

March 1, 2018

***Via Email***

Sen. Scott Newman, Chair, Senate Transportation  
Finance and Policy

Sen. Scott Dibble, Ranking Minority Member, Senate  
Transportation Finance and Policy

Rep. Paul Torkelson, Chair, House Transportation  
Finance

Rep. Frank Hornstein, DFL Lead, House  
Transportation Finance

Rep. Linda Runbeck, Chair, House Transportation and  
Regional Governance Policy

Rep. Connie Bernardy, DFL Lead, House  
Transportation and Regional Governance Policy

Sen. Torrey Westrom, Chair, Senate Agriculture,  
Rural Development, and Housing Finance

Sen. Kari Dziedzic, Ranking Minority Member, Senate  
Agriculture, Rural Development, and Housing  
Finance

Rep. Rod Hamilton, Chair, House Agriculture Finance

Rep. Jeanne Poppe, DFL Lead, House Agriculture  
Finance

Sen. Bill Weber, Chair, Senate Agriculture, Rural  
Development, and Housing Policy

Sen. Foug Hawj, Ranking Minority Member,  
Agriculture, Rural Development, and Housing Policy

Rep. Paul Anderson, Chair, House Agriculture Policy

Rep. David Bly, DFL Lead, House Agriculture Policy

Sen. Bill Ingebrigtsen, Chair, Senate Environment and  
Natural Resources Finance

Sen. David Tomassoni, Ranking Minority Member,  
Senate Environment and Natural Resources Finance

Rep. Dan Fabian, Chair, House Environment and  
Natural Resources Policy and Finance

Rep. Rick Hansen, DFL Lead, House Environment and  
Natural Resources Policy and Finance

Sen. Carrie Rudd, Chair, Senate Environment and  
Natural Resources Policy and Legacy Finance

Sen. Chris Eaton, Ranking Minority Member, Senate  
Environment and Natural Resources Policy and  
Legacy Finance

Sen. Gary Dahms, SF 218 author

Rep. Chris Swedzinski, HF 124 author

RE: Recommendations for Changes to MnDOT's Permitting Process for Mowing and Haying in State Highway Right of way

Dear Legislators:

This letter is in response to legislation passed during the 2017 session in which the Minnesota Legislature established a moratorium on enforcing permits to mow or bale hay in the right of way of a trunk highway. This legislation also required the commissioner of transportation to recommend to the legislature the establishment of a permit or notification system to mow or hay in the trunk highway right of way ([Laws of Minnesota 2017, Chapter 15, Section 1](#)).

The Legislature outlined specific elements to be included in the recommendations, including:

- Ease of permit application or notification
- Frequency of permits or notification
- Priority given to the owner or occupant of private land adjacent to a trunk highway right of way
- Determination of authority to mow or hay trunk highway right of way in which adjacent land is under the jurisdiction of the state or a political subdivision
- Recognition of differences in the abundance of wildlife habitat based on geographic distribution throughout the state

The legislation required the recommendations to be developed with input from agricultural and environmental groups. The Minnesota Department of Transportation convened a stakeholder group between Aug. 2017 and Jan. 2018 to review challenges with permitting mowing and haying as it relates to the various interests in the right of way. MnDOT also held nine public listening sessions and collected feedback in multiple formats (on its website, by email, mail and verbally) from across the state to learn the public's opinion on the issue and potential future legislation.

The following are the recommendations based on stakeholder group feedback and public engagement.

### **Ease of Permit Application or Notification**

#### ***Application:***

- Updated permit application system in 2017 to provide an online electronic permit submission;
- Continue to allow applicants to download the permit application form from MnDOT's website and print it, fill it out and mail it to MnDOT; and
- Continue to provide in-person permit application assistance in the district offices.

***Insurance:***

- Removed the requirement to designate the State of Minnesota as the third party insured<sup>1</sup>; and
- Modified minimum insurance requirement to reflect change from mandatory to recommended minimum limit of \$1 million in coverage per occurrence.<sup>1</sup>

***Security Deposit:***

- District staff will continue to set or waive the refundable security deposit as appropriate.

***Safety Requirements:***

- Retain high-visibility vest (or shirt) requirement for individuals in the right of way when not operating farm equipment, vehicle, or implement of husbandry. MnDOT to provide a vest if needed;<sup>1</sup>
- Retain vehicle/equipment light requirement (previously changed from a strobe light to a flashing amber light of a type approved by the Commissioner of Public Safety, as they are readily available and less expensive);<sup>1</sup> and
- Require all vehicles to operate consistent with safety and visibility requirements of Minnesota Law.

***Mowing without haying of right of way vegetation in an area traditionally maintained as lawn by private landowners:***

- Propose additional language to [Minn. Stat. 160.232](#) to excuse an abutting landowner, or authorized designee of an abutting landowner, from the requirement of obtaining a permit when the landowner desires to mow the right of way vegetation immediately adjoining that landowner's lawn, house, or building for purposes of routine lawn maintenance;
- Propose additional language to [Minn. Stat. 160.232](#) to describe the responsibilities, requirements and liability one is accepting by mowing without haying in the right of way as described in the immediately preceding recommendation; and
- Educate individuals about reasonable amounts of mowing without a permit.

**Frequency of Permits or Notification and Priority Given to the Owner or Occupant of Private Land Adjacent to a Trunk Highway Right of way**

***Abutting Landowner/Designee Permit Applicant:***

- Develop and use a long-term permit. Following permit issuance, abutting landowner may renew annually by communication with MnDOT, contingent on continuous ownership of the land and subject to MnDOT's right of reasonable revocation.

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<sup>1</sup> Denotes a change implemented prior to or during the 2017 legislative session on the basis of informal stakeholder engagement and government entity feedback.

- Abutting landowners can apply before March 1<sup>st</sup> to have priority<sup>2</sup>; and
- An abutting landowner’s designee may receive the long-term permit provided to abutting landowners, subject to receipt of approval by the abutting landowner and review and approval of district office staff. The abutting landowner may withdraw designation, which will cancel an existing permit between MnDOT and a designee, by notifying MnDOT.

***Non-abutting Landowner Permit Applicant Without “Designee” Status:***

- Require an annual permit for non-abutting landowner permit applicants without “designee” status; and
- Consider applications after March 1<sup>st</sup> on a first come, first served basis.

**Determination of Authority to Mow or Hay Trunk Highway Right of way in which Adjacent Land is Under the Jurisdiction of the State or a Political Subdivision**

MnDOT is entrusted with management of trunk highway right of way through statutory and case law, including right of way adjacent to land under the jurisdiction of the State of Minnesota or a political subdivision.

Currently, MnDOT is engaged in collaborative relationships, memorialized in partnership or other agreements, with state entities and political subdivisions that have jurisdiction over lands adjacent to right of way. These collaborative relationships provide opportunity for communication and resource efficiency. MnDOT recognizes the value of these collaborative relationships and will continue to work with governmental entities in this manner.

**Recognition of Differences in the Abundance of Wildlife Habitat Based on Geographic Distribution throughout the State**

MnDOT explored with the stakeholder group the idea of proposing date changes allowed for mowing by region. MnDOT reached out to the Minnesota Department of Natural Resources to provide information regarding differences in wildlife habitat across Minnesota. The DNR provided maps of public land percentage per county, the Minnesota Prairie Conservation Plan, and Grassland Habitat Changes in Western and Southwestern Minnesota 2007-present. MnDOT created maps based on data supplied by Journey North on spring and fall monarch butterfly sightings in Minnesota by citizen reporters.

In addition to these maps, the group looked at other existing statewide rules base upon geographic regions in Minnesota, such as DNR ice fishing shelter removal dates, DNR ecological provinces, USDA plant hardiness zone, Minnesota Department of Agriculture AgroEcoregions, Minnesota State Climatology Office spring frost-free dates, Road Weight Restriction Zones and MnDOT districts. Interstate and U.S. highways were included on these maps as reference and to see if a highway or group of highways formed a logical break.

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<sup>2</sup> Denotes a change implemented prior to or during the 2017 legislative session on the basis of informal stakeholder engagement and government entity feedback.

It was determined by the stakeholder group that the information provided by MnDOT, DNR, MDA and Journey North did not provide logical geographic break lines for mowing regions in Minnesota.

## Other Discussion Points

***Environmental Stewardship Right of way Opportunities:*** The Department of Natural Resources and MnDOT joint Roadsides for Wildlife program and MnDOT's highway sponsorship program both provide a vehicle for individuals and businesses to practice environmental stewardship in the right of way. The Roadsides for Wildlife program is established and the highway sponsorship program is in development.

***Requirement for having Permit On Hand while Mowing and Haying in the Right of way:*** Since special provisions as part of permitting are necessary for permittees' awareness, MnDOT will continue to require the permit to be on hand during these operations, but will now allow for that to be in electronic form in lieu of a paper copy.

***Flush Bars:*** DNR staff clarified this is not a major benefit to wildlife, as tractors move too quickly for wildlife to get out of the way and farmers are unable to stop abruptly to avoid nests, etc. The group determined this would be a potential recommendation item for the Roadsides for Wildlife program.

***Phased Implementation of the Permit System:*** MnDOT will provide educational communication explaining these changes to the permit process and phasing implementation of the permit system.

## Recommended Legislative Proposals or Resulting Permit Process Changes

Based on stakeholder group discussion and public engagement, MnDOT proposes the following additional legislative proposals and permit process changes.

- Propose revision of [Minn. Stat. 160.232, subd. \(b\)](#) from allowing mowing on "the first eight feet away from the road surface, or shoulder..." to authorizing mowing of "one standard swath" in order to accommodate modern mowing equipment.
- Propose revision of [Minn. Stat. 160.232, subd. \(c\)](#) to remove the language establishing the restriction that right of way "may not be mowed to a height of less than 12 inches" and replace it with a restriction that right of way "may not be mowed to a height of less than what is deemed an appropriate length as determined by the Commissioner of Transportation."
- Propose amendment to [Minn. Stat. 160.232](#) in order to: 1) allow an abutting landowner, or an abutting landowner's designee, to mow right of way vegetation immediately adjacent to the landowner's grass lawn, house or other building without a permit solely for the purpose of routine lawn maintenance; and 2) define responsibilities, requirements and liabilities associated with engaging in activities in the right of way without a permit and inform an abutting landowner or designee of same.

The summary document contains feedback from the stakeholder working group as well as public comments. For questions or comments on these proposed changes, please contact Nancy Daubenberger at (651) 366-4826.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles A. Zelle". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles A. Zelle  
Commissioner