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange.

(B) Where a freeway fully controlled access highway is bridged over another route, the 500 foot measurement shall be made from the end of the bridge in the quadrant. The direction of measurement shall be along the edge of main traveled way away from the bridge.

(C) Where the routes involved are both freeways fully controlled access highways, measurements on both routes shall be made according to (A) or (B) of this Subitem, whichever applies. Should there be a situation where there is more than one point at which the pavement widens along each road within a quadrant, the measurement shall be made from the pavement widening which is farthest from the intersecting roadways.

(c) Controlled Routes Without Fully Controlled Access:

(i) Outside of incorporated towns and cities -- no two structures shall be spaced less than 300 feet apart; and

(ii) Within incorporated towns and cities -- no two structures shall be spaced less than 100 feet apart.

(d) The foregoing provisions for the spacing of signs do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

(e) Official and "on-premise" signs, as permitted under the provisions of G.S. 136-129(1), (2), (2a) and (3), and structures that are not lawfully maintained shall not be included nor shall measurements be made from them for purposes of determining compliance with spacing requirements; and

(f) The minimum distance between structures shall be measured along the nearest edge of the main traveled way between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.

(3) Lighting of Signs; Restrictions:
(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights including animated or scrolling advertising, are prohibited, unless expressly allowed under Item 4, of this rule except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the controlled routes and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with the operation of a motor vehicle are prohibited.

(c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state; and

(e) Lighting shall not be added to or used to illuminate nonconforming signs or signs conforming by virtue of the grandfather clause.

(4) Automatic Changeable Facing Sign:

(a) Automatic changeable facing signs shall be permitted on the controlled routes under the following conditions:

(i) The sign does not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising;

(ii) The changeable facing remains in a fixed position for at least eight seconds;

(iii) If a message is changed electronically, it must be accomplished within an interval of two seconds or less;

(iv) The sign is not placed within 1,000 feet of another automatic changeable facing sign on the same side of the highway;

(v) The 1000-foot distance shall be measured along the nearest edge of the pavement and between points directly opposite the signs along each side of the highway;

(vi) A legally conforming structure may be modified to an automatic changeable facing upon compliance with these standards and approval by the Department.

An application for an outdoor advertising alteration permit shall be made on NCDOT form OA-1A, which may be obtained at any District Office or the NCDOT website. Nonconforming or grandfathered structures shall not be modified to an automatic changeable facing;

(vii) The sign must contain a default design that will freeze the sign in one position if a malfunction occurs; and

(viii) The sign application meets all other permitting requirements.

(b) The outdoor advertising permit shall be revoked for failure to comply with this Item.
(5) Unzoned Commercial or Industrial Area Qualification for Signs:

(a) To qualify an area unzoned commercial or industrial for the purpose of outdoor advertising control, one or more commercial or industrial activities shall meet all of the following criteria prior to submitting an outdoor advertising permit application:

(i) The activity shall maintain all necessary business licenses as may be required by applicable state, county or local law or ordinances;

(ii) The property used for the activity shall be listed for ad valorem taxes with the county and municipal taxing authorities as required by law;

(iii) The activity shall be connected to basic utilities including but not limited to power, telephone, water, and sewer, or septic service;

(iv) The activity shall have direct or indirect vehicular access and be a generator of vehicular traffic;

(v) The activity shall have a building designed with a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the right of way of the controlled route. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply;

(A) The mobile home unit or recreational vehicle shall meet the North Carolina State Building Code criteria for commercial or business use.

(B) A self-propelled vehicle shall not qualify for use as a business or office for the purpose of these rules.

(C) All wheels, axles, and springs shall be removed.

(D) The unit shall be permanently secured on piers, pad, or foundation.

(E) The unit shall be tied down in accordance with local, state, or county requirements;

(vi) The commercial or industrial activity must be in active operation a minimum of six months prior to the date of submitting an application for an outdoor advertising permit;

(vii) The activity shall be open to the public during hours that are normal and customary for that type of activity in the same or similar communities but not less than 20 hours per week;

(viii) One or more employees shall be available to serve customers whenever the activity is open to the public; and

(ix) The activity shall be visible and recognizable as commercial or industrial from the main traveled way of the controlled route. An activity is visible when that portion on which the permanent building designed, built, or modified for its current commercial use can be clearly seen twelve months a year by a person of
normal visual acuity while traveling at the posted speed on the main traveled way
of the controlled route adjacent to the activity. An activity is recognizable as
commercial or industrial when its visibility from the main traveled way of the
controlled route is sufficient for the activity to be identified as commercial or
industrial.

(b) Each side of the controlled route shall be considered separately. All measurements shall
begin from the outer edges of regularly used buildings, parking lots, storage or processing
areas of the commercial or industrial activity, not from the property line of the activity and
shall be along the nearest edge of the main traveled way of the controlled route.

c) The proposed sign location must be within 600 feet of the activity.

d) To qualify an area as unzoned commercial or industrial for the purpose of outdoor
advertising control, none of the following activities shall be recognized:

(i) Outdoor advertising structures;

(ii) On-premise or on-property signs defined by Rule .0201(18) of this Section if the
on-premise/on-property sign is the only part of the commercial or industrial
activity that is visible from the main-traveled way;

(iii) Agricultural, forestry, ranching, grazing, farming, and related activities,
including, but not limited to temporary wayside fresh produce stands;

(iv) Transient or temporary activities;

(v) Activities not visible and recognizable as commercial or industrial from the traffic
lanes of the main traveled way;

(vi) Activities more than 660 feet from the nearest edge of the right of way;

(vii) Activities conducted in a building principally used as a residence;

(viii) Railroad tracks and minor sidings;

(ix) Any outdoor advertising activity or any other business or commercial activity
 carried on in connection with an outdoor advertising activity; and

(x) Illegal junkyards, as defined in G.S. 136-146, and nonconforming junkyards as
 set out in G.S. 136-147;

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

Eff. July 1, 1978;

Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; November 1, 1988.
19A NCAC 02E .0204 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0204  LOCAL ZONING AUTHORITIES

Local zoning authorities may certify to the Board of Transportation when they have established effective control within zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, and with customary use. Upon authorization from the Chief Engineer to the local zoning authority, the size, lighting and spacing requirements set forth in G.S. 136 Articles 11 and 11A or 19A NCAC 02E .0200, will not apply to those areas and the local zoning authority shall be authorized to issue permits for the erection and maintenance of outdoor advertising signs.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
19A NCAC 02E .0206 is proposed for readoption without substantive changes as follows:

**19A NCAC 02E .0206 APPLICATIONS**

(a) An application for an outdoor advertising permit shall be made on NCDOT form OA-1, which may be obtained at any District Office or the NCDOT website at www.ncdot.gov. Upon completion, the application shall be submitted to the district office for the district where the proposed site is located. The application shall be submitted by Certified Mail and include the following attachments:

1. A written lease or written proof of interest in the land where a sign is proposed to be constructed. An applicant may delete information pertaining to term and amount of lease;
2. A right of entry form to provide the right of entry from the property owner or adjacent property owners to allow DOT personnel to enter upon property when necessary for the enforcement of the Outdoor Advertising Control Act or these rules;
3. If zoned, a written statement from the local zoning authority indicating the present zoning of the parcel and its effective date. Upon request of the district engineer or designee, the applicant shall submit copies of minutes from the appropriate zoning authority pertinent to the zoning action;
4. If the area is an unzoned commercial or industrial area, a copy of the documentation confirming that the requirements under 19A NCAC 02E .0203(5)(a)(i) and (ii) have been met;
5. A sign permit of zoning permit, if required by the local government having jurisdiction over the proposed location;
6. A written certification from the sign owner indicating there has been no misrepresentation of any material facts regarding the permit application, or other information supplied to acquire a permit; and
7. The initial nonrefundable permit fee.

(b) Any omission of attachments or certification required in Items (1) through (7) in this Rule may cause the rejection of the application. If the application is incomplete, the entire application package, including application fee, shall be returned to the applicant.

**History Note:** Authority G.S. 136-130; Eff. July 1, 1978; Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.
19A NCAC 02E .0207 is proposed for readoption without substantive changes as follows:

**19A NCAC 02E .0207  FEES AND RENEWALS**

(a) Initial and annual renewal fees shall be paid by the sign owners for each permit requested in order to defer the costs of the administrative and inspection expenses incurred by the Division of Highways of the Department of Transportation in administering the permit procedures.

(b) An initial nonrefundable fee of one hundred and twenty dollars ($120.00) as defined in G.S. 136-133 per outdoor advertising structure shall be submitted with each permit application for a new permit and for an alteration permit and an annual nonrefundable renewal fee of sixty dollars ($60.00) as defined in G.S. 136-133 per sign structure shall be paid by the sign owners on or before April 15 of each year to the appropriate District Engineer’s office. Sign owners must return the information required under Paragraph (c) of this Rule with their annual renewal fees.

(c) The Division of Highways of the Department of Transportation shall send an invoice for the annual renewal fee to each sign owner/permit holder with a valid permit. For a renewal to be approved, the sign owner/permit holder must submit the signed invoice along with the renewal fee. If requested, the permit holder/sign owner shall provide a valid lease or other proof of interest in the land where the sign is located. Failure to submit this documentation within 30 days of written request from the District Engineer’s office by certified mail will subject the permit to revocation under 19A NCAC 2E .0210(4).

19A NCAC 02E .0208 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0208  PERMIT AND PERMIT EMBLEM

(a) A permit shall be issued for lawful outdoor advertising structures by the Division of Highways of the Department of Transportation upon proper application, approval, and the payment of the nonrefundable initial permit fee.

(b) The erection of new outdoor advertising structures shall not commence until a permit has been approved and the emblem issued. The outdoor advertising structure except all sign faces must be completely constructed and erected within 180 days from the date of approval of the permit and issuance of the emblem. If the outdoor advertising structure except sign faces is not constructed within 180 days from the date of approval of the permit and issuance of the emblem then any intervening rule change shall apply to the sign structure. During the 180 day period, the new outdoor advertising structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the rules in this Section.

(c) The permit holder/sign owner shall notify the appropriate Division of Highways District Engineer’s office district engineer by certified mail, return receipt requested, within 10 days after the outdoor advertising structure is completed that it is ready for final inspection.

(d) Prior to notifying the appropriate District Engineer’s office Engineer that the structure has been completed, the sign owner shall place the emblem, which will have an identifying number, on the outdoor advertising structure in such a position as to be visible and readable from the main traveled way of the controlled route.

(e) Prior to notifying the appropriate District Engineer’s office Engineer that the structure has been completed, the sign owner shall 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 from the main traveled way of the controlled route.

(f) Within 90 days after receiving notice that an outdoor advertising structure is complete, the appropriate District Engineer’s office Engineer shall inspect the structure. If the structure fails to comply with the Outdoor Advertising Control Act or the rules in this Section, the District Engineer’s office Engineer shall advise the permit holder/sign owner by certified mail of the manner in which the structure fails to comply and that the structure must be made to comply within 30 days of receipt of the notice or removed.

(g) Replacements for emblems that are missing or illegible may be obtained from the district engineer or designee by submitting a written request accompanied by a copy of the permit application which approved the original emblem.

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

Eff. July 1, 1978;

Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990.
19A NCAC 02E .0209 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0209 TRANSFER OF PERMIT/CHANGE OF ADDRESS

Within 30 days after ownership of a permitted outdoor advertising sign is transferred, the previous or new owner shall submit a written notice, signed by the transferring owner and notarized, to the district engineer—District Engineer’s office for the county in which the sign is located. A permit holder/sign owner must provide the appropriate district engineer—District Engineer’s office with written notice of any change of address within 30 days of the address change. Should a permit holder/sign owner fail to provide written notice of a transfer of permit or change of address, a revocation of a permit for one of the reasons specified in Rule .0210 of this Section shall stand and shall not be affected by failure to notify the district engineer—District Engineer’s office of such changes.

History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993.
19A NCAC 02E .0210 is proposed for readoption without substantive changes as follows:

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 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 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 inspection of an 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 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 Rule, alterations include:
   (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 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 visible as required by Rule .0208 of this Section;
(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 was conducted.
actually or by design by the sign 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 independent contractors hired by any of the above persons; and

(a) 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 except as authorized by the Department of Transportation, including activities authorized by the Department for selective vegetation removal pursuant to 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

(b) involved crossing the control of access fence to reach the sign structure, except as authorized by the Department, including those activities referenced in Sub-Item (a) 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 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; 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 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. 136-93; 136-130; 136-133; 136-133.1(i); 136-133.4(e);

Eff. July 1, 1978;
Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993; March 1, 1993; October 1, 1991; December 1, 1990;
Temporary Amendment Eff. March 1, 2012;
19A NCAC 02E .0212 is proposed for readoption without substantive changes as follows:

19 NCAC 02E .0212 NOTICE GIVEN FOR REVOKING PERMIT

(a) Prior to the revocation of an outdoor advertising permit, the district engineer District Engineer’s office shall notify the permit holder/sign owner by certified mail of the alleged violation under Rule .0210 of this Section. The permit holder/sign owner shall be given thirty (30) days in which to bring the sign into compliance, if permissible by these rules, or provide information concerning the alleged violation to the district engineer or designee to be considered prior to the actual revocation. The district engineer District Engineer’s office shall consider the information provided by the permit holder prior to any revocation of a permit.

(b) When, in the opinion of the District Engineer, Engineer’s office, a violation of Rule .0210 of this Section has occurred, he shall so notify the permit holder/sign owner for the outdoor advertising structure by certified mail, return receipt requested, stating the factual and statutory or regulatory basis for the revocation, and include a copy of the Outdoor Advertising rules. The notification shall also state that because the structure is in violation of the provisions of the Outdoor Advertising Control Act or the rules in this Section, the structure is unlawful and a nuisance and that if the structure is not removed or made to conform to the provisions of the act or the rules within 30 days after receipt of the notification, if permitted by these rules, the Department of Transportation or its agents shall, at the expense of the permit holder/sign owner, remove the outdoor advertising structure.

(c) An outdoor advertising structure cannot be made to conform to the Outdoor Advertising Control Act or these Rules when the permit is revoked under 19A NCAC 2E .0210 (2),(3),(11), or (12).

History Note: Authority G.S. 136-130; 136-134;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.
19A NCAC 02E .0213 is proposed for readoption without substantive changes as follows:

19A NCAC 02E.0213 APPEAL OF DECISION OF DISTRICT ENGINEER’S OFFICE TO SEC. OF TRANS.

(a) Should any permit applicant or permit holder/sign owner disagree with a decision of the appropriate district engineer District Engineer’s office pertaining to the denial or revocation of a permit for outdoor advertising or the determination that an outdoor advertising structure is illegal, the permit applicant or permit holder/sign owner shall have the right to appeal to the Secretary of Transportation pursuant to the procedures hereinafter set out.

(b) Within 30 days from the time of the receipt of the decision of the district engineer District Engineer’s office permit applicant or permit holder/sign owner shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by certified mail, return receipt requested, with a copy to the district engineer District Engineer’s office.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the District Engineer's office’s decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the final agency decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by certified mail, return receipt requested, no later than 90 days after the Secretary receives the written appeal. A copy of the final agency decision shall also be mailed to the district engineer District Engineer’s office.

(d) Judicial review of the final agency decision is governed by G.S. 136-134.1.

History Note: Authority G.S. 136-130; 136-133; 136-134;
Eff. July 1, 1978;
19A NCAC 02E.0214 is proposed for repeal through readoption as follows:

19A NCAC 02E.0214 STANDARDS FOR DIRECTIONAL SIGNS

(a) General—For the purposes of this Section the following directional signs are prohibited:

1. signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;
2. signs which move or have any animated or moving parts;
3. signs located in rest areas, parklands or scenic areas.

(b) Size:

1. No directional sign shall exceed the following limits:
   Maximum area 150 square feet;
   Maximum height 20 feet; and
   Maximum length 20 feet.
2. All dimensions include border and trim, but exclude supports.

(c) Lighting—Directional signs may be illuminated, subject to the following:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited;
2. Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an interstate or primary highway or NHS route or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with the operation of a motor vehicle are prohibited; and
3. No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) Spacing:

1. Each location of a directional sign must be approved by the division of highways;
2. No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other controlled access highways (measured along the highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way);
3. No directional sign may be located within 7,000 feet of a rest area, parkland, or scenic area;
4. No two directional signs facing the same direction of travel shall be spaced less than one mile apart;
5. Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;
6. Directional signs located adjacent to the interstate system shall be within 75 air miles of the activity; and
7. Directional signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) Message Content—The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number, or exit numbers.
(f) Selection Criteria:

1. Privately owned activities or attractions eligible for directional signing are limited to the following:
   natural phenomena, scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

2. Privately owned attractions or activities must be nationally or regionally known. For purposes of this rule the following meanings shall apply:
   (A) Nationally known means the attraction has drawn attention through various forms of media within the continental United States; and
   (B) Regionally known means the attraction is known in a specific region of the state such as the mountains, piedmont, or coastal region, through published articles or paid advertisements available to a regional audience.

History Note: Authority G.S. 136-130; 136-129; 150B-21.3A:

Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993;
Repealed Eff. ______________
A permit shall be required for the construction or maintenance of any directional sign permitted by Rule .0214 of this Subchapter, except that no permit shall be required to erect or maintain directional signs to religious sites or for the construction and maintenance of official signs and notices, public utility signs, service club and religious notices, and public service signs, as defined by Rule .0201 (10)(a), (b), (c), and (18) of this Subchapter. An initial fee of forty dollars ($40.00) shall be paid with each application for a permit. An annual renewal of each permit, along with a renewal fee of thirty dollars ($30.00), shall be required in order to maintain such directional signs. Permit and renewal of the permits may be obtained from the district engineer.

History Note: Authority G.S. 136-130; 136-133;

Eff July 1, 1978;
Temporary Amendment Eff. November 1, 1999;
Repealed Eff. ___________
19A NCAC 02E .0224 is proposed for adoption without substantive changes as follows:

19A NCAC 02E .0224 SCENIC BYWAYS

(a) Outdoor advertising is prohibited adjacent to any highway designated as a scenic byway by the Board of Transportation after the date of the designation as scenic, regardless of the highway classification, except for outdoor advertising permitted in G.S. 136-129 (1), (2), (2a) or (3).

(b) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway that is on a controlled route for outdoor advertising shall become nonconforming signs and shall be subject to all applicable outdoor advertising regulations provided in 19A NCAC 02E.0200. Any sign erected on a controlled route adjacent to a Scenic Byway after the date of official designation shall be an illegal sign as defined in G.S. 136-128 and G.S. 136-134.

(c) Permits shall not be required for signs adjacent to scenic byways which were not on a controlled route for outdoor advertising. The department shall maintain an inventory of signs that were in existence at the time the route was designated a Scenic byway. Any sign erected after its designation as a Scenic Byway, except for outdoor advertising permitted in G.S. 136-129(1), (2), or (3), shall be an illegal sign as defined by G.S. 136-128 and G.S. 136-134.

(d) Outdoor advertising signs adjacent to Scenic Byways that are not required to obtain permits are nonetheless governed by the rules in this section.

History Note: Authority G.S. 136-129.2; Eff. August 1, 2000.
19A NCAC 02E .0225 is proposed for readoption with substantive changes as follows:

19A NCAC 02E .0225  REPAIR/MAINTENANCE/ALTERATION/RECONSTRUCTION OF
CONFORMING SIGNS AND REPAIR AND MAINTENANCE OF NON-
CONFORMING SIGNS

(a) Signs may not be serviced from or across the right of way of interstates and fully controlled access primary routes
freeways or from or across controlled access barriers or fences of controlled routes. An application for an outdoor
advertising alteration permit shall be made on NCDOT form OA-1A, which may be obtained at any District Office or
the NCDOT website at www.ncdot.gov.

(b) Conforming signs may be altered within the limits of the rules in this Section.
(1) A conforming sign that has been destroyed or significantly damaged may be reconstructed within
the limits of the rules in this Section by notifying the district engineer in writing of any
substantial changes that would affect the original dimensions of the initial permit application.
(2) Conforming sign structures may be reconstructed so long as the reconstruction does not conflict
with any applicable state, state or federal or local rules, regulations or ordinances.
(3) A nonrefundable alteration permit fee is required with the application.
(4) The alteration of a conforming outdoor advertising structure shall not commence until an alteration
permit has been issued. The outdoor advertising structure except all sign faces must be completely
constructed and erected within 180 days from the date of the issuance of the alteration permit. If
the outdoor advertising structure except sign faces is not constructed within 180 days of issuance of
the alteration permit then any intervening rule change shall apply to the sign structure. During the
180 day period, the altered outdoor advertising structure shall be considered in existence for the
purpose of spacing of adjacent signs.

(c) Alteration to a nonconforming sign or sign conforming by virtue of the grandfather clause is prohibited.
Reasonable repair and maintenance are permitted including changing the advertising message or copy. The following
activities are considered to be reasonable repair and maintenance:
(1) Change of advertising message or copy on the sign face;
(2) Replacement of border and trim;
(3) Repair and replacement of a structural member, including a pole, stringer, or panel, with like
material;
(4) Alterations of the dimensions of painted bulletins incidental to copy change; and
(5) Any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the
sign face or faces are reduced they may not thereafter be increased beyond the size of the sign on
the date it became nonconforming.

(d) The addition of lighting or illumination to existing nonconforming signs or signs conforming by virtue of the
grandfather clause is specifically prohibited as reasonable maintenance; however, such lighting may be permanently
removed from such sign structure.
(e) A nonconforming sign or sign conforming by virtue of the grandfather clause may continue as long as it is not abandoned, destroyed, discontinued, or significantly damaged.

(f) When the combined damage to the face and support poles appears to be significant, as defined in 19A NCAC 02E .0201(29), .0201(28), the sign owner may request the Department to review the damaged sign, including salvageable sign components, prior to repairs being made. Should the sign owner perform repairs without notification to the Department, and the Department later determines the damage is greater than 50% of the combination of the sign face and support pole(s), the permit may be revoked. To determine the percent of damage to the sign structure, the only components to be used to calculate this value are the sign face and support pole(s). The percent damage shall be calculated by dividing the unsalvageable sign components by the original sign structure component quantities, using the following criteria:

1. Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50% and the percentage of damage attributable to sign face shall be 50%;
2. Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%; and
3. Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80% and the percentage of damage attributable to sign face shall be 20%.

History Note: Authority G.S. 136-89.58; 136-30; 136-131.2; 136-130; 136-89.58;
Eff. August 1, 2000;
19A NCAC 02E .0226 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0226  ORDER TO STOP WORK ON UNPERMITTED OUTDOOR ADVERTISING

(a) If outdoor advertising is under construction and the Department determines that a permit has not been issued for the outdoor advertising as required under the provisions of this Chapter, the District Engineer or his designee may require that all work on the sign cease until the sign owner shows that the sign does not violate the provisions of this chapter. The order to cease work shall be in writing and prominently posted on the outdoor advertising structure, and no further notice of the stop work order is required. The failure of a sign owner to comply immediately with the stop work order shall subject the outdoor advertising structure to removal by the Department of Transportation or its agents.

(b) For purposes of this rule only, outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public.

(c) The cost of removing outdoor advertising by the Department of Transportation or its agents shall be assessed against the sign owner.

(d) No stop work order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed. The District Engineer or his designee shall consult with the Outdoor Advertising coordinator to determine whether such an order has been served on the Department.

History Note: Authority G.S. 136-130; 136-133;
Temporary Adoption Eff. November 16, 1999;
19A NCAC 02E .0601 is proposed for readoption without substantive changes as follows:

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

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

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

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

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

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93(b); 136-93.3;
Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
19A NCAC 02E .0602 is proposed for readoption without substantive changes as follows:

19A NCAC 02E .0602 REQUESTS FOR SELECTIVE VEGETATION REMOVAL 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 and sent to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications shall be submitted in both printed and electronic form. Applications for selective vegetation removal permits shall include the following information:

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

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the permittee's facilities adjacent to highway right-of-way at locations where such facilities have been constructed or where agritourism activities are carried out as set forth in G.S. 136-93.3 and Rule .0601 of this Section. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other trees shall be preserved if they are not screening the facility from view and are view, and when
measured at six inches above the ground, shall equal four or more caliper inches and greater in diameter. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other vegetation that are four or more caliper inches or greater in diameter, as measured at six inches from above the ground, and not to be preserved, may be cut, thinned, pruned, or removed according to if approved by the Division Engineer having jurisdiction or that Division Engineer’s designee, approval of Department personnel designated by the Division Engineer. All vegetation cutting, thinning, pruning, or removal shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133.1, approved by the American National Standards Institute and published by the International Society of Arboriculture that is hereby incorporated. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, 1 S. Wilmington St., Raleigh, N.C. Copies of the Standard may be obtained from the International Society of Arboriculture (ISA) for a twenty dollars ($20.00) cost. The ISA may be contacted at P.O. Box 3129 Champaign, Illinois 61826 or by accessing this website: http://www.isa-arbor.com/.

(c) Applications shall be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to one area of right-of-way adjacent to frontage property of the facility, but not to exceed 1,000 contiguous linear feet. Facilities with frontage property on opposite sides of the State highway right-of-way may split the maximum vegetation removal distance between the two sides of the highway, resulting in a total of two contiguous cutting or removal distances along frontage property, with the total of the two sides not exceeding 1,000 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 desired for cutting, thinning, pruning, or removal, that have with a diameter of four or more 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.

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

(e) In accordance with G.S. 136-93(d), if the application for vegetation cutting is for a site located within the corporate limits of a municipality and 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 the municipality shall may be given the opportunity to review the application. Information regarding whether a municipality desires to review vegetation removal applications may be found on the Department’s website www.ncdot.gov or by contacting the Division Engineer’s office.

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18(9); 136-93; 136-93.3; 136-130;

Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
Amended Eff. November 16, 1991; December 1, 1990; August 1, 1985; June 2, 1982;
Temporary Amendment Eff. November 16, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. March 1, 2012;
19A NCAC 02E .0603 is proposed for readoption without substantive changes as follows:

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

(a) Pursuant to G.S. 136-133.2, within 30 days following receipt of the application for a selective vegetation removal permit for a facility, including the fee set out in G.S. 136-18.7, 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 that has previously advised the Department in writing that it seeks to provide comments regarding such applications. The applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. The list of municipalities requesting to review applications shall be maintained and updated by the Department on the website www.ncdot.gov. Upon receipt of the application, 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 the opening of view to a facility that does not meet the requirements of Rule .0601 of this Section;
2. it is determined by Department personnel that the facility is not screened from view;
3. the application is for the opening of view 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;
4. it is determined by Department personnel that removal of vegetation shall diminish a planting installed for headlight screening and affect the safety of the traveling public;
5. the application is solely for providing visibility to on-premise signs;
6. the application is for the removal of vegetation planted in accordance with a local, State, or federal beautification project. However, this section Subparagraph shall not apply if a mitigation replanting plan that 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 agreed upon in writing by the applicant, the Department, and, if applicable, the Federal Highway Administration, then this subsection does not apply; Administration;
7. on two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit, unless the applicant engages a landscape contractor to perform the current work;
8. the application is for removal of vegetation that will open views to junkyards;
9. the applicant fails to complete an application, as described in Rule .0602 of this Section;
10. 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 easements.
(11) an 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 at the requested site for a period of five years that shall begin on the date the Department resolves the "unlawful destruction" or "illegal cutting" incident by settlement agreement with the responsible party, or the Department administratively closes the case. 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.
19A NCAC 02E .0604 is proposed for readoption without substantive changes as follows:

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

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

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

(2) The permittee shall furnish a Performance Bond, or certified check, or cashier's check made payable to North Carolina Department of Transportation for the sum of two thousand dollars ($2,000). The Performance Bond, or certified check, 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 Bond, or certified check, or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The Performance Bond, or certified check, or cashier's check shall run concurrently with the permit. The Performance Bond, or certified check, or cashier's check shall be released after a final inspection of the work by the Department reveals that all work provided for and specified by the permit is found to be completed; and, if damage shall be caused by the permittee or the permittee's agent, 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;

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

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

(5) The permittee shall also provide proof of liability insurance coverage of five million dollars ($5,000,000). Whoever performs the work, the permittee, his contractor, or agent, shall maintain workers’ compensation and vehicle liability insurance coverage. The permittee, his contractor, and agent may be liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in
this Item, Subparagraph, may 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 if the contractor
or agent's policy provides coverage of five million dollars ($5,000,000) in coverage, and the
permittee provides proof to the Department with proof of the coverage. The permittee or contractor
permittee, 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, the combination of a general liability and excess
liability policy, or an 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. 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 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)(7) 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)(8) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The
applicant shall mark the permitted cutting distances according to Rule .0602(c) of this Section. 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
beginning point and the 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)(9) Pursuant to Rule .0602(b) of this Section, the permittee shall tag with visible material or
flagging any trees that screen the facility from view, have been requested to be cut, thinned, pruned,
or removed within the maximum vegetation cut or removal zone, and have a diameter of four or
more caliper inches, as measured at six inches above the ground and at the time of the application.
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 that do not screen the facility from view from the roadway, and have a diameter of four or more caliper inches, as measured at six inches above the ground, at the time of the application, of four caliper inches or greater in diameter, as measured six inches above ground level that are not screening the facility from view from the roadway. The Department shall make this determination by allowing selective thinning of tree density that opens the view to the facility or agritourism activities 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 review. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department, by electronic means (including electronic mail or facsimile) an amended version of the original sketch of the site by site, indicating the changes on the sketch and initialing, and dating the changes thereon;

(12) If any cutting, thinning, pruning, or removal of vegetation from any portion of but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements, conditions or conditions, other restrictions affecting the right of way right-of-way to which the State is subjected or agrees 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, the permittee shall comply with applicable easements, rules, statutes, or permits for those portions of vegetation;

(a) If applicable easements, rules, statutes, or permits conservation easements, or conditions affecting the right of way to which the State is subjected or agrees 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 easements, State or Federal rules, statutes, or permits, including equipment type specifications for those portions of vegetation;

(b) Portions of the maximum cutting or removal zone not within an easement, nor applicable to rules, statutes, or permits a conservation easement nor applicable to conditions affecting the right of way to which the State is subjected 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;
The permittee shall adhere to erosion control requirements, according pursuant to Article 4 of G.S. § 113A, the North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;

A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. When a present inspector fails to acknowledge or identify work that does not conform with the requirements, it shall not prevent later notification to the permittee that the work is noncompliant with the permit;

A selective vegetation removal permit shall be secured for each applicable facility prior to performing any vegetation removal work. The permittee, or its contractor, or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;

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

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

Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;

The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the
safety of the traveling public, the Department shall deny access to the right-of-way for selective
vegetation removal;

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

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

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

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

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

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

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

History Note:
Authority 136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 136-133.4; 136-133.4(e);
Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;
Eff. June 1, 1982;
Amended Eff. January 1, 2015; November 1, 2012; August 1, 2000; November 1, 1991; August 1, 1985; August 1, 1982; June 2, 1982.
19A NCAC 02E .0608 is proposed for readoption without substantive changes 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, pursuant to permitted under G.S. 136-129(4) or (5) G.S. 136-129(4) or (5), to the applicable county’s Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality 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. 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) if the sign is located on a ramp, the application shall indicate whether cut zone is modified or normal; indication of application being for a modified cut zone or normal cut zone;
(4) for applications if an application is eligible for municipal review, the application shall indicate the year 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; and if existing trees are to be removed, such trees require compensation by either monetary reimbursement or reimbursement, removal of two nonconforming outdoor advertising signs, or a beautification and replanting plan as set out in Rule .0611 of this Section, and by submitting the Existing Tree Compensation Agreement form found on the Department website: 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 number, 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 shall be required 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 bond or certified check or cashier's check pursuant to G.S. 136-93;
(13) if using a contractor for vegetation removal work, identify the contractor and their qualifications if
the contractor is not listed on the Department’s website directory of qualified transportation firms;
(14) payment of non-refundable two-hundred-dollar ($200.00) permit fee, pursuant to
G.S. 136-18.7;
(15) certificate of liability, and proof of worker’s compensation, and vehicle liability insurance
coverage;
(16) geographic information system document and document, property tax identification number to
verify location of sign in relation to municipal limits limits, and territorial jurisdiction boundary;
(17) verification of on-site marking and tree-tagging requirements;
(18) if cutting request is for a modified cut zone along a highway ramp, a diagram of the cut zone is
required unless the diagram is included on a site plan plan, and calculations are required comparing
the modified cut zone to the normal cut zone;
(19) if the Department disputes the site plan, the Department may request additional information per
pursuant to G.S. 136-133.1(c);
(20) certification that the applicant has permission from the adjoining landowner(s) to access their private
property for the purpose of conducting selective vegetation removal permit activities; and
(21) applicant’s notarized signature.

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

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

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-
130; 136-133.1; 136-133.2;
Temporary Adoption Eff. March 1, 2012;
Eff. November 1, 2012;
19A NCAC 02E .0609 is proposed for readoption without substantive changes as follows:

**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, the Division Engineer shall approve or deny the application.

(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 that has been declared illegal, or whose permit has been revoked, or is currently involved in litigation with the Department;
3. it is determined by Department personnel that removal of vegetation shall diminish a planting installed for headlight screening and 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 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 Rule .0611 of this Section, except for the provisions in Paragraph (d) and Subparagraph (g)(11); and is agreed upon in writing 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, unless the applicant engages a landscape contractor to perform the current work;
6. the application is for removal of vegetation that will open 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 complete an application, as described in Rule .0608 of this Section;
9. 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; 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); 136-93; 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;
19A NCAC 02E .0610 is proposed for readoption without substantive changes as follows:

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

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

(1) Selected vegetation, as defined in G.S. 136-133.1(b), may be cut, thinned, pruned, or removed in accordance with the standards set out in G.S. 136-133.4;

(2) The permittee shall furnish a Performance Bond, or certified check, or cashier's check made payable to North Carolina Department of Transportation for the sum of two thousand dollars ($2,000). The Performance Bond, or certified check, 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 Bond, or certified check, or cashier's check 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 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; restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;

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

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

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

(6) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality, per 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;

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

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

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

(a) submit the reimbursement to the Department pursuant to G.S. 136-133.1(d) in a cashier’s or certified check;
(b) fully disassemble two non-conforming outdoor advertising signs, and their supporting structures, and return the outdoor advertising permits tags to the Department pursuant to G.S. 136-133.1(d); or

(c) obtain Departmental approval for the replanting plan in accordance with G.S. 136-133.1(e) and Rule .0611 of this Section;

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

(11) After a tree is removed and the applicant or the Department discovers, based on the number of rings in the tree stump, an error in the tree survey report or site plan, the Department shall request an amendment to the tree survey report or site plan, and a redetermination shall be made by the Department, pursuant to G.S. 136-133.1(d) and (e), and the applicant shall be subject to that redetermination;

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

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

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

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

(d) If the reasons set forth in Sub-paragraphs (12)(a), (b), and (c) of this Rule allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with the conditions set forth above, including equipment type for those portions of the cutting or removal zone. Vegetation removal for portions of the maximum cutting or removal zone not affected by the reasons set forth in...
Sub-paragraph (12)(a), (b) and (c) of this Rule shall be governed by standards set out in G.S. 136-93; 136-93;

(13) The permittee shall adhere to erosion control requirements, according to General Statutes, Article 4, Chapter 113A Article 4 of G.S. § 113A, entitled: Sedimentation Pollution Control Act of 1973;

(14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit. When If a present inspector fails to point out work that does not conform with to the requirements, it does such a failure shall not prevent later notification from the Department to the permittee that the work is not in compliance with the permit;

(15) A selective vegetation removal permit shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;

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

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

(18) The permittee or its contractor or agent shall have a copy of the selective vegetation removal permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;

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

(20) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another selective vegetation removal permit at the same site during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;

(21) The permittee shall provide to the Department a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the Department. The permittee shall notify the Department in advance of work scheduled for nights, weekends and holidays. The Department may modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the
safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;

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

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

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

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

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

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-93.2; 136-127; 136-130; 136-133.1; 136-133.1(a1); 136-133.2; 136-133.3; 136-133.4; 136-133.5; Temporary Adoption Eff. March 1, 2012;
Eff. February 1, 2013;

19A NCAC 02E .0611 is proposed for readoption without substantive changes as follows:

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

(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 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 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) Submission of a 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 Rules .0603(b)(6) and .0609(b)(4) of this Section. 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, and 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.

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

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

1. The work for initial plantings and all future replacements by the permittee or any of their employees, agents, or assigns shall be in accordance with the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), approved by the American National Standards Institute and published by the Tree Care Industry Association, Inc. that is hereby incorporated, Association, Inc., except as stipulated in the rules in this Section. Copies of the Standard are available for inspection in the office of the State Roadside Environmental Engineer, Division of Highways, 1 S. Wilmington St., Raleigh, N.C. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollars ($20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 136 Harvey Road, Suite 101 Londonberry, NH 03053 or at this website: www.tcia.org. Initial and replacement planting may be considered acceptable if the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species that are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants that are not in a living and healthy condition as defined in these Rules.

2. The permittee shall adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A of G.S. § 113A, entitled: Sedimentation Pollution Control Act of 1973;

3. All plant materials shall be approved in writing by the Department prior to arrival at the site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the current edition and subsequent amendments and editions of the American Standard for Nursery Stock ANSI Z60.1 approved by the American National Standards Institute and published by the American Nursery and Landscape Association Horticulture Association that is hereby incorporated;

4. All work is subject to Division of Highways inspection and shall be scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements;

5. Grinding or other mechanical removal of all cut stumps (to a minimum depth of four inches below ground level) shall be completed in the area of replanting during the preparation of the site, prior to initial planting;
All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) shall apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;

The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, and the permittee shall establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee shall be requested in writing to the Department. The Department shall notify the permittee in writing of the approved changes to the replacement plantings;

At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee’s work and release the bond. Then a one-year observation period shall begin during which the permittee shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The permittee is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period. Replacement shall occur in accordance with the dates of planting as stated in the rules in this Section;

After the one-year observation period concludes, the Department shall notify the permittee if the permit requirement conditions have been met successfully;

Replanted materials may be pruned according to the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations—Pruning ANSI A300 (Part 1), approved by the American National Standards Institute and published by the Tree Care Industry
Association Inc. that is hereby incorporated, Association Inc., however, topping of trees or other vegetation is not allowed;

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

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

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

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

History Note: Authority G.S. 99E-30; 136-93; 136-93.4; 136-93.5; 136-130; 136-133.4; 136-93.3;
Temporary Adoption Eff. March 1, 2012;
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