

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .0100 - TORT CLAIMS

19A NCAC 02E .0101 CLAIMS INVOLVING THE DIVISION OF HIGHWAYS

(a) To assist persons in processing a claim against the State of North Carolina as a result of accidents involving division of highways' marine vessels and claims involving accidents on facilities maintained by the division of highways, Form 141-- "Statement of Claimant" is made available.

(b) Form 141-- "Statement of Claimant" is provided by the division of highways to be completed by the claimant, providing such information as the name and address of the damaged party and other information relative to the claim.

(c) Copies of Form 141-"Statement of Claimant" may be obtained from the Chief Engineer - Operations, or any highway division engineer, highway district engineer, or ferry division headquarters office.

Note: See G.S. 143-291 through -299.1 on "Tort Claims against the State Departments and Agencies" for the procedures for complaints.

History Note: Authority G.S. 143-291 to 299; 143-299.1; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0102 ACCIDENTS INVOLVING STATE-OWNED VEHICLES OR EQUIPMENT

(a) Division of Highways' vehicles or equipment are covered by liability insurance with the Travelers Insurance Companies. This coverage includes any type of claim that is related to an accident involving a self-propelled vehicle. In addition to accidents, involving the collision of a state-owned vehicle and privately-owned property, other examples of coverage are:

- (1) paint spraying from pavement marking machines;
- (2) paint spraying from air compressors;
- (3) asphalt spray from distributors;
- (4) sand blasting;
- (5) objects falling from vehicles;
- (6) objects thrown by mowers, etc.

(b) Claimants may contact Travelers Insurance Companies at:

The Travelers Insurance Companies
P.O. Box 220379
Charlotte, North Carolina 28222.

History Note: Authority G.S. 143-291 to 299; 143-299.1; 143B-350(f); 143B-350(g);
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 – OUTDOOR ADVERTISING

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

In addition to the definitions set forth in G.S. 136-128, of Article 11 of North Carolina General Statutes, also known as the Outdoor Advertising Act, the following definitions shall apply for purposes of the Rules of this Section:

- (1) Abandoned Sign: An outdoor advertising sign structure shall be considered abandoned if it has no lease or meets one of the following criteria for a period of 12 months:
 - (a) is not maintained in accordance with the Rules of this Section; or
 - (b) is without a message, contains out-of-date advertising matter, or is significantly damaged.
- (2) Automatic Changeable Facing Sign: A sign, display, or device that changes the message or copy on the sign facing electronically by digital means or movement or rotation of panels or slats.

- (3) Blank Sign: A sign structure that contains no message or 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 comprehensive plan means a development plan that guides decisions of the local zoning authority relating to zoning and the growth and development of the area. Even if comprehensively enacted, the following criteria shall determine whether a zoning is enacted to permit outdoor advertising:
 - (a) the zoning classification provides for commercial or industrial activity only incidental to other primary land uses;
 - (b) the commercial or industrial activities are permitted only by variance or special exceptions; or
 - (c) 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 that would not otherwise permit outdoor advertising.
- (5) Conforming Sign: A sign legally erected in a zoned or unzoned commercial or industrial area that meets all requirements of the rules of this Section and Article 11 of Chapter 136 of NC General Statutes.
- (6) Controlled Access Highway: A highway on which entrance and exit accesses are allowed only at designated points.
- (7) Controlled Route: Any interstate or federal-aid primary highway as it existed on June 1, 1991, and any highway that is or becomes a part of the National Highway System (NHS).
- (8) Destroyed or Significantly Damaged Sign: A sign that has sustained damage by more than 50 percent as determined by the criteria set forth in Rule .0225(f) of this Section by factors other than tortious or criminal acts, including vandalism. An example of a destroyed sign includes a sign damaged by wind.
- (9) Dilapidated Sign: A sign that fails to be in the same form as originally constructed, or that fails to perform its intended function of conveying a message. Characteristics of a dilapidated sign include 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 that is blocked by overgrown vegetation outside the highway right of way.
- (10) Directional Sign: A sign that contains navigational 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. Directional and other official signs and notices include:
 - (a) Public Service Sign: A sign located on a school bus stop shelter that meets all the following requirements:
 - (i) identifies the donor, sponsor or contributor of a shelter;
 - (ii) is located on a school bus shelter that 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 that 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 erected and maintained by publicly or privately owned utilities.
 - (c) Service Club and Religious Notices: Any sign or notice that relates to meetings of nonprofit service clubs, charitable associations, or religious services. These signs shall not exceed eight square feet in area.
- (11) Discontinued Sign: A sign no longer in existence or 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.
- (12) Fully Controlled Access Highway: A divided highway for through traffic that persons, including the owners or occupants of abutting lands have no right of access except at the points and in the manner determined by the Department of Transportation.

- (13) 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 by federal authorities.
- (14) Lease: An agreement by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a contract under North Carolina laws.
- (15) 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.
- (16) Nonconforming Sign: A non-conforming sign means as defined in G.S. 136-128(2a).
- (17) Official Sign or 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 historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies.
- (18) On-premise Sign: A sign that advertises the sale or lease of property upon which it is located or that 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 shall be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include:
 - (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.
- (19) Parkland: Any publicly-owned land that is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
- (20) Permit Holder: A permit holder is the sign owner and the entity whose name is on the approved outdoor advertising permit application as "Permit Holder or Sign Owner".
- (21) 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.
- (22) 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.
- (23) Scenic Byway: A 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 that is or becomes a part of the National Highway System.
- (24) 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 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.
- (25) Sign Not Conforming to State Standards: a sign which was legally erected but does not conform to the zoning, size, lighting, and spacing criteria established in Rule .0203 of this Section promulgated at a later date, or a sign which was legally erected but later fails to conform to the zoning, size, lighting, and spacing criteria established in Rule .0203 of this Section.
- (26) Sign Face: The part of the sign, including trim and background, that contains the message or informative contents.
- (27) Sign Location: A sign location is the latitude and longitude as determined by recreational grade global position system (GPS) equipment with imagery reference. The location shall be determined and listed on each outdoor advertising permit application by DOT personnel.
- (28) Sign Owner: A sign owner is the owner of the physical sign structure.

- (29) Unzoned Commercial or Industrial Area: An area that is not zoned by State or local law, regulation, or ordinance, and that 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 Rule .0203(5) of this Section.
- (30) Zoned Commercial or Industrial Area: An area that is zoned for business, industry, commerce, or trade pursuant to a State or local zoning ordinance or regulation. Local zoning action shall be taken pursuant to the state's zoning enabling statute or constitutional authority. Zoning that is not part of comprehensive zoning or that is created 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 in Rule .0203(5) of this Section.

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;
 Readopted Eff. January 1, 2021.

19A NCAC 02E .0202 AGREEMENT

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) 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 control and are expressly incorporated by reference as part of this section. A copy of this agreement may be obtained from the Office of the Chief Engineer free of charge. Copies of Title 23 of the United States Code of Federal Regulations are available at the following website: <https://www.ecfr.gov>.

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;
 Readopted Eff. January 1, 2021.

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

Except for those signs set forth in G.S. 136-129(1), (2), (2a), and (3), this Rule 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.

- (1) Signs shall be configured and sized as follows:
 - (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. All measurements shall include any border and trim, but shall exclude the base or apron, embellishments, embellished advertising space, supports, and other structural members;
 - (b) the maximum size limitations shall apply to each side of a sign structure. Signs placed back-to-back, side-to-side, or in V-type construction with no more than two displays to each facing shall be considered as one sign. The maximum size limitations shall apply to each facing of a sign structure;
 - (c) Side-by-side signs shall be structurally tied together to be considered as one sign structure;
 - (d) 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;
 - (e) 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; and
 - (f) Double-decking of sign faces so that one is on top of the other is prohibited.
- (2) Signs shall be spaced as follows:

- (a) Signs shall not be located in a manner to obscure, or otherwise physically interfere with the effectiveness of any traffic sign, signal, or device, or to obstruct or physically interfere with a driver's view of approaching, merging, or intersecting traffic;
 - (b) Controlled Routes with Fully Controlled Access:
 - (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, 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 for a ramp and the direction of measurement shall be along the edge of pavement away from the interchange, collector distributor, 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 highways as follows:
 - (A) Where a route is bridged over a fully controlled access highway, the 500 foot measurement shall begin on the outside edge of pavement of the fully controlled access highway at a point below the edge of the bridge. The direction of measurement shall be along the edge of pavement away from the interchange;
 - (B) Where a 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; and
 - (C) Where the routes involved are both 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 rules of this Section regarding spacing between sign structures shall not apply to structures separated by buildings or other obstructions where only one sign facing located within the distances set forth in the rules of this Section is visible from the highway at any one time;
 - (e) Official signs, on-premise signs, or 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 opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highways.
- (3) Signs shall meet the following lighting requirements:
- (a) No sign shall contain, include, or be illuminated by any flashing, intermittent, or moving light or lights, including animated or scrolling advertising except as allowed by Item (4) of this Rule or it is giving public service information, such as time, date, temperature, or weather;
 - (b) No light emitted or reflected off of a sign shall be of an intensity or brilliance as to cause glare or to impair the vision of a driver, or which otherwise interfere with the operation of a motor vehicle;
 - (c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal; and

- (d) All sign lighting shall be subject to any other provisions relating to lighting of signs applicable to all highways under the jurisdiction of the State, including G.S. 136-32.2.
- (4) Automatic changeable facing signs shall meet the following requirements:
- (a) the sign does not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising;
 - (b) the changeable facing remains in a fixed position for at least eight seconds;
 - (c) if a message is changed electronically, it must be accomplished within an interval of two seconds or less;
 - (d) the sign is not placed within 1,000 feet of another automatic changeable facing sign on the same side of the highway;
 - (e) the 1000-foot distance is measured along the nearest edge of the pavement and between points opposite the signs along each side of the highway;
 - (f) a legally conforming structure may be modified to an automatic changeable facing structure as set forth in Rule .0225 of this Section. Signs not conforming to State standards shall not be modified to an automatic changeable facing;
 - (g) the sign must contain a default design that will freeze the sign in one position if a malfunction occurs; and
 - (h) the sign application meets all permitting requirements as set forth in Rule .0206 of this Section.
- (5) Unzoned commercial or industrial area qualification for signs shall meet the following requirements:
- (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 utilities, including power, telephone, water, and sewer, or septic service;
 - (iv) The activity shall have vehicular access and generate 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; and
 - (E) the unit shall be tied down in accordance with local, state, or county requirements.
 - (vi) The commercial or industrial activity must be in 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 for that type of activity, 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 travel way in a vehicle traveling at the posted speed of the controlled route for 12 months of a year.
 - (b) Each side of the controlled route shall be considered separately. All measurements shall begin from the outer edges of buildings where business is conducted including 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 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 temporary wayside fresh produce stands;
 - (iv) transient or temporary activities;
 - (v) activities more than 660 feet from the nearest edge of the right of way;
 - (vi) activities conducted in a building used as a residence;
 - (vii) railroad tracks and minor sidings;
 - (viii) any outdoor advertising activity or any other business or commercial activity carried on in connection with an outdoor advertising activity; and
 - (ix) 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;
Readopted Eff. January 1, 2021.

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;
Amended Eff. December 1, 2012; November 1, 1993.

19A NCAC 02E .0205 PERMITS REQUIRED

History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. June 15, 1981;
Repealed Eff. November 1, 1993.

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. Upon completion, the application shall be submitted to the district office for the district where the proposed site is located. The application shall 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, 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 or 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 FEES AND RENEWALS

- (a) All applicable fees shall be paid by the permit holders for each permit requested.
- (b) An initial nonrefundable fee of one hundred twenty dollars (\$120.00) per outdoor advertising structure shall be submitted with each new permit application.
- (c) An annual non-refundable renewal fee of sixty dollars (\$60.00) per sign structure shall be paid by the permit holders on or before April 15 of each year.
- (d) The Division of Highways of the Department of Transportation shall send an invoice for the annual renewal fee to each permit holder with a permit. For a renewal to be approved, the permit holder must submit the signed invoice along with the renewal fee. If requested, the permit holder 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 shall subject the permit to revocation under 19A NCAC 02E .0210(4).

*History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; December 1, 1990; July 1, 1986;
Temporary Amendment Eff. November 16, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. January 1, 2021.*

19A NCAC 02E .0208 PERMIT AND PERMIT EMBLEM

- (a) Permits shall be issued for signs that are in compliance with all federal, State, or local laws pertaining to outdoor advertising structures by the Division of Highways of the Department of Transportation upon application, approval, and the payment of the initial permit fee as defined in Rule .0207 of this Section.
- (b) The erection of new outdoor advertising structures shall not commence until a permit has been approved and the emblem issued. All construction of the outdoor advertising structure, except sign faces, shall be completed within 180 days of the approval of the permit. 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 Rule .0203 of this Section.
- (c) The permit holder shall notify the appropriate office as provided in the permit by certified mail, return receipt requested, within 10 days after the outdoor advertising structure is completed. Upon completion of the construction and prior to notifying the appropriate District Engineer's Office, the permit holder shall affix the following information to the outdoor advertising structure in a position as to be visible from the main-traveled way of the controlled route:
 - (1) the emblem, with a Department-issued identification number; and
 - (2) the name of the person, firm or corporation owning or maintaining the outdoor advertising structure.

(d) Within 90 days after receiving notice that an outdoor advertising structure is complete, the appropriate District Engineer's office 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 shall advise the permit holder by certified mail of the manner in which the structure fails to comply. The permit holder shall have 30 days from receipt of the notice to either bring the structure into compliance or have it removed.

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

*History Note: Authority G.S. 136-130; 136-133;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990;
Readopted Eff. January 1, 2021.*

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

(a) 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's office for the county in which the sign is located.

(b) A permit holder must provide the appropriate District Engineer's office with written notice of any change of address within 30 days of the address change.

(c) Should a permit holder 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's office of the changes.

*History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; November 1, 1993;
Readopted Eff. January 1, 2021.*

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

The appropriate District Engineer's office 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's office for which had the correct facts been known, he or she would not have issued the outdoor advertising permit;
- (2) misrepresentations of any facts made by the permit holder and on which the District Engineer's office 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, 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 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 in accordance with Rule .0208 of this Section;
- (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 of this Section;
- (8) alterations to a sign not conforming to State standards other than reasonable repair and maintenance as defined in Rule .0225(c) of this Section. 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 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 the unlawful violation was conducted actually or by design by the permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including independent contractors hired by any of the above and meets either of the following:
 - (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 sign not conforming to State standards that changes the location of the sign;
- (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, or the rules of this Section; and
- (18) failure to comply with all the requirements specified in a vegetation removal permit if such failure meets the standards of G.S. 136-133.1(i).

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;
 Amended Eff. November 1, 2012;
 Readopted Eff. January 1, 2021.

19A NCAC 02E .0211 DENIAL OF PERMIT

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;
 Temporary Repeal Eff. March 1, 2012;
 Repealed Eff. November 1, 2012.

19 NCAC 02E .0212 NOTICE GIVEN FOR REVOKING PERMIT

(a) Prior to the revocation of an outdoor advertising permit, the District Engineer's office shall send the permit holder a notice of violation by certified mail of the alleged violation under Rule .0210 of this Section. The permit holder shall bring the sign into compliance, if permissible by these Rules, within 30 days of receipt of the notification, or provide information concerning the alleged violation to the District Engineer's office to be

considered prior to the revocation. The District Engineer's office shall consider the information provided by the permit holder prior to any revocation of a permit.

(b) If the permit holder does not bring the sign into compliance after 30 days, if permissible by these Rules, and the District Engineer determines that a violation has occurred as set forth in Rule .0210 of this Section, he or she shall send the permit holder a notice of revocation by certified mail, return receipt requested. The notification shall include the following information:

- (1) the factual and statutory or regulatory basis for the revocation;
- (2) a copy of the rules of this Section; and
- (3) a statement that is unlawful and a nuisance in accordance with G.S. 136-134.

(c) Upon receipt of the notice of revocation, the permit holder shall either remove or bring the outdoor advertising structure into compliance with the Outdoor Advertising Act and rules of this Section within 30 days. If the permit holder or site owner fails to do so, the Department shall remove the outdoor advertising structure at the expense of the permit holder.

(d) 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 02E .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;
Readopted Eff. January 1, 2021.*

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

(a) Should any permit applicant, permit holder, or sign owner disagree with a decision of the appropriate 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, permit holder, or sign owner may appeal to the Secretary of Transportation in accordance with this Rule.

(b) Within 30 days from the time of the receipt of the decision of the District Engineer's office, the permit applicant, permit holder, or sign owner shall submit a written appeal to the Secretary of Transportation setting forth 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'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'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;
Amended Eff. August 1, 2000; November 1, 1993; November 1, 1991; June 15, 1981;
Readopted Eff. January 1, 2021.*

19A NCAC 02E. 0214 STANDARDS FOR DIRECTIONAL SIGNS

(a) For the purposes of this Section, the following directional signs shall be prohibited:

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

(b) For the purposes of this Section, the following size requirements shall be permissible:

- (1) No directional sign shall exceed the following limits:
 - (A) maximum area 150 square feet;
 - (B) maximum height 20 feet; and
 - (C) maximum length 20 feet.
- (2) all dimensions include border and trim, but exclude supports.

- (c) Directional signs may be illuminated, subject to the following:
 - (1) signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights shall be prohibited;
 - (2) signs that are not 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 National Highway System (NHS) route or that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with the operation of a motor vehicle shall be 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) The spacing of signs shall be determined as follows:
 - (1) each location of a directional sign must be approved by the District Engineer's office;
 - (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 2,000 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) No 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) 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) For directional signs for privately-owned activities, the activity shall meet both of the following 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; and
 - (2) privately-owned attractions or activities must be nationally or regionally known. For purposes of this Rule, the following meanings shall apply:
 - (A) national 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. 136-129; 136-130;
 Eff. July 1, 1978;
 Amended Eff. August 1, 2000; November 1, 1993;
 Readopted Eff. January 1, 2021.

19A NCAC 02E .0215 PERMITS FOR DIRECTIONAL SIGNS

- (a) A permit shall be required for the construction or maintenance of any directional sign permitted by Rule .0214 of this Section, 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 Section.
- (b) An application for a directional sign shall be made according to Rule .0206 of this Section with the exception the initial fee shall be forty dollars (\$40.00) paid with each application for a permit.
- (c) An annual renewal of each permit shall be made according to Rule .0207 of this Section with the exception the renewal fee shall be thirty dollars (\$30.00) and shall be required to maintain such directional signs.

History Note: Authority G.S. 136-130; 136-133;
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993; July 1, 1986, March 1, 1983, June 15, 1981;

*Temporary Amendment Eff. November 1, 1999;
Amended Eff. August 1, 2000;
Readopted Eff. January 1, 2021.*

19A NCAC 02E .0216 SPECIFIC SERVICE SIGNING (LOGO) PROGRAM

The Specific Service Signing Program, hereinafter "Program", provides eligible businesses with the opportunity to be listed on official signs within the right-of-way of fully controlled access highways. The Traffic Engineering and Safety Systems Branch is responsible for administering the program and receiving requests for information concerning the Program. Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, 1561 Mail Service Center, Raleigh, NC 27699-1561. Division Engineers, for the division in which the interchange is located, are responsible for receiving and distributing applications and copies of policies and procedures, executing agreements and administering the agreements.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. April 1, 1994; October 1, 1993; October 1, 1991;
Temporary Amendment Eff. October 13, 2003;
Amended Eff. January 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0217 SPECIFIC INFORMATION PROGRAM DEFINITIONS

19A NCAC 02E .0218 LOCATION OF PANELS

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 24 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. August 1, 1998; September 1, 1984; April 1, 1994; October 1, 1993; October 1, 1991; April 1, 1986; November 1, 1985;
Temporary Repeal Eff. October 13, 2003;
Repealed Eff. January 1, 2004.*

19A NCAC 02E .0219 ELIGIBILITY FOR PROGRAM

19A NCAC 02E .0220 COMPOSITION OF BUSINESS PANELS AND LOGO SIGNS

*History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; October 1, 1991; November 1, 1987;
Temporary Amendment Eff. October 13, 2003;
Amended Eff. October 1, 2014; January 1, 2004;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.*

19A NCAC 02E .0221 LOGO PROGRAM FEES

- (a) All logo signs, to which individual Logo Signing Program business panels are attached, shall be constructed, owned, and maintained by the Department. The participating logo business shall pay an annual fee as set forth in this Rule.
- (b) The annual fee for participation in the Logo program shall be three hundred dollars (\$300.00) for each mainline, ramp, and trailblazer panel. Every participating business shall have a contract that automatically renews annually.
- (c) The participating logo business shall provide a new or renovated business panel when necessary due to damages caused by acts of vandalism, accidents, or natural causes including natural deterioration. If the Department replaces a business panel on a logo sign or removes or masks a business panel because of seasonal operation, there shall be no additional charge to the business.

(d) The fee shall be paid by check or money order and shall be due in advance of the period of service covered by the fee. Failure to pay a fee when due shall be grounds for removal of the business panels and termination of the contract.

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. July 1, 2000; August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; September 1, 1990;
Temporary Amendment Eff. October 13, 2003;
Amended Eff. February 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .0222 CONTRACTS WITH THE DEPARTMENT

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. July 1, 2000; August 1, 1998; December 1, 1994; October 1, 1993; October 1, 1992, September 1, 1990;
Temporary Repeal Eff. October 13, 2003;
Repealed Eff. January 1, 2004.

19A NCAC 02E .0223 APPEAL OF DECISION OF DIVISION ENGINEER TO SECRETARY

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f);
23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. October 1, 1993;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

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 signs not conforming to State standards and shall be subject to all applicable outdoor advertising regulations provided in this Section. 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 that 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 shall comply with the rules in this section.

History Note: Authority G.S. 136-129.2;
Eff. August 1, 2000;
Readopted Eff. January 1, 2021.

19A NCAC 02E .0225 REPAIR/MAINTENANCE/ALTERATION OF SIGNS

- (a) Signs may not be serviced from or across the right of way of freeways or from or across controlled access barriers or fences of controlled routes.
- (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, federal or local rules, regulations or ordinances.
- (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), 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. 136-130; 136-89.58;
 Eff. August 1, 2000;
 Amended Eff. August 1, 2000.

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

History Note: Authority G.S. 136-130; 136-133;
 Temporary Adoption Eff. November 16, 1999;
 Eff. August 1, 2000;
 Repealed Eff. January 1, 2021.

SECTION .0300 - JUNKYARD CONTROL

19A NCAC 02E .0301 UNZONED INDUSTRIAL AREA

(a) For purposes of this Section and the Junkyard Control Act, "Unzoned industrial area" means the land occupied by an industrial activity, including its building, parking lot, storage or processing, and that land located within 1,000 feet thereof that is:

- (1) located on the same side of the highway as the principal part of the industrial activity;
- (2) not used for residential or commercial purposes; and
- (3) not zoned by State or local law, rule, or ordinance.

(b) For the purposes of this Section and the Junkyard Control Act, "Industrial activity" means an activity that the nearest zoning authority within the State permits in industrial zones or zones that are less restrictive. An activity is also industrial if the nearest zoning authority within the State has prohibited the activity but the activity is generally recognized as industrial by other zoning authorities within the State. None of the following shall be considered industrial activities:

- (1) outdoor advertising structures;
- (2) agricultural activities including ranching, farming, grazing, and such necessarily related activities as are generally carried on by a farmer on the farmer's own premises, including wayside fresh produce stands;
- (3) forestry activities that include the growing of timber, thinning, felling, and logging of timber or pulpwood;
- (4) transient or temporary activities;
- (5) activities not visible from the traffic lanes of the main-traveled way;
- (6) activities more than 1,000 feet from the nearest edge of the right of way;
- (7) activities conducted in a building used as a residence;
- (8) railroad tracts other than yards, minor sidings, and passenger depots; and
- (9) junkyards, as defined in Section 136, Title 23, of the United States Code.

History Note: Authority G.S. 136-151; 23 U.S.C. 136;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02E .0302 PERMITS

History Note: Authority G.S. 136-151; 136-149;
Eff. July 1, 1978;
Repealed Eff. December 1, 1993.

19A NCAC 02E .0303 FEES

(a) The application fee for the Application for Junkyard payment shall be fifteen dollars (\$15.00).

(b) The Application for Junkyard Permit is available from the Division Engineer having jurisdiction in the county where the proposed or existing junkyard is located. The Application for Junkyard Permit allows an applicant to request a permit number for the establishment or continued maintenance of a junkyard in accordance with the provisions of the Junkyard Control Act, Article 12, Chapter 136 of the General Statutes of North Carolina (Junkyard Control Act). Applications for Junkyard Permits shall require the applicant to provide the following information:

- (1) applicant's name and address;
- (2) whether the junkyard is proposed or already existing;
- (3) if already existing, the date the junkyard was established;
- (4) the proposed or already existing location of the junkyard; and
- (5) certification by the applicant that approval for the proposed or already existing junkyard operations have been obtained from the owner of the real property, or the property owner's authorized agent, on which the junkyard is located or proposed to be located.

(c) Permit numbers shall only be provided to an applicant upon payment of the application fee, and approval by the District Engineer that the junkyard is in compliance with the Junkyard Control Act. If the junkyard is proposed, meaning the Application for Junkyard Permit is to establish a junkyard, the Division Engineer will keep the application on file at the district office. Once the junkyard is in existence, the District Engineer shall approve the Application for Junkyard Permit if, upon inspection, the junkyard is found to conform to the provisions of the Junkyard Control Act.

(d) An annual renewal of each permit shall be required to maintain junkyards within 1,000 feet of the right-of-way of interstate and federal-aid primary highways. In December of each year, the Department will send to the permittee a renewal invoice for payment of the junkyard permit annual renewal fee. The renewal fee shall be five dollars (\$5.00), due on December 15th of each year, and paid to the District Engineer having jurisdiction. The permit shall be renewed upon payment of the annual renewal fee.

History Note: Authority G.S. 136-149; 136-151;
Eff. July 1, 1978;

Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.

SECTION .0400 - GENERAL ORDINANCES

19A NCAC 02E .0401 PENALTY IMPOSED FOR VIOLATION OF ORDINANCES

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Repealed Eff. November 1, 1993.

19A NCAC 02E .0402 PILING OBSTRUCTIONS ON HIGHWAYS OR WITHIN RIGHT OF WAY

It shall be unlawful to pile, place, or leave, any trash, refuse, garbage, lumber, logs, cordwood, tree-laps, scrapped automobile, scrapped truck or part thereof, or any other material upon any road, highway, or shoulders thereof, within the right-of-way, or over the ditches or drainways of any road or highway of the State highway system.

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0403 DEPOSITING MUD ON STATE HIGHWAYS

No person operating a vehicle with "dual wheels" or a vehicle equipped with four-wheel drive shall track mud onto any paved portion of any State highway so as to create a safety hazard to the traveling public.

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Amended Eff. November 1, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0404 HIGHWAY OBSTRUCTIONS INTERFERING WITH TRAFFIC/MAINTENANCE

- (a) It shall be unlawful to place any highway obstruction, including, but not limited to, a driveway headwall, fence, rural mailbox, newspaper delivery box, or other roadside obstruction, so as to interfere with the traffic or maintenance of the roads and highways of the State highway system.
- (b) If the Department determines that any highway obstruction, constitutes a roadside collision hazard, the highway obstruction shall be removed by the person or entity responsible for placing the obstruction within the right-of-way within 30 days of receipt of written notice from the Department. Only mailboxes or newspaper delivery boxes with 4" x 4" wooden or small diameter metal posts shall be permitted on road additions made to the State highway system after May 3, 1990. If determined to be a roadside collision hazard, the location of any brick column, mailboxes, or newspaper delivery boxes, on rigid stands such as block, stone, or any other type of material, shall be prohibited within the State highway system right-of-way.
- (c) If a person fails to remove the highway obstruction in accordance with Paragraph (b) of this Rule, the Division Engineer may take action to remove the obstruction and bill the responsible party for the expense.

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0405 DAMAGE TO STATE HIGHWAY SYSTEM SURFACE OR SHOULDER

It shall be unlawful to move on, over, or across the surface or shoulder of any State highway system bridge, road, or highway, any object, tractor, engine, farm equipment, or vehicle of any kind that has wheels or objects attached that could cut, mutilate, or damage the surface or shoulder of any State highway system bridge, road, or highway without the written permission of the Chief Engineer's office. The Chief Engineer or the Chief Engineer's designee shall consider factors such as the ability of the road or bridge to handle the equipment without damage, planned protection

of the roadway or bridge to prevent damage, planned traffic control and law enforcement assistance to safely move the equipment, and day and time of the planned move to evaluate potential disruptions to the traveling public.

History Note: Authority G.S. 20-115; 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0406 VEHICLES SERVED BY SERVICE STATION

History Note: Authority G.S. 136-18(5); 136-90;
Eff. July 1, 1978;
Repealed Eff. July 1, 2019.

19A NCAC 02E .0407 CONTROL AND REGULATION OF ROADSIDE PARKS AND REST AREAS

(a) It shall be unlawful, within any scenic service overlook, rest area, or other designated parking area on the primary and secondary roads and highways of the State, for any person, firm, or corporation to erect tents, booths, or structures of any kind for camping or any other activity; to create, cause, or allow any unreasonably loud or disturbing noise; to solicit contributions, names, support, or for any other purpose, except as permitted pursuant to Section .0800 of this Subchapter to conduct or participate in public or private auctions and other ceremonies; to distribute tracts, pamphlets, favors or any material, product or literature; to erect displays, signs, or carry on any commercial activity; to use public address such as loud speakers; to distribute or use alcoholic beverages; endanger the life, property, and welfare of the traveling public.

(b) For the purposes of this Rule, the following definitions apply.

- (1) "Unreasonably loud noise" means a noise which is incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace, order, or calm of the area, or which is obnoxious to, or unreasonably disturbing to, a person whose residence, work, or commercial enterprise is within a reasonable proximity to the point, place, or person from whom the noise is emanating, or emanated, and the noise is of such a kind, nature, duration, or extent that a reasonable person would consider the noise to be unreasonably loud or disturbing.
- (2) "Disturbing noise" means a noise which is perceived by a person of reasonable and ordinary firmness and sensibilities as interrupting the normal peace, order, and calm of such person, or persons, or tending to annoy, disturb, or frighten such persons in such proximity to the point, place, or person from whom the noise is emanating, or emanated.

History Note: Authority G.S. 136-18(9); 136-125;
Eff. July 1, 1978;
Amended Eff. October 1, 1991; August 1, 1986;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0408 FISHING FROM BRIDGES

It shall be unlawful to fish from any bridge on any interstate or other controlled access highway.

History Note: Authority G.S. 136-18(5); 136-89.50; 153A-242; 160A-302.1;
Eff. July 1, 1978;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0409 OPERATING NONMOTORIZED VEHICLES

Unless otherwise authorized by the Board of Transportation, it shall be unlawful for any person to ride any animal, or to operate a bicycle, horse drawn wagon, or any nonmotorized vehicle or moped on any interstate or controlled access highway.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Amended Eff. June 15, 1981;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0410 HITCHHIKING ON INTERSTATE OR CONTROLLED ACCESS HIGHWAYS

(a) It shall be unlawful for any person to hitchhike or to solicit rides, or for the driver of any vehicle to stop for the purpose of picking up one who is hitchhiking or soliciting a ride, on any interstate or controlled access highway.

(b) This Rule shall not prohibit an operator or passengers in a vehicle stopped on a controlled access facility by reason of any emergency, mechanical failure, or other failure of the vehicle to operate, from requesting aid or soliciting a ride, nor does it prohibit the operator of any other vehicle from stopping to render aid or assistance and giving rides in such situations.

*History Note: Authority G.S. 136-18(5); 136-89.50;
Eff. July 1, 1978;
Readopted Eff. July 1, 2019.*

19A NCAC 02E .0411 JUMPING FROM BRIDGES

*History Note: Authority G.S. 136-18(5); 150B-21.3A;
Eff. July 1, 1978;
Repealed Eff. July 1, 2019.*

19A NCAC 02E .0412 AIRCRAFT LANDING AND TAKING OFF ON HIGHWAYS

(a) It shall be unlawful for aircraft to take-off or land on any road or highway of the State Highway System, unless authorized by the Chief Engineer, in writing. The Chief Engineer may authorize take-off or landing on any road or highway of the State Highway System based upon the following:

- (1) a showing of good cause, which may include issues of national security, safety of the general public, or natural disasters; and
- (2) arrangements have been made for law enforcement officials to redirect or administer Vehicular traffic on the highway during the landing or take-off.

(b) Nothing in this Rule shall prohibit an aircraft from landing on any roads or highways in an emergency situation if the landing is necessary to prevent injury or death to the occupants of the aircraft, provided that the emergency landing can be made without danger to persons and vehicles on or near the highway. After an emergency landing, take-off by the aircraft may be permitted under the direction of a law enforcement officer if it is determined by the law enforcement officer that the take-off will not endanger persons or vehicles on the highway and there are no other practical nor feasible means of removing the aircraft.

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Temporary Amendment Eff. March 15, 1982, for a Period of 47 Days to Expire on May 1, 1982;
Temporary Amendment Expired Eff. May 1, 1982;
Amended Eff. December 1, 2012; October 1, 1982;
Readopted Eff. March 1, 2019.*

19A NCAC 02E .0413 PARADES ON HIGHWAY SYSTEM ROADS

It shall be unlawful for any person, firm, organization, school, or other group of persons to conduct or participate in a parade on any street or highway of the State Highway System located outside the limits of a municipality.

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.*

19A NCAC 02E .0414 PARKING VEHICLE FOR SALE OR DISTRIBUTION OF GOODS

It shall be unlawful to sell any fruits, vegetables, goods, wares, or merchandise of any character from a vehicle, stand, or structure, or from any place on the right-of-way of any primary or secondary highway, or road of the State Highway System.

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;*

Readopted Eff. February 1, 2019.

19A NCAC 02E .0415 ADVERTISING SIGNS WITHIN RIGHT-OF-WAY

It shall be unlawful for any person, firm, or corporation to erect, place, or allow any advertising, or other sign, except regulation traffic and warning signs approved by the Department, on any highway or the right-of-way thereof, or so as to overhang the right-of-way, or to permit the erection or placing of any advertising or other sign, as herein prohibited, on any highway right-of-way which is situated over any land owned, rented, leased, or claimed by such person, firm, or corporation.

*History Note: Authority G.S. 136-18(10); 136-30;
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.*

19A NCAC 02E .0416 PRIVATE DRIVES OR ROADS INTERSECTING HIGHWAYS

- (a) It shall be unlawful to intersect the State highways with any private driveway or roadway, unless approved by the Department of Transportation, and provided by the party responsible for the private driveway or roadway.
- (b) It shall be unlawful to obstruct any drainage ditch within the right-of-way of any road or State highway.

*History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.*

19A NCAC 02E .0417 COMMERCIAL ENTRANCES INTERSECTING WITH RIGHT-OF-WAY

It shall be unlawful to revise or construct any commercial entrances to intersect with the right-of-way of any primary or secondary highway, or road of the State Highway System, unless a permit has first been obtained from the Department of Transportation, or its duly authorized officers and employees, in accordance with the rules contained in 19A NCAC 2B, Section .0600, titled "Driveway Entrances".

*History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991;
Readopted Eff. February 1, 2019.*

19A NCAC 02E .0418 FENCING WITHIN RIGHT-OF-WAY

It shall be unlawful for any person to erect a fence, of any kind, within the right-of-way limits of any highway, except upon the written permission of the Chief Engineer's Office upon a showing that the change in fencing is beneficial to the public.

*History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.*

19A NCAC 02E .0419 CULTIVATING CROPS AND MAINTAINING PASTURES WITHIN RIGHT-OF-WAY

It shall be unlawful for any person to plant, cultivate, or grow any crop, or to maintain any pasture or pasture grass, within the right-of-way limits of any highway, unless written permission from the Chief Engineer's Office has been obtained upon a showing that the change in cultivating, growing or maintenance of crops is beneficial to the public.

*History Note: Authority G.S. 136-18(10); 136-93; 143B-350(f);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.*

19A NCAC 02E .0420 CONSTRUCTION WITHIN RIGHT-OF-WAY

(a) Unless authorized in writing by the Chief Engineer's Office upon a showing that the change in construction within the right-of-way is beneficial to the public, it shall be unlawful for any person or firm to construct, place, or erect any of the following, or any combination thereof, over any road, highway, or right-of-way of the State Highway System:

- (1) power, broadband, telephone, or other poles;
- (2) signboards or fences;
- (3) water, gas, oil, petroleum products, steam chemicals, sewage, drainage, irrigation, or other pipelines; or
- (4) wires, cables, or other obstructions.

(b) Rules for the preparation and submission of applications for utility encroachments shall be found at 19A NCAC 02B .0500.

History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. March 1, 2019.

19A NCAC 02E .0421 UTILITY WIRES OR CABLES OVER HIGHWAYS

(a) For purposes of this Rule, the American National Standards Institute's National Electrical Safety Code (ANSI Code) is incorporated by reference and includes any subsequent amendments and editions. The ANSI Code may be obtained from the Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331, telephone number 1-800-678-IEEE, website <https://webstore.ansi.org>, at a cost of forty-three dollars and fifty cents (\$43.50).

(b) It shall be unlawful to construct any power, telephone, television, telegraph, or any other utility wires or cables over highways or roads on the State Highway System unless such wires have the minimum vertical clearance above the highest elevation of the road or highway crossed by them as set forth in the ANSI Code for the installation and maintenance of electric supply and communication lines, except as set forth in Paragraph (c) of this Rule.

(c) A minimum vertical clearance of 18 feet shall be maintained for overhead power and communication lines crossing all highways. The lateral and vertical clearance from bridges shall conform with the ANSI Code; however, greater clearances at bridges may be required by the Department of Transportation to provide for bridge construction and maintenance. Parallel utility lines occupying highway right-of-way shall maintain a minimum vertical clearance as required in the National Electrical Safety Code.

(d) Rules for the preparation and submission of applications for utility encroachments can be found in 19A NCAC 02B .0500.

History Note: Authority G.S. 136-18(10); 136-89.50; 136-93;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; November 1, 1991;
Readopted Eff. March 1, 2019.

19A NCAC 02E .0422 USE OF RUNAWAY TRUCK RAMPS

It shall be unlawful for any operator of a motor vehicle, non-motorized vehicle, moped, bicycle, or any pedestrian or any person having custody or control of any animal or animal powered vehicle to park on, stand upon, obstruct, or otherwise use any runaway truck ramp, as designated by signs, except to bring an out-of-control vehicle to a halt.

History Note: Authority G.S. 136-18(5);
Eff. August 10, 1981;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0423 REGULATION OF AIRPORT CONSTRUCTION

(a) Except as otherwise provided by this Rule, all construction or alteration of airports or aircraft landing areas on any part of land adjoining any public highway or in close proximity, shall be in conformity with the Federal Air Regulations, Title 14, Chapter I, Part 77, Subpart C, Code of Federal Regulations, which is incorporated by reference including any subsequent editions or amendments. Copies of these regulations are available at no cost to the public by visiting <https://www.govinfo.gov>. Close proximity, as referenced in this Paragraph, shall be assessed

on a case-by-case basis according to the orientation of the landing area, and its respective alignment to the public highway.

(b) No construction or alteration as referenced in Paragraph (a) of this Rule shall be undertaken without having first obtained an Aircraft Landing Area Permit from the Department. An Aircraft Landing Area Permit shall be approved upon confirmation of satisfaction, by written documentation, of the clearance requirements detailed in Paragraph (a), all applicable requirements by the county or municipality, and Federal regulations. All construction or alteration shall be in accordance with the Aircraft Landing Area Permit. Except for highways on the Federal-aid highway system, the Board of Transportation shall authorize a permit at variance with the foregoing Federal Aviation Administration standards if it determines that the construction or alteration of the aircraft landing area will not result in a public road being a hazard to air navigation. The Department's determination of whether a public road is a hazard to air navigation shall be dependent on the type of aircraft, orientation of the landing area, and its respective alignment to the public highway, traffic, and utilities.

(c) Applicants seeking an Aircraft Landing Area Permit shall provide the Department with all plans, designs, estimates, and supporting data at the time the application is made. The estimates and data required may include, topographical surveys of the airport or aircraft landing area site and surrounding areas, including the proposed construction or alteration, with particular references to highways in the vicinity; hydrographic surveys, with particular reference to the effect that the proposed construction or alteration will have upon drainage patterns; and area maps, airport traffic patterns, and approach surfaces.

(d) This Rule shall not apply to publicly owned and operated airports and aircraft landing areas receiving Federal funds and subject to regulation by the Federal Aviation Administration, nor shall this Rule be construed to prohibit necessary repairs from being made to or on any airport facilities regardless of their present location.

History Note: Authority G.S. 136-18(22);
Eff. November 1, 1985;
Amended Eff. November 1, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0424 TWIN TRAILERS ACCESS ROUTES

History Note: Authority G.S. 20-115.1; Board of Transportation minutes on November 18, 1989;
Eff. September 1, 1990;
Repealed Eff. November 1, 1991.

19A NCAC 02E .0425 ACCESS ROUTES/SEMI-TRAILER TRUCKS WITH 48/53 FOOT TRAILERS

History Note: Authority G.S. 20-115.1; 20-116;
Eff. October 1, 1991;
Repealed Eff. November 1, 1991.

19A NCAC 02E .0426 ACCESS ROUTES FOR STAA DIMENSIONED VEHICLES

The definitions and requirements set forth in this Rule shall apply to access routes for Surface Transportation Assistance Act (STAA) dimensioned vehicles.

(1) Definitions.

- (a) "Twin trailer truck" means a vehicle combination consisting of a truck-tractor and two trailing units, with a width not to exceed 102 inches, as authorized by G.S. 20-115.1.
- (b) "The National Truck Network" means a network of interstate, federal-aid primary, and other highway routes within the State that have been designated by the Department for motor vehicle combination use pursuant to G.S. 20-115.1(g) or the United States Secretary of Transportation for STAA dimensioned vehicle use. State highway system roads designated by the Department pursuant to G.S. 20-115.1(g) shall herein be referred to as the "North Carolina Truck Network."
- (c) "Terminal" means any location where:
 - (i) freight either originates, terminates, or is handled in the transportation process;
or
 - (ii) commercial motor carriers maintain operating facilities.

- (d) "Vehicle Template" means a drawing of the radius of a twin trailer turn used to determine the route design necessary to accommodate the vehicle.
 - (e) "Short-cut" means a route used for the purpose of connecting two National or North Carolina Truck Network routes.
- (2) Reasonable Access Requirements.
- (a) No filing or authorization by the Department shall be required for access to terminals and service facilities located within three road miles of the National or North Carolina Truck Network.
 - (b) The following requirements shall apply for access to terminals located beyond three road miles from the National or North Carolina Truck Network.
 - (i) Access routes approved prior to June 1, 1991, for any one particular type of STAA dimensioned vehicle are approved for all STAA dimensioned vehicles for access purposes only.
 - (ii) Terminal officials and truck operators shall submit an application for a proposed new access route to the State Traffic Engineer of the Department for approval. The application shall be provided by the State Traffic Engineer. The contents of the application shall include the type of route designation requested, and name and contact information of the requesting party. The submittal shall also include a map, or photocopy of a portion of a map, showing the proposed access route(s) or changes to an existing approved access route(s) and the terminal location. The State Traffic Engineer may be reached at 919-814-5100 or 750 N. Greenfield Parkway, Garner, North Carolina 27529.
 - (iii) The State Traffic Engineer may seek advice from the State Highway Patrol, the Division of Motor Vehicles, or other law enforcement officials concerning the application.
 - (iv) Public notice of all applications for "reasonable access" pursuant to Sub-Item (2)(c) of this Rule shall be published by the Department of Transportation in a newspaper circulated in the area of the State where access is requested. The notice shall be published at least once a week on the same day of the week for two consecutive weeks. Governing bodies of incorporated municipalities shall be notified by the Department of all applications within their jurisdictions.
 - (v) The State Traffic Engineer shall approve or deny all applications for proposed new accessed routes based upon the application of vehicle templates, roadway plans, and photographs. If plans or photographs are not available or the use of vehicle templates is not practical, the terminal official or truck operator shall provide a STAA dimensioned test vehicle and driver for the purpose of observing the test vehicle traverse the requested access route.
 - (vi) Safety factors that shall be taken into consideration when reviewing and evaluating requested access route shall include, traffic congestion, traffic volume, route length, vehicle mix, geometric design of the highway, intersection geometrics, width of the shoulders, width of the pavement, super-elevation of the pavement, pavement conditions, at-grade railroad crossings, stopping sight distance, percentage passing sight distance, speed limits, vertical and horizontal alignments, ability of other vehicles to pass trucks, width of bridges, previous accident statistics, and location of schools.
 - (vii) Short-cut routes shall not be authorized by this Rule. Such a route shall be considered for designation as an addition to the National or North Carolina Truck Network by the Department pursuant to G.S. 20-115.1(g).
 - (viii) The State Traffic Engineer shall approve or reject any application submitted pursuant to this Sub-item within 90 days of receipt. The State Traffic Engineer shall provide notification and justification for any approval or rejection to the applicant and law enforcement officials. Automatic approval of a requested access route shall be provided if such notification is not received within the 90-day period.
 - (c) The Department shall notify State and local law enforcement officers of an approved "reasonable access" route that serves each terminal within the jurisdiction of the

enforcement agency. The State Traffic Engineer shall also make available to terminal officials and commercial motor vehicle operators information regarding reasonable access to and from the National or North Carolina Truck Network.

- (d) The Department may, at any time subsequent to approval, revoke any routes designated as a "reasonable access" route based on safety considerations. Terminal officials, truck operators, and law enforcement officials shall be notified in writing 30 days prior to any revocation.
- (e) Any STAA dimensioned vehicle traveling an access route shall have on board an cargo manifest.
- (f) A terminal official, truck operator, or an state and local law enforcement officer may appeal the rulings concerning an access route made by the State Traffic Engineer to the Secretary of Transportation. In giving notice of appeal, the documentation to support reasons for believing that the determination of the State Traffic Engineer was erroneous shall be provided. The decision of the Secretary of Transportation shall be the final agency decision.

History Note: Authority G.S. 20-115.1; 136-18; 143B-350;
Board of Transportation Minutes for November 18, 1988;
Eff. November 1, 1991;
Amended Eff. November 1, 1993;
Readopted Eff. July 1, 2019.

19A NCAC 02E .0427 MULTI-USE PATHS

(a) Authorization for a municipality to construct and maintain multi-use paths on State highway system rights-of-way shall be provided through an encroachment agreement between the municipality and Department. The encroachment agreement shall specify the conditions of approval.

(b) The municipality shall submit multi-use path plans with a standardized encroachment agreement to the local highway Division Engineer for review and approval. Encroachment agreements shall include provisions indicating that the municipality is responsible for the following:

- (1) design, construction, signage, and maintenance of the proposed multi-use paths;
- (2) submitting design and construction plans to the local highway Division Engineer for review and approval prior to bidding for construction; and
- (3) relocating the proposed multi-use trail if the highway right-of-way is required for the purpose of road widening by the Department.

(c) A proposed encroachment agreement shall be approved by the Division Engineer upon a determination that the proposed multi-use path is safe and does not conflict with planned highway improvements that have been recommended in an adopted transportation plan.

(d) If a proposed multi-use path utilizes State highway system rights-of-way acquired through the use of federal aid highway funds, then approval shall be obtained from the Federal Highway Administration.

History Note: Authority G.S. 136-71.9; 136-71.10;
Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Transferred and Recodified from 19A NCAC 2B .0161 Eff. October 1, 1993.
Readopted Eff. July 1, 2019.

SECTION .0500 - MISCELLANEOUS FUNCTIONS

19A NCAC 02E .0501 WORK FOR OTHER GOVERNMENTAL AGENCIES

19A NCAC 02E .0502 AGREEMENT FOR WORK

History Note: Authority G.S. 136-18(23); 136-27; 136-34; 136-41.3; 136-66.1; 143-64.22;
143-130; 143-134; 143D-24; 153A-291; 160A-274;
Eff. July 1, 1978;
Repealed Eff. December 1, 1993.

SECTION .0600 - SELECTIVE VEGETATION REMOVAL POLICY

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

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). 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, 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 or her agent at no cost to the Department of Transportation and shall comply with this Section.

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;
Amended Eff. January 1, 2015; November 1, 2012; June 2, 1982;
Readopted Eff. June 1, 2020.

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 Division Engineer of the North Carolina Department of Transportation (NCDOT), Division of Highways. Applications shall be submitted in both printed and electronic form. Application submittal information for each county is found on the NCDOT Selective Vegetation Removal website <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>.

Applications for selective vegetation removal permits shall include the following information:

- (1) the applicant contact information;
- (2) the name and location of the facility;
- (3) the indication of request for either a business facility or agritourism activity;
- (4) a municipal review indication, if applicable;
- (5) the requested use of and site access for power-driven equipment in accordance with Rule .0604(21) of this Section;
- (6) a 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 his or her qualifications if the contractor is not listed on the Department's website directory of qualified transportation firms;
- (8) a payment of non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (9) a certificate of liability, and proof of worker's compensation and vehicle liability insurance coverage;
- (10) a geographic information system document and property tax identification number to verify location of the facility in relation to municipal limits;
- (11) a verification of on-site marking and tree-tagging requirements;
- (12) a 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(10) of this Section;
- (13) if applicable, 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;

- (14) a certification that the facility qualifies as an agritourism activity as required by G.S. 136-93.3; and
- (15) the 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 the 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 when measured at six inches above the ground, equal four or more caliper inches 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 in diameter, as measured at six inches above the ground, and not to be preserved, may be cut, thinned, pruned, or removed if approved by the Division Engineer having jurisdiction or that Division Engineer's designee. All vegetation cutting, thinning, pruning, or removal shall be in accordance with the current edition of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133 that is hereby incorporated by reference, including subsequent amendments and editions. 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 270 Peachtree Street NW, Suite 1900, Atlanta, GA 30303 or by accessing the website: <http://www.isa-arbor.com/store/product/122>.

(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 a diameter of four or more caliper inches, as measured six inches above ground level, at the time of the application. .

(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 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 Selective Vegetation Removal website or by contacting the Division Engineer's office.

*History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 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;
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;
Amended Eff. January 1, 2015; November 1, 2012;
Readopted Eff. June 1, 2020.*

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 North Carolina Department of Transportation (NCDOT) 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 NCDOT Selective Vegetation Removal website <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. 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 Subparagraph shall not apply if a mitigation 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;
- (7) on two previous occasions, the applicant 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 the requirements of the application as set forth 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 conditions affecting the right-of-way to which the State is subjected or agrees in writing to subject itself, including conservation agreements, or due to the application at any time of State or federal rules, regulations, or statutes, including any conditions mandated as part of the issuance of a permit to the Department for a construction project by a State or federal agency with jurisdiction over the project; or
- (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 Subparagraph, "unlawful destruction or illegal cutting" is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

History Note: Authority G.S. 99E-30; 136-18(5); 136-18(7); 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. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982; Temporary Amendment Eff. March 1, 2012; Amended Eff. January 1, 2015; November 1, 2012; Readopted Eff. June 1, 2020.

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.

19A NCAC 02E .0605 APPEAL TO THE CHIEF ENGINEER

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

19A NCAC 02E .0606 EXCEPTIONS TO THE POLICY

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. August 1, 1985;
Repealed Eff. December 29, 1993.

19A NCAC 02E .0607 TEMPORARY MORATORIUM

History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9);
Eff. December 1, 1990;

Repealed Eff. December 29, 1993.

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

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5), to the Division Engineer of the North Carolina Department of Transportation (NCDOT), Division of Highways. Applications shall be submitted in both printed and electronic form. Application submittal information for each county is found on the NCDOT Selective Vegetation Removal website: <https://connect.ncdot.gov/resources/roadside/Pages/Selective-Vegetation-Removal-Permits.aspx>. 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) the applicant contact information;
- (2) the 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;
- (4) if an application is eligible for municipal review, and as a prerequisite to municipal review submittal, the application shall indicate the year the sign was 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;
- (5) an indication of appropriate maximum cutting distance;
- (6) the applicant's desire to remove existing trees, if present. If existing trees are to be removed, such trees require compensation by either monetary 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 NCDOT Selective Vegetation Removal website;
- (7) the 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, caliper inches, and monetary value of existing trees to be cut, thinned, pruned, or removed, as determined by G.S. 136-93.2, 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, 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) a municipal review indication, if applicable;
- (11) the requested use of and site access for power-driven equipment in accordance with Rule .0610(23) of this Section;
- (12) the 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 his or her qualifications if the contractor is not listed on the Department's website directory of qualified transportation firms;
- (14) a payment of the non-refundable two hundred dollar (\$200.00) permit fee, pursuant to G.S. 136-18.7;
- (15) the certificate of liability, proof of workers' compensation, and vehicle liability insurance coverage;
- (16) the geographic information system document, property tax identification number to verify location of sign in relation to municipal limits, and territorial jurisdiction boundary;
- (17) a verification of on-site marking and tree-tagging requirements;
- (18) if the 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, 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 pursuant to G.S. 136-133.1(c);

- (20) if applicable, 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) the applicant's notarized signature.
- (b) 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; 136-130; 136-133.1; 136-133.2;
Temporary Adoption Eff. March 1, 2012;
Eff. November 1, 2012;
Amended Eff. January 1, 2015;
Readopted Eff. June 1, 2020.*

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

- (a) Pursuant to G.S. 136-133.2, 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 pursuant to G.S. 136-134, 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 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 the requirements of the application as set forth 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 rules or federal statutes or regulations, 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; 136-134; Temporary Adoption Eff. March 1, 2012; Eff. February 1, 2013; Amended Eff. January 1, 2015; Readopted Eff. June 1, 2020.

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, 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 sign owner or 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, or 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 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, or 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, pursuant to 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, a corresponding key or legend indicating corporate limits, territorial jurisdiction boundaries, and indicating the precise location of the outdoor advertising structure. The permittee shall provide the property tax identification number for the parcel where 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, and 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, and 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 application the colors of flagging used to mark each category of trees;
 - (9) If there are existing trees requested for removal, the permittee shall satisfy the following before any work may be performed:
 - (a) submit the reimbursement to the Department pursuant to G.S. 136-133.1(d) in a cashier's check or certified check;
 - (b) fully disassemble two non-conforming outdoor advertising signs, 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 all disputed 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, 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 in this Item, 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:
 - (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, rules, or regulations, 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;
 - (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-items (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 of this Item, 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-items (12)(a), (b) and (c) of this Rule shall be governed by standards set out in G.S. 136-93;

- (13) The permittee shall adhere to erosion control requirements, pursuant to G.S. 113A, Article 4;
- (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. 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;
- (15) A selective vegetation removal permit shall be secured for each applicable outdoor advertising site prior to performing any vegetation removal work;
- (16) 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, and 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;
- (17) The applicant shall certify that he or she has permission from the adjoining landowner(s) to access the private property for the purpose of conducting activities related to the selective vegetation removal permit application;
- (18) 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;
- (19) The permittee, its contractor, or agent shall take measures to locate and protect utilities 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;
- (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 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 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;
- (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 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 of the American National Standard for Arboricultural Operations-Safety Requirements ANSI Z133;
- (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. At the end of each workday, 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; and
- (25) 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 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; 136-133.2; 136-133.3; 136-133.4;
Temporary Adoption Eff. March 1, 2012;
Eff. February 1, 2013;
Amended Eff. January 1, 2015;
Readopted Eff. June 1, 2020.*

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) Submittal 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 provides comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make a 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 shall be based upon the current edition of the American Standard for Nursery Stock ANSI Z60.1 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. The American Standard for Nursery Stock ANSI Z60.1, approved by the American National Standards Institute and published by the American Horticulture Association is hereby incorporated by reference, including subsequent amendments and editions. The document may be accessed at no cost at americanhort.org/page/standards. 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:

- (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 of the American National Standard for Tree Care Operations-Transplanting ANSI A300 (Part 6), Planting and

Transplanting except as stipulated in this Rule. 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. is hereby incorporated by reference, including subsequent amendments and editions. Copies of the Standard may be obtained from the Tree Care Industry Association, Inc. for a twenty dollar (\$20.00) cost. The Tree Care Industry Association, Inc. (TCIA) can be contacted at 670 North Commercial Street, Suite #201, Manchester, NH 03101 or at this website: www.tcia.org/TCIA/SHOP. 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 Subparagraph (7) of this Paragraph;

- (2) The permittee shall adhere to erosion control requirements, according to G.S. 113A, Article 4;
- (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;
- (4) All work is subject to Division of Highways inspection, 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;
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) shall apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, the permittee 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;
- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the 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 Subparagraph (6) of this Paragraph;

- (9) After the one-year observation period concludes, the Department shall notify the permittee if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the current edition and subsequent amendments and editions of the American National Standard for Tree Care Operations-Pruning ANSI A300 (Part 1) – Planting and Transplanting; 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 Rules .0603(b)(6) and .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. The permittee shall exercise care to prevent: windburn; injury to or drying out of the trunk, branches, or roots; or 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) – Planting and Transplanting. 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; 136-93.3; 136-130; 136-133.1; 136-133.4; Temporary Adoption Eff. March 1, 2012; Eff. November 1, 2012; Amended Eff. January 1, 2015; Readopted Eff. June 1, 2020.

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

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

- (1) the request for a modified vegetation cut or removal zone along acceleration or deceleration ramps shall be noted on the selective vegetation removal application at the time the application is submitted. The same application requirements as set forth in Rule .0608 of this Section shall apply to a modified vegetation cut or removal zone request.
- (2) the application shall include a diagram of the modified cut zone request to indicate the relocated point A to point D line and the relocated point B to point E line. If the request includes removal of existing trees as defined in G.S. 136-133.1(b)-(e), the applicant may indicate the relocated points on the required site plan in lieu of a separate diagram. The applicant shall provide calculations showing that the total aggregate area of cutting or removal equals the maximum allowed in G.S.

136-133.1(a). The applicant shall mark the modified points A, B, D, and E, as applicable, at the site for review by the Department. Modified points A and B along the right-of-way boundary (or fence if there is a control of access fence) are to be marked with visible flagging tape. Modified points C, D, & E along the edge of the pavement of the ramp are to be marked with spray paint, including the actual distances. Such markings for a modified vegetation cut or removal zone under G.S. 136-133.1(a1) shall represent and equal the maximum cut or removal area along the surface of the ground allowed in G.S. 136-133.1(a).

- (3) the Department may authorize a one-time modification of the maximum vegetation cut or removal zone for each requested sign face when the view to the outdoor advertising sign face will be improved. The modified area of vegetation cutting or removal shall cause the point A to point D line and the point B to point E line as set forth in G.S. 136-133.1(a) to be relocated as long as the total aggregate area of cutting or removal does not exceed the maximum allowed for the defined cut or removal zone in G.S. 136-133.1(a). Points A and B shall always remain on the right-of-way line and points D and E shall always remain on the edge of the pavement of the ramp. G.S. 136-133.1(g) regarding cutting vegetation from the private property side along a controlled access fence shall remain applicable from relocated point A of the modified cut zone to relocated point B of the modified cut zone.
- (4) the Department shall establish and document the modified cut or removal zone as the permanent view that shall not be altered for future selective vegetation removal permits.
- (5) If an outdoor advertising site has previously been cut under a valid selective vegetation removal permit, in accordance with G.S. 136-93(b), to the extent that the requirement of not exceeding the total aggregate area of cutting or removal allowed in G.S. 136-133.1(a) cannot be met, the applicant may apply for a modified cut or removal zone no sooner than one year after the most recent cutting activity at the site. Within the one year period, the applicant may, to the extent that the maximum cut or removal zone defined in G.S. 136-133.1(a) was not previously cut, apply that uncut area towards determining the limits of the one-time modified cut request as defined in G.S. 136-133.1(a1) and the rules of this Subchapter.
- (6) Should the outdoor advertising structure subject to a modified cut or removal zone for a selective vegetation removal permit be sold or transferred, the new owner or outdoor advertising permit holder shall be subject to G.S. 136-133.1(a1), and the rules of this Subchapter and shall not alter the modified cut zone as established and documented for a previous sign owner or permit holder.
- (7) Upon denial or conditioning by the Department of Transportation of a modified vegetative cut or removal zone under G.S. 136-133.1(a1), the applicant may file an appeal pursuant to G.S. 136-133.3.

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

SECTION .0700 - PROFESSIONAL OR SPECIALIZED SERVICES

19A NCAC 02E .0701 EMPLOYMENT OF PROFESSIONAL/SPECIALIZED FIRM: AUTHORIZATION

(a) Except as set out Paragraph (b) of this Rule the employment by contract of any agency, firm or individual may be authorized and executed by any of the business unit managers listed under any of the following conditions:

- (1) The required work necessitates engineering or professional expertise and services not available on the staff of the department;
- (2) The required work can be accomplished more effectively, more efficiently, and more economically than by staff of the department;
- (3) The required work cannot be undertaken and accomplished by the staff of the department in time to meet the established schedule for development of the project; or
- (4) An emergency situation exists which requires expedient action to alleviate or minimize a condition representing a danger or economic loss to the public.

(b) Such employment shall not be considered when other agencies of the state which have staff with the necessary expertise are available to accomplish the required work in a satisfactory manner on a schedule and at a cost suitable to meet the department's requirements.

*History Note: Authority G.S. 136-28.1(f); 143B-350(f)(13) and (g);
Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;
Eff. August 1, 1982;
Amended Eff. August 1, 2012; December 1, 1993; October 1, 1991; April 1, 1986; February 1,
1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September
6, 2016.*

19A NCAC 02E .0702 SOLICITATION AND AWARD OF CONTRACT

- (a) The Department shall maintain a "Directory of Transportation Firms" that have the necessary expertise and experience, and have expressed a desire to perform in professional engineering or other kinds of professional or specialized services for the Department in connection with transportation construction or repair. Prequalification pursuant to Rule .0703 of this Section shall be required for inclusion on the Directory or award of a contract under this Section.
- (b) Upon authorization by the Secretary of Transportation for the DOT staff to use a professional or specialized firm, a Selection Committee shall be established by the branch manager consisting of at least three members from the DOT staff who are experienced in the type of services to be contracted. For contracts anticipated to exceed fifty thousand dollars \$50,000, solicitation for proposals shall be by published advertisement. In addition, solicitation for interest may be by direct mail to all firms prequalified for the type of services to be contracted and selected from the Directory.
- (c) The firm(s) to be employed shall be selected for each project by the Selection Committee.
- (d) For contracts having a total cost over fifty thousand dollars (\$50,000) and for supplemental agreements award shall be made by the Secretary of Transportation.
- (e) Supplemental agreements that increase a cost of a project to more than fifty thousand dollars (\$50,000) shall be approved by the Secretary.
- (f) In an emergency situation, these Rules may be waived by the Secretary of Transportation or the Secretary's designee pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted, and a contract executed by the Secretary of Transportation or the Secretary's designee as required to resolve the emergency conditions.

*History Note: Authority G.S. 136-28.1(e) and (f); 143B-350(f) and (g);
Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;
Eff. August 1, 1982;
Amended Eff. October 1, 2014; December 1, 2012; December 29, 1993; October 1, 1991; April 1,
1986; February 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September
6, 2016.*

19A NCAC 02E .0703 PREQUALIFYING TO AWARD – PROFESSIONAL SERVICES FIRMS

- (a) In order to ensure that contracts awarded pursuant to G.S. 136-28.1(f) and G.S. 143-64.31 are awarded to responsible firms, prospective professional services firms shall comply with the rules set forth in this Section except as otherwise provided by law.
- (b) In order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31, all prospective professional services firms shall be prequalified with the Department to ensure that the firm is capable of performing the proposed contract.
- (c) The requirements of prequalification are as follows:
 - (1) Applicants shall demonstrate the necessary experience, knowledge, and expertise to perform complete professional services contracts in which they submit or subcontract;
 - (2) Applicants shall demonstrate that they have sufficient financial resources, including available equipment and qualified personnel, and a financial statement (first time applicants and reinstatements only), to perform and complete professional services contracts in which they submit or subcontract;
 - (3) Applicants shall demonstrate that they have the necessary knowledge and expertise to comply with all state and federal laws relating to professional services contracts.

(d) Prospective professional services firms shall update their prequalification status annually to show changes in the staff and updated information regarding necessary company business licenses.

(e) Firms shall re-qualify every three years to show changes in the staff, updated information regarding necessary company business licenses, and updated project experience to ensure that prequalification remains based on recent experience of the staff that is not out of date.

(f) A requalified professional services firm shall maintain compliance with the rules in this section at all times in order to be eligible to contract with the Department pursuant to G.S. 136-28.1(f) and G.S. 143-64.31. If at any time a professional services firm fails to comply with these rules, the Department shall disqualify the professional services firm from any further contracts until the firm is able to demonstrate compliance with these requirements by re-qualifying.

*History Note: Authority G.S. 136-28.1(e) and (f); 143-64.31; 143-B-350(f) and (g);
Eff. October 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0800 - SOLICITATION OF CONTRIBUTIONS FOR RELIGIOUS PURPOSES AT REST AREAS

19A NCAC 02E .0801 PERMIT TO SOLICIT CONTRIBUTIONS

In recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public as well as the right of citizens to the free exercise of religion, all religious organizations and those non-profit charitable or educational organizations with a history of concern for the health and safety of the traveling public are hereby authorized to solicit contributions at North Carolina Highway rest areas, wayside parks, and visitor welcome centers in accordance with these Rules. All other forms of solicitation by any other individuals or organizations are prohibited.

*History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 1993; October 1, 1991; August 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0802 PERMITS REQUIRED

(a) All organizations desiring to solicit under the provisions of this Section must first obtain a permit from the Department of Transportation for the stated purpose of allowing their members to solicit at designated areas on the state highway system.

(b) Written requests for permits for solicitation shall be sent to the appropriate Division Engineer of the Division of Highways in which the rest area or welcome center is located.

(c) Written requests must include all of the following:

- (1) copy of certificate showing that the applicant is exempt from federal income tax as a religious, educational or charitable organization as provided in 26 USC 501(c)(3) together with the applicant's tax exemption number;
- (2) a statement indicating the locations where the organization intends to solicit contributions;
- (3) the name and address of each individual authorized to solicit for the applicant;
- (4) the name of an officer of the applicant, together with an address, to whom the permit is to be sent and complaints are to be directed; and
- (5) if the request for a permit is from a non-religious educational or charitable organization, a written description of the organization's past efforts serving and promoting the safety of the traveling public.

(d) When all the appropriate information required in Paragraph (c) of this Rule has been provided by the applicant, a permit shall be issued by the Chief Engineer, or his duly authorized representative, and said permit shall be effective for a period of 30 days from the date of issuance.

(e) Each permit issued shall describe the activity authorized, the area in which it may be conducted, and the period of time for which the permit is issued.

*History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 2012; October 1, 1991; September 1, 1986; August 1, 1986; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0803 SOLICITATION RESTRICTIONS AND REQUIREMENTS

(a) Any member of an organization duly permitted under these Rules actually engaged in soliciting for contributions must provide and prominently display an identification tag or badge containing all of the following information:

- (1) a photograph;
- (2) name;
- (3) organization; and
- (4) DOT permit number.

(b) While engaged in the solicitation of contributions, individual solicitors shall orally identify themselves and state which organization they represent.

(c) Individual solicitors operating under a permit from the department shall be permitted to engage in their solicitation activities only between the hours of 9:00 a.m. and 5:00 p.m. each calendar day except during holidays, when a different time is authorized in the permit.

(d) Individual solicitors are prohibited from soliciting on any portion of a highway not designated as a rest area or welcome center.

(e) The area of the rest area which may be used shall be specified in the permit, and shall not impede visitors' access to rest facilities. At the same time, it shall provide visibility of the soliciting group when feasible.

(f) Individual solicitors may use incidental water and electric utility services at highway rest areas or visitor centers with connections at locations approved by the Division of Highways.

(g) A permittee shall be limited to one individual solicitor engaged in solicitation activities at each site, and this individual may have the assistance of no more than two other members of the permittee's organization.

(h) Individual solicitors shall not persist in soliciting after solicitation has been declined, and solicitors shall not solicit State employees who are identifiable as such.

(i) Individual solicitors shall not harass persons by demanding, threatening or intimidating conduct.

(j) While individual solicitors may solicit from the general public donations for printed matter, refreshments or religious paraphernalia, the individual solicitors must inform the person solicited if a minimum donation is required.

(k) All distribution of refreshments, pamphlets and other materials and transfers of money or funds solicited from a person acting pursuant to a permit issued by the Chief Engineer or his duly authorized representative, shall take place in or at the location specifically identified in the permit.

(l) Individual solicitors may not engage in dancing, chanting, the use of music or other noise producing instruments, megaphones, microphones or any other similar devices.

(m) Individual solicitors shall cease activities in the event of emergency situations involving dangers to the general public.

(n) Individual solicitors shall not interfere with pedestrian or vehicular traffic.

(o) No more than two organizations, one religious and one non-religious charitable or educational, may solicit at highway rest areas, wayside parks or visitor welcome centers at the same time.

*History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 2012; December 1, 1993; October 1, 1991; August 1, 1986; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0804 REVOCATION OF PERMIT

(a) Any of the following shall be grounds for revoking a permit issued under the provisions of these Rules:

- (1) failure to renew the permit issued to the organization;
- (2) loss of federal income tax exemptions;
- (3) violations of the restrictions on solicitations contained in Rule .0803 of this Section;
- (4) substantiated complaints of harassment of travelers by individual solicitors;

- (5) any action which adversely affects the health or safety of the traveling public;
 - (6) fraud or misrepresentation in application on the part of the permittee.
- (b) Any organization which applies for a permit for solicitation and is refused such a permit, or any organization which has its permit revoked, may make a written appeal within 30 days of the department's decisions to the Secretary of Transportation whose decisions shall be final.

History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 1993; August 1, 1986; September 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0900 - DISTRIBUTION OF NEWSPAPERS FROM DISPENSERS AT REST AREAS AND WELCOME CENTERS

19A NCAC 02E .0901 NEWSPAPER DISTRIBUTION POLICY

The Department of Transportation, in recognition of the First Amendment right of freedom of speech which includes the right to distribute newspapers in certain public areas, and in recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public and the commercial vending authority of the Division of Services to the Blind, Department of Human Resources, has determined that all distribution of newspapers at rest areas and welcome centers on all of North Carolina's highways shall be in accordance with the following Rules. All other forms of newspaper distribution at rest areas and welcome centers are prohibited.

History Note: Authority G.S. 111-41 et seq.; 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0902 PERMITS REQUIRED

- (a) A permit must be obtained from the Department of Transportation to distribute newspapers from newspaper dispensers at rest areas and welcome centers.
- (b) All permit requests must be in writing and must include the owner's name, address, telephone number and location of the newspaper dispenser, a plot plan showing the proposed location of the newspaper dispenser and a certification that such location is in conformity with this Section. The filing of a completed permit application will be considered a temporary permit pending the 30 day Department of Transportation review in Paragraph (c) of this Rule.
- (c) Within 30 days of receipt of the permit application, the Department of Transportation will review the proposed location and, if it meets all requirements, issue a permit. If the application does not meet all requirements, the Department shall issue a notice of nonconformance and list the reasons the application does not conform to the Department Rules.
- (d) The permit shall be valid until terminated or revoked for noncompliance with these Rules.

History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0903 INDEMNIFICATION

- (a) The owner of the news dispenser, upon the placement of a newspaper dispenser at a rest area or welcome center, assumes the unconditional obligation and thereby agrees to defend, indemnify and save harmless the State, its agents, servants and employees from all suits, actions or claims of any character brought because of death or any injury received or sustained by negligence of State employees or agents, arising out of the installation, use or maintenance of any newspaper dispenser located on State highway rest areas or welcome centers, or where such suit, action or claims arise out of such installation, use or maintenance of any newspaper dispenser being a contributing omission, neglect or misconduct by the permittee, or its employees, agents, distributors or servants relating to the installation, use or maintenance of any newspaper dispenser within the State highway rest areas or welcome centers.

(b) The aforesaid indemnification provision shall be contained in each permit issued by the Department pursuant to this Section.

*History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0904 LOCATION, INSTALLATION AND MAINTENANCE/NEWSPAPER DISPENSERS

Any newspaper dispenser which in whole or in part rests upon, in or over rest areas or welcome centers shall comply with the following standard:

- (1) Newspaper dispensers shall not exceed five feet in height, 36 inches in width, or 30 inches in depth;
- (2) Newspaper dispensers may be chained or otherwise attached to one another; however, no more than three newspaper dispensers may be joined together in this manner, and a space of no less than 18 inches shall separate each group of three newspaper dispensers so attached.
- (3) No newspaper dispenser shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of a newspaper or periodical sold therein.
- (4) Every newspaper dispenser placed at a rest area or welcome center shall have affixed thereto in a place where such information may be easily seen, the name, address, and telephone number of the owner and person (if different from the owner) responsible for maintaining the news dispenser.
- (5) No newspaper dispenser shall be chained, bolted or otherwise attached to any public fixture located within the State highway right of way, including, but not limited to, official signs, sign supports, guide rails, traffic signal supports, highway lighting supports, controller boxes, fire hydrants or bus shelters.
- (6) Newspaper dispensers shall be securely place so as to reasonably prevent personal injury or property damage due to tilting, tipping or overturning.
- (7) Every newspaper dispenser shall be maintained so that:
 - (a) It is reasonably free of dirt and grease.
 - (b) It is reasonably free of chipped, faded, peeling and cracked paint;
 - (c) It is reasonably free of rust and corrosion; and
 - (d) The structural parts thereof are intact.
- (8) No newspaper dispenser shall be within five feet of a fire hydrant, fire call box, police call box or any other emergency facility.
- (9) No newspaper dispenser shall be placed in lobbies of rest areas or welcome centers or along the sidewalk on the approach to the rest area or welcome center building. Newspaper dispensers also are not allowed under the roof overhangs of these buildings.
- (10) No newspaper dispenser shall be placed in such a way that it impedes vehicular, pedestrian or handicapped person movements on drive and walkways, at telephones, trash receptacles, water fountains, to and from picnic areas or to and from rest area and welcome centers service buildings.
- (11) No newspaper dispenser shall be placed along the curbs adjacent to parking areas. When a news dispenser is placed along a sidewalk it shall be placed parallel to and no more than six inches from the sidewalk edge farthest from the traffic curb.
- (12) Where vending facilities are in existence at rest areas or welcome centers, the newspaper dispensers shall be placed in close proximity to those buildings.
- (13) Where vending facilities are planned at a rest area or welcome center, the newspaper dispensers shall be placed near the planned location of the vending facility.

*History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

19A NCAC 02E .0905 CONDITIONS, NOTICE OF VIOLATIONS AND APPEALS

- (a) The continued placement, use and maintenance of newspaper dispensers is conditioned upon compliance with all the provisions of this Section. If any of the provisions of this Section are alleged to have been violated or if the location, installation, or condition of the newspaper dispenser no longer meets with the specifications of this Section the permittee shall be notified of the non-compliance by registered mail, return receipt requested.
- (b) The notice shall state the specific provision(s) of this Section which are alleged to have been violated.
- (c) The notice shall further state that, upon request by the permittee within 15 days of the receipt of said notice, the official issuing the notice of violation shall meet with the permittee to discuss the basis for the determination that a violation exists and any proposed means of eliminating any violations. That meeting shall take place within 30 days of said request. A request for such a meeting shall stay the further enforcement of this Section, except in emergency situations. Following any such meeting, the official issuing the notice of violation may rescind the notice if it is determined that there was no violation or in the event the alleged violation is otherwise eliminated. The official may also grant time for the correction of any violation upon request.
- (d) If, within 30 days after mailing the notice of non-compliance, or within 30 days after the meeting referred to in Paragraph (c) of this Rule, in the event a meeting is requested and does not resolve the dispute in a mutually acceptable manner, or the permittee has failed to remove the newspaper dispenser or otherwise correct the violation or reason for non-compliance, the permit shall be revoked and the permittee shall be notified by registered mail that the permit has been revoked.
- (e) The decision as provided for in Paragraph (d) of this Rule shall be the final agency decision.
- (f) If the permittee (or applicant where no permit has been issued) fails to appeal from the revocation of a permit or a decision not to grant a permit, and does not remove or have removed the newspaper dispenser in question within 30 days from the receipt of a revocation notice, the newspaper dispenser shall be removed by the Department of Transportation maintenance personnel and stored at a Department of Transportation maintenance yard. The permittee shall be notified by registered mail of the location of the newspaper dispenser and the hours when it may be obtained. The Department of Transportation shall not be liable for any damage to the newspaper dispenser, to any material contained therein, or for any lost sales caused by the removal, transportation or storage of the newspaper dispenser.

History Note: Authority G.S. 136-18(9);
Eff. October 1, 1991;
Amended Eff. December 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .0906 COMPLIANCE WITH DIV OF SERVICES FOR THE BLIND REQUIREMENTS
Permittees must comply with the requirements of the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act [20 USC 107a(a)(5)].

History Note: Authority G.S. 111-41 et seq.; 136-18(9);
Eff. October 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .1000 - SCENIC BYWAYS

19A NCAC 02E .1001 DEFINITIONS

This Section establishes the Department's rules for the administration, designation and removal of the North Carolina Scenic Byways Program. For purposes of this Section, the following definitions shall apply:

- (1) "Board" means North Carolina Board of Transportation.
- (2) "Byway" means a scenic highway.
- (3) "Designate" means a process for approving a road or a system of roads to the state system of Scenic Byways.
- (4) "D.O.H." means Division of Highways of the Department of Transportation.
- (5) "Interested Party" means any proponent or opponent of the proposal for the designation or removal of the Byway.

- (6) "Intrinsic Qualities/Resources" means unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural, or ethnic features.
- (7) "Merit" means applications with all facts substantiated and considered suitable for further consideration.
- (8) "N.C.D.O.T./Department" means North Carolina Department of Transportation.
- (9) "Program" means the Scenic Byways Program and its associated administrative tasks.
- (10) "Promote" means to foster and encourage the advancement of the Scenic Byways Program.
- (11) "Removal" means the process of removing a Byway or a section of a byway from the state system of Scenic Byways.
- (12) "Report" means a summary of information prepared by the Roadside Environmental Unit.
- (13) "Roadside Environmental Unit" means a unit of the Department of Transportation.
- (14) "Scenic Byway/Highway" means a defined road or system of roads, designated by the Board of Transportation, having distinct natural, cultural, historical, and aesthetic qualities.
- (15) "Scenic Byway/Highway Management Plan" means strategic goals specifically outlined to preserve or enhance the scenic integrity along a state highway or state byway.
- (16) "Scenic Value" means a measurement of the aesthetic quality of an area determined through a visual inventory conducted by the Roadside Environmental Unit.
- (17) "T.I.P." means the Transportation Improvement Program.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1002 PURPOSE

- (a) The Scenic Byway/Highway system shall be established to provide the public with the opportunity to travel on a system of roads featuring the intrinsic qualities of the State within the existing highway system.
- (b) The Scenic Byway/Highway program is intended to identify not create scenic byways/highways.
- (c) The program and rules prescribed to sustain the integrity and safety of the scenic byway/highway system shall be incorporated into N.C.D.O.T. planning and maintenance operations.
- (d) All lawfully erected outdoor advertising signs adjacent to a Scenic Byway/Highway 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 shall become nonconforming signs and shall be allowed to remain until such time as funds become available for purchase.
- (e) The implementation of the system provides an alternative for safe travel, encourages tourism and economic growth, and promotes intrinsic qualities/resources along the highway system.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1003 ADMINISTRATION OF PROGRAM

- (a) The responsibilities and execution of duties of implementing and carrying out the goals of the Scenic Byway/Highway program are vested in the Division of Highways (DOH) of the NCDOT. The DOH is authorized:
 - (1) to plan, design, and develop the Scenic Byway/Highway System and Program;
 - (2) to develop and make recommendations, including routes to be designated or removed, to the Board of Transportation on the organization and operation of the Scenic Byway/Highway Program;
 - (3) to support the protection of historical, cultural, natural and aesthetic resources in areas adjacent to the highway.
- (b) Other administrative duties which shall be conducted by the Department are:
 - (1) to compose and provide application forms for proposed Scenic Byway/Highway locations and for removal of Scenic Byway/Highway locations from the system;
 - (2) to coordinate and manage Scenic Byway/Highway system signing;

- (3) to annually review and file a report by February 1 each year with the Secretary of Transportation on the existing Scenic Byways/Highways in the system and those highways offered for both designation and removal in the system;
- (4) to oversee interaction between the Department of Transportation and public/private entities interested in the development or management of the State Byway/Highway system;
- (5) to develop and make available to the public interpretive information about the Scenic Byways and Highways.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1004 DESIGNATION CRITERIA

- (a) The following criteria shall be required for a route to be included in the Scenic Byway/Highway system:
 - (1) highway design which preserves and protects the natural beauty or scenery of the area;
 - (2) location on an existing highway or roadway having legal public access;
 - (3) minimum consecutive length of one mile;
 - (4) adequate land area to accommodate safe enjoyment of scenic attractions;
 - (5) evidence of strong local support for the designation established by the proponent of the designation, which includes but is not limited to petitions, letters, and newspaper articles;
 - (6) significant natural or aesthetic features visible from and adjacent to the roadway. Such features include but are not limited to agricultural lands, vistas of marshes, shorelines, forests, and other areas of dense vegetation or notable geographic characteristics;
 - (7) intrinsic qualities such as but not limited to historical, cultural, or recreational resources in the area.
- (b) The NCDOT shall determine that development of the designated area shall not detract from the scenic natural character and visual quality of the route. The Department shall ensure the route is compatible with recreational, aesthetic, and environmental management needs of the area.
- (c) Designation of a highway as a Scenic Byway/Highway shall not significantly interfere with the operation or maintenance of existing public utility lines and facilities.
- (d) Designation of a highway as a Scenic Byway/Highway shall not be construed to require any modification in local land use regulations or restrictions, require any change in commercial or agricultural activities, or affect future highway rehabilitation, development, or the need to maintain or improve the roads.
- (e) Preference shall be given to a Scenic Byway/Highway with existing protected areas such as national forests or federal or state park land near or adjacent to the proposed route.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348;
Eff. March 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1005 DESIGNATION PROCESS

The process for designation as a Scenic Byway shall be as follows:

- (1) A non-profit organization, which includes but shall not be limited to a county commission or the governing body of any municipality, may submit an application to the Roadside Environmental Unit of the Department of Transportation with proper Scenic Byway/Highway identification on the envelope;
- (2) Roadside Environmental Unit shall review the application and prepare a written report, which includes findings on the designation criteria set in 19A NCAC 02E .1004 and a recommendation on whether the proposal should be adopted or rejected;
- (3) Proposed routes deemed to have merit based on criteria in 19A NCAC 02E .1004 shall be submitted by the DOH staff to the Board of Transportation for approval or denial;
- (4) At the request of any interested party, the Citizens Participation Unit of the N.C.D.O.T. shall hold a public hearing to consider any proposal recommended for approval;

- (5) If a hearing is requested the proponents of the Byway shall place a legal notice in at least one newspaper in the municipality nearest the proposed Scenic Byway/Highway and in three successive issues. The notice shall contain the date, time, and location of the hearing and a summary of the proposed designation. Proponents of the Byway/Highway shall be responsible for the cost of the legal notice. In addition to the hearing, written comments shall be accepted by the Roadside Environmental Unit for 30 days from the publication of the hearing notice. If no hearing is requested, written comments may be submitted and shall be accepted for 90 days from the date of application. A request for public hearing shall be made within 60 days from the receipt of the application. The hearing shall be held no sooner than 14 days following the last day of the legal notice and no later than 30 days following the last day of the legal notice;
- (6) The Department shall notify the proponent in writing of the Board of Transportation's approval or denial of the proposal;
- (7) The Board may designate any route or section of a route at anytime so long as the Board meets the criteria in 19A NCAC 02E .1004.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1006 APPLICATION FOR DESIGNATION

- (a) The following items shall be included for a Scenic Byway application:
 - (1) the proponent's name, address, telephone number, and email address, and the name, address, email address, and telephone number of the organization, if applicable;
 - (2) a written description of the section of highway to be designated, including a description of the section's unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features;
 - (3) photographic files of the area that demonstrate the section's qualities of significance;
 - (4) county maps with the proposed route marked;
 - (5) copies of zoning ordinances applicable to the route or a written list of existing land-use areas for unzoned areas;
 - (6) documentation of notice given to local governments adjacent to proposed route;
 - (7) for unzoned areas, a written list of commercial or industrial activities adjacent to or within 800 feet of the pavement of the proposed route; and
 - (8) an optional Scenic Byway Management Plan may be submitted with an application.
- (b) Completed applications shall be sent to the Roadside Environmental Unit, 1557 Mail Service Center, Raleigh, NC 27699-1557, no later than August 31 of each year. Incomplete applications shall not be accepted and will be returned to the proponent.
- (c) The application and all application materials are public records pursuant to Chapter 132 of the North Carolina General Statutes.

History Note: Authority G.S. 136-18(5); 136-18(31); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Readopted Eff. March 1, 2019.

19A NCAC 02E .1007 REMOVAL PROCESS

- (a) A route or section of a route may be removed if its character has changed such that it meets the criteria for removal as specified in G.S. 136-18(31) and taking into consideration that it no longer meets the criteria as set out in 19A NCAC 02E .1004.
- (b) The process of removal shall be as follows:
 - (1) A non-profit organization, which includes but shall not be limited to a county commission or the governing body of any municipality, may submit an application for removal to the Roadside Environmental Unit of the Department of Transportation with proper Scenic Byway/Highway identification label on the envelope;

- (2) The Roadside Environmental Unit shall review application, prepare a report incorporating a study of the scenic value of the submitted route or section of route and submit proposals deemed to have merit as specified in 19A NCAC 02E .1004 to the Board of Transportation;
 - (3) At the request of any interested party, the Citizens Participation Unit of the N.C.D.O.T. shall hold a public hearing to consider any proposal recommended for removal;
 - (4) If a hearing is requested the proponent of the Byway removal shall place a legal notice in at least one newspaper in the municipality nearest the route or section of a route proposed for removal and in three successive issues. The notice shall contain the date, time, and location of the hearing and a summary of the removal proposal. Proponents of the removal shall be responsible for the cost of the legal notice. In addition to the hearing, written comments shall be accepted by the Roadside Environmental Unit for 30 days from the publication of the hearing notice. If no hearing is requested, written comments may be submitted and shall be accepted for 90 days from the date of application. A request for public hearing shall be made within 60 days from the receipt of the application. The hearing shall be held no sooner than 14 days following the last day of the legal notice and no later than 30 days following the last day of the legal notice;
 - (5) The Board of Transportation shall approve or deny application; and
 - (6) The Department shall notify the applicant of approval or denial.
- (c) The Board may remove any route or section of a route from the Scenic Byway System at anytime so long as the Board meets the criteria for removal outlined in these Rules and in G.S. 136-18.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1008 REMOVAL APPLICATION

- (a) The following shall be included in a Scenic Byway removal application, but is not limited to such items, to be considered.
- (1) Characteristic which has changed such that it no longer meets criteria for designation;
 - (2) Documentation of current zoning, ordinances, and other land-use controls;
 - (3) Documentation of public notification of removal to relative parties and legal notice of public notification;
 - (4) Written route or section of route description, including elements supporting the proposal to remove;
 - (5) Written applicant information including name, address, and telephone number;
 - (6) Photographic slides of characteristics supporting proposal to remove;
 - (7) County maps with route or section of route marked.
- (b) Application must be received by the Roadside Environmental Unit, N.C.D.O.T., P.O. Box 25201, Raleigh, NC 27611 at least six months prior to the annual Board meeting set aside for Scenic Byway review. Incomplete applications shall not be accepted and will be returned to the proponent.
- (c) All applications and application materials shall become property of the North Carolina Department of Transportation.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1009 BOARD OF TRANSPORTATION EVALUATION

- (a) The Board of Transportation shall annually evaluate the Scenic Byway/Highway Program at its March meeting.
- (b) The review and evaluation shall include, but not be limited to, the following:
- (1) An examination of funding for the program;
 - (2) A determination of suitability of those proposed routes for designation and removal. A request for further information on the proposed route may be made by the Board. The suitability of the route shall be decided at a later date.

(c) The annual meeting date, place, and time shall be determined by the Board of Transportation and shall be consistent within each calendar year and with the annual Transportation Improvement Program (TIP) public hearings.

(d) The Board of Transportation retains the authority to designate or remove a route or a section of a route from the Scenic Byway/Highway system at any time. Prior to making its decision, the DOH shall prepare a recommendation to the Board.

History Note: Authority G.S. 136-18(5); 136-122 through 136-125; 136-129.2; 143B-348; Eff. March 1, 1995; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .1100 – TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

19A NCAC 02E .1101 TOURIST-ORIENTED DIRECTIONAL SIGN (TODS) PROGRAM

(a) The Tourist-Oriented Directional Sign Program, hereinafter "Program," offered by the North Carolina Department of Transportation, hereinafter "Department," provides directional signing for eligible tourist attractions located on the state non-freeway system which is located within the right-of-way at intersections as specified in the Manual on Uniform Traffic Control Devices (MUTCD).

(b) Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, 1592 Mail Service Center, Raleigh, North Carolina 27699-1592.

(c) Applications for participation in the program shall be accepted by the Division Engineer who is responsible for the county where the attraction is located.

History Note: Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1102 DEFINITIONS

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02E .1103 LOCATION OF TODS

The Department shall administer the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with this Rule.

- (1) The Department shall only erect panels at at-grade intersections. An at-grade intersection is an intersection that is controlled by stop signs or traffic signals. A TODS Trailblazer shall be installed if further direction is needed to guide the tourist from the intersection to the attraction.
- (2) Panel placement shall be determined by the Department according to the natural terrain and shall not block scenic vistas.
- (3) A separate sign panel shall be provided on the intersection approach for each eligible attraction in accordance with G.S. 136-140.16. Panels shall be allowed in each direction only when lateral spacing is available.
- (4) TODS panels shall be located at least 200 feet in advance of the main intersection. Signs shall be spaced at least 200 feet apart and at least 200 feet from other traffic control devices. TODS panels shall not be located more than one-half (0.5) mile from the center of the main intersection and shall not be placed in the signing sequence for any other prior intersections.
- (5) Warning, regulatory, guide, or other official highway signs shall take precedence over TODS.

History Note: Authority G.S. 136-89.56; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .1104 ELIGIBILITY FOR PROGRAM

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

19A NCAC 02E .1105 COMPOSITION OF SIGNS

- (a) No TODS panel shall be displayed in a manner that would mislead or misinform the traveling public.
- (b) No message shall interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal, or similar device.
- (c) Each TODS panel shall include only information related to that attraction.
- (d) TODS panel and trailblazer designs shall be in conformance with the standards as specified in the MUTCD, as defined in G.S. 136-130, and approved by the Department, prior to fabrication and shipment.

History Note: Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .1106 TODS PROGRAM FEES

- (a) The annual fee for each TODS panel or TODS Trailblazer shall be two hundred dollars (\$200.00).
- (b) All participating businesses shall pay the annual fee prior to installation of the TODS panel(s).
- (c) The annual fee shall be paid by check or money order and due in advance of the period of service requested. Failure to pay a fee when due shall be grounds for removal of the TODS panel.

History Note: Authority G.S. 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19;
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Readopted Eff. August 1, 2019.

19A NCAC 02E .1107 CONTRACTS WITH THE DEPARTMENT

19A NCAC 02E .1108 APPEAL OF DECISION

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .1200 – PRIVATE PROPERTY OWNERS

19A NCAC 02E .1201 PURPOSE

The North Carolina Department of Transportation's Public Vehicular Area designation exists to allow private property to be designated as a public vehicular area by the private property owner.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003;
Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1202 DEFINITIONS

For the purposes of the rules in this Section, the following definitions shall apply:

- (1) "Department" shall mean the North Carolina Department of Transportation.
- (2) "Participants" shall mean the private property owners who have registered property as a Public Vehicular Area.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1203 PARTICIPATION

- (a) The Division Engineer or his designee shall acknowledge receipt and registration of applications from participants applying to participate in designating a Public Vehicular Area.
- (b) By certified check or money order, each participant shall pay a one time non-refundable fee of two hundred dollars (\$200.00) for each registration. If the property is sold, the PVA registration shall transfer to the new owner unless the new owner chooses to amend or modify the agreement. This registration fee shall cover the cost of one certified copy of the registration of the Public Vehicular Area. Requests for additional certified copies shall be submitted to the Division Engineer in writing along with a check or money order for five dollars (\$5.00) per copy.
- (c) All applications shall be submitted on a form furnished by the Department.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1204 RESPONSIBILITIES OF PARTICIPANTS AND DEPARTMENT

- (a) The Department shall provide a copy of the official design of the signs that shall state "Public Vehicular Area G.S. 20-219.4."
- (b) Any participant shall:
 - (1) Locate signs in a manner that does not inhibit sight distance or create a safety hazard;
 - (2) Fabricate, install, and maintain signs in accordance with the Manual on Uniform Traffic Control Devices;
 - (3) Erect signs so as to provide reasonable notice to the motorist. Signs indicating Public Vehicular Area shall be placed at the driveway entrances to the area and within the limits of the Public Vehicular Area. The signs shall not be placed in the public right of way.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

19A NCAC 02E .1205 TERMINATION OF THE AGREEMENT

- (a) Any participant may choose to cancel the agreement by notifying the Department. No prorated refund shall be given to the participant due to cancellation of agreement.
- (b) A participant may choose to modify the agreement by resubmitting an application and two hundred dollars (\$200.00) fee for each registration.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003;

Eff. August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.