

Technical Memorandum

To: Electronic Distribution Recipients

From: Nancy T. Daubenberger, P.E.
Division Director, Engineering Services



Subject: Guidelines for Responding to Requests for Managing Right-of-Way Vegetation Adjacent to Businesses and On-Premise and Off-Premise Advertising Devices

Expiration and Purpose

This Technical Memorandum extends the expiration date of Technical Memorandum 11-17-ENV-03 to January 3, 2018 unless superseded prior this date.

The purpose of these guidelines is to provide a formal means for owners or operators of roadside businesses and advertising devices to make a request for vegetation management.

Guidelines

See Attachment: TM 11-17-ENV-03

Questions

Any questions regarding the technical provisions of this Technical Memorandum can be address to the following:

Paul Voigt, Roadside Vegetation Management Unit, Office of Environmental Stewardship, at **651-366-3631**

Any questions regarding publication of this Technical Memorandum should be referred to the Design Standards Unit, DesignStandards.DOT@state.mn.us. A link to all active and historical Technical Memoranda can be found at <http://techmemos.dot.state.mn.us/techmemo.aspx>.

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Attachments:

TM 11-17-ENV-03



MINNESOTA DEPARTMENT OF TRANSPORTATION
Engineering Services Division
Technical Memorandum No. 11-17-ENV-03
December 6, 2011

To: Electronic Distribution Recipients

From: Jon M. Chiglo, P.E.
Division Director, Engineering Services

Subject: Guidelines for Responding to Requests for Managing Right-of-Way Vegetation Adjacent to Businesses and On-Premise and Off-Premise Advertising Devices

Expiration

This Technical memorandum supersedes Technical Memorandum 06-18-ENV-03 and will expire on December 6, 2016 unless superseded prior to that date.

Implementation

This Technical Memorandum shall be implemented immediately.

Introduction

These guidelines provide a uniform procedure for evaluating requests to remove vegetation that may screen business and advertising displays and a framework for handling requests and managing vegetation in an environmentally sensitive manner.

Purpose

The purpose of these guidelines is to provide a formal means for owners or operators of roadside businesses and advertising devices to make a request for vegetation management and to list criteria to be considered by MnDOT in evaluation of the request.

It is the duty of MnDOT to protect the public investment in roadside vegetation for the benefit of the general traveling public while at the same time being responsive to the needs of the adjacent business activities including advertising devices.

Guidelines

The following State Law applies: (<http://www.revisor.leg.state.mn.us/stats/173/171.html>)

173.171 VEGETATION CONTROL; VISIBILITY; AGREEMENTS. The Commissioner of the Department of Transportation may enter into agreements with the owners of advertising devices not prohibited under these chapters and lawfully erected and maintained in adjacent areas, or with the owners of the real property on which the advertising devices are located, providing for the control of vegetation on the right-of-way in the vicinity of the advertising devices to ensure their visibility from the highway. The agreements shall provide that:

- (1) the cost of any vegetation control measures will be paid for by the owner of the advertising device or the owner of the real property on which it is located; and
- (2) Any control measures will be carried out in a safe, workmanlike manner.

Application

The request for vegetation control to increase visibility to businesses or an advertising device should be made to the MnDOT Area Maintenance Engineer at the Headquarters in which the site is located. Requests may be required to be made on a form provided by the Area Maintenance Engineer.

Time Restraints

Requests must be received to allow time to process the requests and still carry out the necessary operations, such as pruning or transplanting during the proper season.

Definition of Terms Used in this Policy

1. "MnDOT" means the Minnesota Department of Transportation.
2. "Approach distance" means the 1000-foot advance distance measured along the line of travel to the point at which the traffic passes by the center of the site.
3. "Legal conforming advertising device" means an advertising device not prohibited under Minnesota Statute 173 and lawfully erected and maintained in adjacent areas.
4. "Vegetation" means all woody and herbaceous plants either naturally occurring or planted.
5. "Unique vegetation" may include but not be limited to historical specimen trees or plant communities, plants on the limits of their natural range, and canopy trees or shrubs that protect rare or endangered plants growing under them.
6. "Screening vegetation" means trees or shrubs that function as a screen between the roadway and adjacent properties. The screen can block views of the highway from nearby residents or junkyards and other unsightly businesses from the highway.

Evaluation of the Request

All requests for management of vegetation which may be screening a business or an advertising device will be investigated by the appropriate Area Maintenance Engineer or designee. Consultation among the MnDOT District Office Right of Way Unit and the Central Office, Office of Environmental Stewardship may be necessary in the permit process to ensure that easement and environmental considerations are taken into account.

The following criteria will be considered in evaluating the request.

1. Did the obstructing vegetation exist on the site prior to construction of the business or advertising device? If so, will removal be aesthetically damaging to the view of the traveling public?
2. Is the subject advertising device a legal conforming advertising device? If not, the request shall be denied.
3. Is the business or advertising device actually screened? A business or advertising device will be considered to be screened when the viewing distance is less than 250' in zones posted at 35 mph or less and when the viewing distance is less than 350' in zones posted more than 35 mph, within the approach distance. The viewing distances may be all in one continuous segment, or they may be divided into two segments with no less than 100' in either segment. See example interpretations in the attachment to this memo. The Area Maintenance Engineer may elect to increase the viewing distance by 250' so that motorists can safely weave across traffic to enter a business on the opposite side of a multi-lane divided expressway. Adjustments will be made by using both the business site (buildings and other structures) and on-premise signs combined to figure viewing distance.

If a business site is visible for 300', and the on-premise sign is visible for 300', and the viewing distances do not overlap, the business would be considered to be in full compliance.

The 250-foot adjustment should not be used when other concerns are affected by the removal of the vegetation. If the vegetation is a screen to a junkyard, industrial sites or other unsightly views, or screens residents from the highway, this adjustment should not be used. If the vegetation is acting as a living snow fence to aid in the control of blowing and or drifting snow, this adjustment should not be used.

4. Is there vegetation between the R/W limit and the business or advertising device that is obstructing the view of either? If so, the permit should only be granted with a contingency providing for the removal of that vegetation first by the requestor.
5. Is the vegetation to be removed located in the median of the divided highway? If so, the request should be denied.
6. Is the vegetation considered to be unique, or is it an integral component of the landscape, scenic area or wildlife habitat area? If so, the request may be denied.
7. Is the vegetation acting as a screen to nearby residents or unsightly businesses? If so, the request should be denied. Junkyards must be screened from public roads by law (Statute 161.242, Junkyard Act).
8. Is the vegetation acting as a living snow fence to aid in the control of blowing and or drifting snow? If so, the request should be denied.
9. Does MnDOT own the trees? If the R/W is owned in fee the trees are included in the title; however, if the department has an easement, any trees and shrubs may belong to the underlying fee owner.

The original land title document should be examined to determine ownership. Refer to Minn. Stats. 160.22 for procedures to remove trees and shrubs not acquired.

10. Would removal(s) requested create a controversial issue? These guidelines are intended to provide visibility to the requestor when prudent and possible. But if an issue exists that would create a controversy, it should be identified. The requestor may be directed to get approval from adjacent property owners and/or the local unit of government in writing before a permit is granted.

Departmental Response to Requestor

The Department should respond to the requestor within thirty (30) days of receipt of the request.

Departmental Recommendation

After receipt of the completed request, the Area Maintenance Engineer or designee will make a field review of the business or advertising device location in order to determine the nature and extent of screening. After consideration of the evaluation criteria contained in the guidelines, the Area Maintenance Engineer will inform the requestor of the Department's decision either to approve, deny or partly fulfill the request, together with the reasons for the decision.

The appropriate action to be taken will be determined by the Area Maintenance Engineer. Determining the course of action may necessitate conferring with the business or advertising device owner and MnDOT Roadside Vegetation Management specialists before any work is done.

Vegetation to be removed will be appraised by MnDOT's Roadside Vegetation Management Unit personnel (MnDOT Central Office) or District forestry staff. Appraisals shall be in accordance with guidelines set forth in the current edition of the International Society of Arboriculture publication on tree and other plant appraisals. The Area Maintenance Engineer may, at his/her discretion, adjust the value accepted by MnDOT for the vegetation, based on other factors and in consultation with the District Right of Way Engineer and Central Office Roadside Vegetation Management Unit staff. Documentation of the reasons for the change from the appraisal should be made.

If the request is approved, the Area Maintenance Engineer will specify the conditions of the permit, which may include but not be limited to one or a combination of the following actions:

1. Vegetation may be pruned or trimmed to reduce the obstruction.
2. Individual plants may be relocated or removed to reduce or correct the obstruction. Plants shall be relocated to a MnDOT-selected location. Plants to be removed may either be replaced with plantings of equal aesthetic and monetary value, or the requestor must provide monetary compensation equal to the appraised value of all plants removed. Replacement plants must be installed at or near the same location provided they will not obstruct the advertising device or building, or at another location selected by MnDOT. Plantings shall be installed and maintained in accordance with MnDOT Standard Specifications 2571 and 3861.

All work on the highway right of way will be done at the discretion and to the satisfaction of the Area Maintenance Engineer either by a qualified contractor hired by the requestor or by qualified private landscape crews employed by the requestor.

The requestor may be required to post a performance bond.

Costs of Vegetation Control

All costs of any vegetation control measures shall be paid for by the requestor (Minnesota Statute 173.171).

Failure to Comply with Guidelines

Unauthorized vegetation control or removal will subject the violators to Minnesota Statutes 90.301, 90.412, 160.22, 561.04, and 609.595. Damage or destruction of vegetation shall be assessed by MnDOT Roadside Vegetation Management Unit or District forestry staff when so requested by the Area Maintenance Engineer. The responsible party shall be billed.

Questions

For information on the technical contents of this memorandum, please contact **Paul Voigt**, Roadside Vegetation Management Unit, Office of Environmental Stewardship, at **651-366-3631**.

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Example Interpretations

