

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, certified check, or cashier's check made payable to North Carolina Department of Transportation (NCDOT) for the sum of two thousand dollars (\$2,000). The Performance Bond, certified check, or cashier's check shall cover all restoration of the right-of-way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The Performance Bond, certified check, or cashier's check shall be paid with the application before each permit to cut vegetation is issued. The Performance Bond, certified check, or cashier's check shall run concurrently with the permit. The Performance Bond, 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 is 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;
- (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, 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 NCDOT Selective Vegetation Removal website: <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. Bonds shall 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 provide proof of liability insurance coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his or her contractor, or agent, shall maintain workers' compensation and vehicle liability insurance coverage. The permittee, his or her contractor, and agent shall be liable for any losses due to the negligence or willful misconduct of his or her agents, assigns, and employees. The permittee, in lieu of providing proof of liability insurance as described in this Item, may be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work if the contractor or agent's policy provides five million dollars (\$5,000,000) in coverage, and the permittee provides the Department with proof of the coverage. The 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. The required limit of insurance may be obtained by a single general liability policy, 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. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines, a corresponding key or legend indicating corporate limits and territorial jurisdiction boundaries, and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel where the facility is located. The Department may require additional information if the boundary or facility location remains in question;
- (7) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and processing of an application for a selective vegetation removal permit;
- (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;

- (9) The permittee shall perform tagging of trees. 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 the trees shown on the required sketch of the requested vegetation cut or removal zone;
- (10) 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. 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 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, indicating the changes on the sketch, initialing, and dating the changes thereon;
- (11) If any cutting, thinning, pruning, or removal of vegetation from any portion of the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements, conditions, other restrictions affecting the right-of-way to which the State is subjected, written agreements, State or federal rules, regulations, statutes, or permits, the permittee shall comply with applicable easements, rules, regulations, statutes, or permits for those portions of vegetation:
 - (a) If applicable easements, rules, regulations, 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, regulations, statutes, or permits, including equipment type specifications for those portions of vegetation; and
 - (b) Portions of the maximum cutting or removal zone not within an easement, nor applicable to rules, regulations, statutes, or permits regulating vegetation removal, and other activities shall be governed by standards set out in G.S. 136-93;
- (12) The permittee shall adhere to erosion control requirements, pursuant to G.S. 113, Article 4; entitled:
- (13) 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. If a present inspector fails to acknowledge or identify work that does not conform with the requirements, this failure shall not prevent later notification to the permittee that the work is noncompliant with the permit;
- (14) A selective vegetation removal permit shall be secured for each applicable facility prior to performing any vegetation removal work. The permittee, 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;
- (15) If the Division Engineer or his or her 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 and State laws, ordinances, rules, or regulations governing safety and traffic control shall result in suspension of work. The permittee shall adhere to safety requirements, pursuant to G.S. 95, Article 16. Traffic control shall be in accordance with G.S. 136-30 and 19A NCAC 02B .0208;
- (16) The permittee, 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;

- (17) 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;
- (18) 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 State holidays. The Department may modify the permittee's work schedule for nights, weekends, and State 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;
- (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;
- (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;
- (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 safety hazards, any erosion, or 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;
- (22) 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 removed or chipped and spread in accordance with G.S. 136-133.4; and
- (23) 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 that the Department return 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 136-18(5); 136-18(7); 136-18(9); 136-30; 136-93; 136-93.3; 136-133.4; 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; Readopted Eff. June 1, 2020.