

PROPERTY MANAGEMENT (5-491.500)
VEGETATION CONTROL (5-491.515)

515.1 INTRODUCTION

MnDOT often receives requests from people who want to prune or remove trees, hedges or other shrubs growing on a trunk highway right of way. Typical examples include requests made by utilities performing maintenance of their facilities, or requests made by owners of advertising devices desiring improved visibility from the highway.

Although both circumstances involve allowing another person to prune or remove vegetation on MnDOT's right of way, two independent statutes may apply. One statute relates to ownership of trees, hedges and other shrubs on highway easement right of way, and the other relates to visibility of advertising devices.

Minnesota law considers trees and shrubs in a highway right of way to have economic value. When MnDOT purchases a highway easement, the documentation will indicate whether the acquisition includes ownership of the trees and shrubs that may be on the parcel. If the documentation is silent on this topic, the underlying fee owner is deemed to be the owner of the trees and shrubs. Determining ownership of the trees and shrubs is an important first step in responding to a request made another person for permission to prune or remove trees or shrubs on a trunk highway right of way. In situations where MnDOT does not own the trees or other vegetation, the applicable statute requires that MnDOT follow a different process than those situations where MnDOT does own all the vegetation.

Requests to prune or remove vegetation for the purpose of improving visibility of advertising devices adjacent to MnDOT right of way are subject to an additional statute that relates specifically to the visibility of advertising devices from the highway. Upon receipt of such an application, MnDOT will evaluate whether the existing vegetation can be pruned or removed to achieve visibility.

515.2 AUTHORITY

Minnesota Statutes §160.22 addresses cutting or removal of trees and hedges on a highway right of way. Trees are defined as woody vegetation that is at least 6 inches in diameter measured 2 feet from the ground, and hedge is defined as any planted and maintained hedge within the right of way. On land that MnDOT owns in fee, MnDOT may decide where and when vegetation may be trimmed or removed. The statute says that any trees or shrubs planted by MnDOT on or along the right of way by MnDOT for the purpose of protecting the highway from drifting snow cannot be removed without MnDOT's consent. This is true whether or not MnDOT purchased the trees that were already present on a highway easement. The statute further provides that where MnDOT owns a highway easement and acquired ownership of the vegetation, it may decide how and when it may be cut without notice to adjacent landowners, and no person may cut or remove trees or shrubs without approval by MnDOT. However, if the underlying fee owner still owns the trees and hedges on a highway easement right of way, then the fee owner is entitled to notice, a hearing, and an opportunity to appeal to a district court a decision by a road authority to cut and remove the vegetation.

Minnesota Statutes §173.171 authorizes MnDOT to enter into agreements with the owners of lawful advertising devices located in areas adjacent to a trunk highway, 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. Although this statute does not define the term "vegetation," it is generally defined as all woody and herbaceous plants either naturally occurring or planted. This statute allows, but does not require, MnDOT to enter into an agreement. A MnDOT Miscellaneous Work Permit will serve as the agreement documentation. The statute requires that

the agreement must provide that: (1) the cost of any vegetation control measures must be paid by the owner of the advertising device or the owner of the real property on which the advertising device is located; and (2) the vegetation control measures will be carried out in a safe and workmanlike manner.

515.3 PROCEDURE

1. A person (including but not limited to (a) an owner of utility facilities, (b) the owner of an advertising device, or (c) the owner of the property on which such an advertising device is located) who desires to prune or remove vegetation on a trunk highway right of way may initiate the process by submitting a Miscellaneous Work Permit application for review by the District staff.

2. Upon receipt of an application form, the District permit office will route the request for review by the District Right-of-Way Office, the Office of Environmental Stewardship (OES), and other functional areas as appropriate. The evaluation by District ROW will include a determination of whether MnDOT owns the vegetation proposed for pruning or removal.

3. OES will complete an internal review of the area requested for vegetation management for potential impacts. The OES review will include an assessment of whether the proposed work would impact protected or endangered species. If the application requests removal of vegetation, OES will determine a value of the vegetation proposed for removal. OES will send its review and valuation to the District permit office along with a recommendation for approval or denial of the application.

4. Reasons for denial of an application for vegetation management include, but are not limited to:

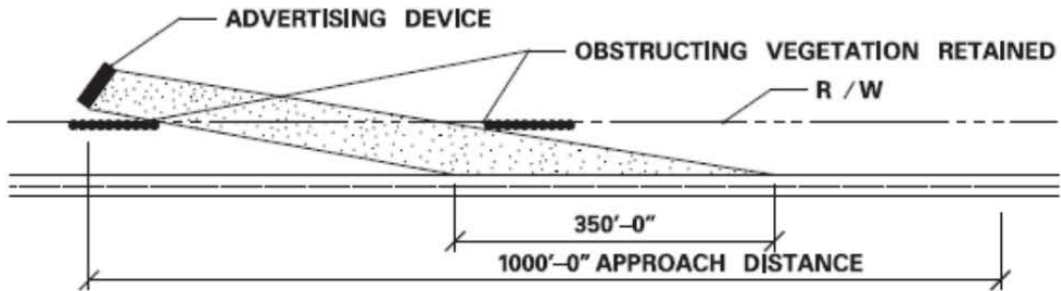
- a. MnDOT does not own the trees to be pruned or removed.
- b. The vegetation proposed for removal is located in the median of a divided highway.
- c. The vegetation proposed for trimming or removal is unique or is an integral component of the landscape, a scenic area or wildlife habitat area.
- d. The vegetation proposed for pruning or removal acts as a screen of junkyards under Minnesota Statutes § 161.242, or otherwise screens unsightly locations from the highway, or screens the highway from nearby residents.
- e. The vegetation proposed for pruning or removal acts as a living snow fence to aid in control of blowing and drifting snow.

5. When an application has been made for the purpose of advertising visibility (i.e., when Minnesota Statutes §173.171 will apply), the review by OES will evaluate the following additional considerations:

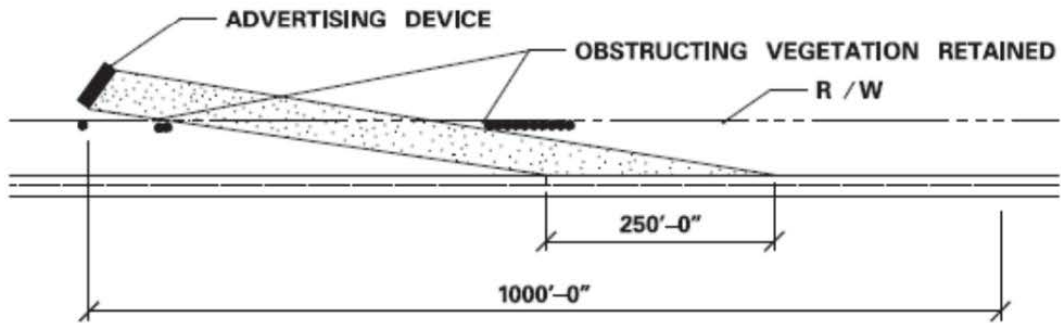
- a. Whether the subject advertising device is a legal conforming advertising device.
- b. Whether the obstructing vegetation existed on the site prior to construction of the business or advertising device. If so, will removal be aesthetically damaging to the view of the traveling public?
- c. Whether vegetation located between the right of way boundary and the business or advertising device contributes to the obstruction of the visibility. If so, the permit may be granted subject to a condition that the applicant remove that vegetation first.

- d. Whether vegetation removal would create a controversy due to opposition by neighbors or by other governmental authorities. If so, all aspects of the controversy should be evaluated. The requestor may be required to address the concerns of the neighbors or governmental authority before a permit is granted.
- e. Whether the vegetation on MnDOT right of way restricts the view of the business or advertising device.
 - A business or advertising device will be considered to be screened when the viewing distance for traffic approaching the site is less than 250 feet in zones posted at 35 mph or less and when the viewing distance is less than 350 feet in zones posted more than 35 mph within the approach distance (1,000 feet). The viewing distances may be all in one continuous segment, or they may be divided into two segments with no less than 100 feet in each segment.
 - The Area Maintenance Engineer may elect to increase the viewing distance by 250 feet 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 feet, and the on-premise sign is visible for 300 feet, 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 removal of the vegetation would raise other concerns such as those listed in paragraph 4.
6. Based on the reviews by District staff and OES, the District may either approve or deny the request. If the application is to be granted, the District Permit Office will ensure that the applicant has a copy of the Vegetation Removal Provisions that will be attached to the permit.
7. The Special Conditions of the permit may require a performance bond (optional) or compensation for the value of the removed vegetation. The District permit office will ensure that the permittee fulfills such requirements.
8. Minnesota Statutes §173.171 requires that all costs of any vegetation control measures for the purpose of advertising visibility shall be paid by the applicant.
9. All work on the highway right of way will be done at the discretion and to the satisfaction of the District Permit Office either by a qualified contractor hired by the requestor or by a qualified private landscape crew employed by the applicant.
10. Upon request by the Area Maintenance Engineer, the value of trees and other vegetation damaged or removed without authorization will be assessed by MnDOT Roadside Vegetation Management Unit or District forestry staff. MnDOT will bill the party responsible for unauthorized cutting or removal of trees or shrubs owned by MnDOT. Other remedies may be pursued under Minnesota Statutes §§ 90.301, 90.412, 160.22, 561.04, and 609.595.

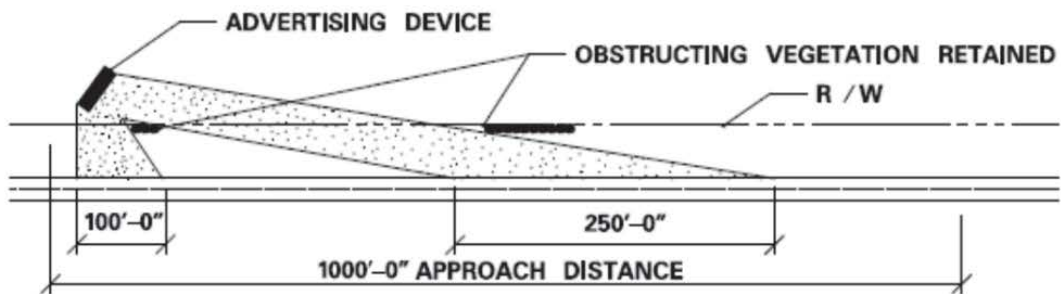
EXAMPLE INTERPRETATIONS



UNOBSTRUCTED DISTANCES FOR HIGHWAYS POSTED AT GREATER THAN 35mph



UNOBSTRUCTED DISTANCES FOR HIGHWAYS POSTED AT 35mph or LESS



UNOBSTRUCTED VIEWING DISTANCES MAY BE ALL ONE CONTINUOUS SEGMENT OR BE DIVIDED INTO TWO SEGMENTS WITH NO LESS THAN 100 FEET IN EITHER SEGMENT

NOT TO SCALE