

Mowing & Haying in the State Right of Way Stakeholder Group Meeting Notes

*Maplewood Training Room, ESD Materials Office,
1400 Gervais Avenue, Maplewood, MN*

December 13, 2017 from 12:30 to 4:30 p.m.

Meeting Objectives

- I. Sharing critical information
- II. Discuss permit process options and adjust as needed

In attendance: Bob Meier, Dan MacSwain, Emily Pugh, Craig McDonnell, Wayne Sandberg, Nancy Daubenberger, Krist Wollum, Jeff Huettl, Don Arnosti

Attending by phone: Eran Sandquist, Lori Cox, Lon Aune, Joe Smentek, Angela Forsythe

Meeting notes review:

Charlie asked the group to review the draft meeting notes, and acknowledged the caveat that additional revisions were needed in order to ensure accuracy regarding the MnDOT legal presentation.

A stakeholder asked for clarity regarding the Highway Sponsorship meeting and whether the processes are known for this program at this time. MnDOT shared they are in the hiring process for the director position which will lead the development of this program, and expect the individual to be in place in late-January. Nancy Daubenberger is willing to discuss questions regarding the program until the new director is in place. A stakeholder requested that the Highway Sponsorship program be accelerated and developed robustly to dovetail with the permitting process.

A stakeholder questioned the portion of the notes that stated that statewide policies tend to trickle down to local roads. Wayne Sandberg explained counties and local government representatives expressed a concern that there will be trickledown in the permitting to local roads, and that they would like to continue to have flexibility and local control over their roadsides.

Question: Where would enforcement fall on the recommendation elements?

Answer: The items in the December 6th notes are elements that need to be addressed in the legislative report. Enforcement doesn't fit within any of these, but it is a concern. If there are suggestions on this, such as who should do enforcement, this group can discuss that.

Question: If MnDOT has a permit process in place but does not enforce the permits, that's confusing?

Answer: At the listening sessions, there were both desires expressed for better enforcement as well as for not enforcing the permits. Enforcement can be included in the guidance from this group. MnDOT does not have enforcement officials on staff. DPS provides support enforcing compliance with MnDOT's policies and permits.

Question: Up until now, there was no one in charge of enforcement? A stakeholder shared a story a DNR officer enforcing permits. Curious who has jurisdiction over enforcement?

DNR answer: DNR does not have authority to do that, will look into the instance described.

Question: When MnDOT says they have no enforcement authority – there's things like issuing a ticket or charging with a crime, and then there's things like denying a permit. Enforcement can be denying a permit.

MnDOT answer: MnDOT has the administrative authority to deny permits. MnDOT staff who issue permits also perform field visits to check on right of way use and discuss any concerns with those doing work on the highway right of way. MnDOT considers this management, not permit enforcement.

Stakeholders discussed that denying a permit could be considered a type of enforcement. If MnDOT issues a permit and they have concern about someone's actions on the right of way, MnDOT could deny a future permit. Investigation is outside of MnDOT's purview. If a situation escalates, they would call in the county sheriff.

Questions: Does MnDOT's permit convey temporary property rights?

MnDOT Answer: No. It gives them rights to mow and remove the hay.

Question: If someone gets an agreement to not mow and hay [through the Highway Sponsorship program], who controls noxious weeds?

MnDOT answer: The details are still being worked out but it is likely it would be the individual/organization with whom MnDOT went into the agreement. If someone is sponsoring a highway, that individual will likely be in charge of noxious weeds. This responsibility would be discussed and then detailed in the agreement.

Question: Is it public information who gets the permit and where they get to mow?

Answer: Yes, you could call MnDOT and ask if there's a permit for that area.

DNR update on habitat in Minnesota

DNR brought maps showing public lands in Minnesota and grassland habitat changes. The DNR presentation at the December 6th meeting focused on the loss of CRP lands, and the fact that the habitat isn't spread equally throughout the state. In Southern Minnesota, the state owns very little public land. The Southwestern part of the state never had a lot of CRP land, which is why there's smaller amounts of grassland habitat there. A significant amount of grassland habitat has been lost a significant amount in the past 10 years. In the Northeastern part of the state, there's more public land for wildlife. In the grassland parts of the state, the pheasant and songbird numbers have decreased. Loss of grassland also creates water issues, as one of the best ways to clean water is to plant grass. Loss of grass results in loss of water filtration. In 2014 there was a MPCA study that showed in the Southwestern part of the state many bodies of water are not fit for human consumption.

Comment: If we're indicating that we're taking CRP out and using it as a loss of acres: In Marshall, we need to make sure we're adding back in perpetual easements along red river, wetland banks. There's a lot of different land management issues related to US Fish and Wildlife. The land comparison should be apples to apples. These maps do illustrate that one size doesn't fit all across the state.

Comment: Regarding pheasant habitat in Southwest Minnesota - there are getting to be more and more farmers leaving stalks in the field to maintain habitat. Along with CRP and DNR grounds, other practices may be at play.

Listening sessions

12/6 in Rochester – 50 to 55 participants. Most folks who spoke wanted to be able to mow and hay. A few folks spoke on supporting habitat. This was the first listening session where guard rails causing snow drifting issues came up. Learned that if there’s a guard rail there may also be a need for a snow fence of some kind.

MnDOT will provide a summary of the listening sessions to the group.

Check in with the group

Group members were asked to share whether they felt the following assumptions were true:

- *MnDOT has the authority to manage state trunk highway right-of way*
- *A permit or notification system is the tool to do this*
- *Primary issues to consider include:*
 - *Safety*
 - *Competing public interests*
 - *Habitat*

Stakeholders felt that enforcement and noxious weed control should be added to the “primary issues” list. They also wished to clarify that MnDOT works to accommodate the competing public interests in the right-of-way. The majority of stakeholders were in agreement with the additions mentioned, although several provided qualifying statements such as local entities should retain control, or a strong preference for a notification system instead of a permit. Two stakeholders did not agree with these common assumptions, stating that MnDOT hadn’t provided enough legal evidence to show they have blanket authority in the right-of-way. Stakeholders who did not agree felt that if MnDOT has only an easement, then no permit should be necessary. If MnDOT could provide a written opinion from Attorney General’s office, their groups could agree with the assumptions listed above.

Review and discuss permit processes

Review and discussion of permit process and potential legislation changes, including:

- *Timing (including August 1st date and other timing ideas)*
- *Priority to adjacent landowners*
- *Quantity (for instance, if using “take some/leave some” concept for mowing, could we propose legislation to eliminate the date restrictions in statute?)*

Potential considerations for timing:

No time restrictions	Zones	Emergency considerations	July 15 th	Take some/leave some
<ul style="list-style-type: none"> • No time restriction-flexibility 	<ul style="list-style-type: none"> • Timing – different dates for zones in state 	<ul style="list-style-type: none"> • Drought emergency allows a waiver of 	<ul style="list-style-type: none"> • Bump timing to 7/15 – earlier is better • Consider 7/15 start or 	<ul style="list-style-type: none"> • Timing requirement could go away with take some

No time restrictions	Zones	Emergency considerations	July 15 th	Take some/leave some
<p>needed due to weather</p> <ul style="list-style-type: none"> • Timing is arbitrary – up and downs to all • Safety cuts – stay any time 		<p>haying restrictions</p>	<p>different times based on geographic region</p>	<p>leave some concept</p> <ul style="list-style-type: none"> • Could be earlier if agree to a safety zone (8 feet) plus one pass (16 feet?) on state roadsides • Flexible timing linked to leaving some unmowed • Get rid of 8/1 – mow ½ of each side of road • Before August 1st allow x feet mowed (more than 8) out from roadway (counts for safety cut)

Potential considerations for priority to adjacent landowners

Note that for this conversation, there was also a conversation regarding how to identify adjacent landowners- What about corporations, renters, trusts?

Priority to Adjacent Landowner (plus)	Transfer adjacent owner priority	Current	Fee-based (from perspective of MnDOT not having legal authority over ROW)
<ul style="list-style-type: none"> • Cooperative agreement (sponsorship, liability addressed, deposit, ID who is mowing, non-adjacent landowners limit) 	<ul style="list-style-type: none"> • How do you manage giving priority? Good concept –sign off to neighbor 	<ul style="list-style-type: none"> • Like Jan-March open to adjacent landowner 	<ul style="list-style-type: none"> • Sensitive habitat zone - group could pay adjacent landowners to not mow (reimburse cost of hay left unmowed) • No mowing permit unless fee holder also

Priority to Adjacent Landowner (plus)	Transfer adjacent owner priority	Current	Fee-based (from perspective of MnDOT not having legal authority over ROW)
<ul style="list-style-type: none"> • Priority to adjacent landowners (or designee to get any permit • Adjacent landowners get opportunity to agree/disagree to have multi-year permits 			<ul style="list-style-type: none"> • agrees (plus MnDOT approval) • If adjacent landowner doesn't want it mowed, they can say no one can obtain a permit to mow

Potential considerations for quantity – take some/leave some or other compromises that might remove the date restrictions

Mow every other year any given stretch, no date restriction	Every other side of the road could eliminate the ability for someone to harvest hay for the year	Rotating parts of the ditch – would need to be rotated for vegetation management	If more grass is left the date could be earlier – higher quality/less hay? Could come back after 8/1 and cut the rest
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Stakeholder questions and comments during the above activity included comments related to transparency and a request to have a public-facing map related to permits, a desire to have a legal opinion from the Attorney General regarding MnDOT's authority, and a request that MnDOT commit to not requesting additional funding to support a resulting increase in permit requests.

Next steps

Upcoming meetings:

- January 11th – ST. Cloud
- January 18th – MnDOT Central Office
- January 25th – Roseville