

ARKANSAS DEPARTMENT OF TRANSPORTATION
VEGETATION MANAGEMENT ON HIGHWAY RIGHTS OF WAY
RESTORE PROPERTY VISIBILITY POLICY
(RPVP)

October 23, 2019

1.0. PURPOSE

The purpose of this policy is to establish procedures whereby property owners may obtain permits from the Arkansas Department of Transportation (ARDOT) to restore the visibility to their property from adjacent State Highways, controlled pursuant to the Federal and State regulations for the effective control of outdoor advertising and State regulations for landscaping on State Highway rights of way.

The procedures contained in this policy comply with 23 U.S.C. 131, implemented through 23 CFR Part 750, and Arkansas Code Title 27, Chapters 64 and 74 with the intent for ARDOT to protect the public investment in the State Highway System, promote the safety and recreational value of public travel, support Arkansas' economy, and preserve the State's natural beauty.

2.0. DEFINITIONS

2.1. Barrier is a fence, parapet wall, guardrail, wire rope safety fence or other device intended to prohibit entry between the State Highway right of way and the adjacent property.

2.2. Certified Arborist is a specialist in the care and maintenance of trees who possesses an active Arborist Certificate from the International Society of Arboriculture.

2.3. Illegal Sign is a sign that was erected, or is being maintained, in violation of local or State law or regulations, and which is not permitted as a conforming or nonconforming sign.

2.4. Landowner is any persons, corporation, agency or body that is the Owner of Record of a parcel of land that adjoins the State Highway right of way. The County Tax Assessor's records will be accepted as verification of the Owner of Record.

2.5. Landscaping Mitigation is the planting of new vegetation to offset damage resulting from removal of existing vegetation, as it relates to erosion control or aesthetics. For example, removal of brush, honeysuckle, or thickets may result in slopes that will erode. ARDOT may require the planting of grass or other ground cover to minimize damage.

2.6. Legal Sign is a sign that was erected, or is being maintained in accordance with local or State laws and regulations, and which is permitted as a conforming or nonconforming sign.

2.7. Off-premise Sign is a sign advertising products or services not available at the sign site.

2.8. On-premise Sign is a sign advertising those products or services available at the sign site, including “for sale” or “for lease” signs located at the property they advertise.

2.9. Owner is the landowner or sign owner as it relates to the RPVP permit.

2.10. Permittee is the owner that is requesting the RPVP permit.

2.11. Selective cutting is the removal of trees that are defective, of inferior kinds, or obstructing visibility to adjacent property and if removed have minimal impact to the aesthetic value of State Highway rights of way.

2.12. Sign is an outdoor advertising sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents which is visible from any place on the main-traveled way of the portions of the Federal-Aid Highway System regulated by 23 U.S.C. 131.

2.13. Sign Owner is any persons, corporation, agency or body that has the legal or rightful title of a sign.

2.14. Vegetation Control is the mowing, bush hogging, trimming, pruning, and/or selective cutting and removal of vegetation on State Highway rights of way.

3.0. POLICY

It is the policy of ARDOT to allow, by Restore Property Visibility Policy (RPVP) permits, the mowing, bush hogging, cutting, trimming, pruning, and/or selective removal of vegetation on State Highway rights of way to restore the visibility of property and signs from State Highways. This policy permits landowners to return the vegetation height of highway right of way to that of the landscape of the adjoining property. This policy also permits sign owners to restore visibility which has diminished since the original erection of the signs.

This policy for signs applies to the visibility of legal, off-premise signs, both conforming and nonconforming, and not to illegal signs. RPVP permits will not be issued in relation to illegal signs, or to sign owners with other illegal or abandoned signs.

3.1. RPVP permits authorize vegetation control only on that portion of State Highway right of way that abuts the tract of land on which the Permittee owns or on which the Permittee's sign or property is located and/or abuts tracts where landowners agree to such control.

3.2. RPVP permits for signs shall only be considered for legal, currently permitted signs that have had a valid permit for the last two (2) consecutive years.

3.3. RPVP permits must be obtained for each location at which vegetation control will occur and must be renewed in a four-year cycle in July of even numbered years. Where applicable, the RPVP permit will be associated to the relevant sign permit.

3.4. RPVP permits must be obtained for vegetation control involving major clearing, and the installation, use, and maintenance of sprinkler systems.

3.5. RPVP permits must be obtained for vegetation control that could impact public safety, cause drainage damage, or create erosion problems.

3.6. ARDOT may require a National Pollutant Discharge Elimination System (NPDES) permit in conjunction with issuance of the RPVP permit.

3.7. Unless notified otherwise by ARDOT, RPVP permits for mowing, minor clearing and maintenance of frontage under certain circumstances are not required on non-controlled access facilities at locations that are free from barriers intended to prohibit entry onto the State Highway right of way from the adjacent property.

3.8. Vegetation control within median areas of divided highways will be considered on a case by case basis. If approved, the Permittee will be required to submit a Highway Access Safety Plan.

3.9. Permittees may perform vegetation control for the area in front of the property or sign within the limits of the Department's right-of-way, unless otherwise specified in the permit.

3.10. RPVP permits authorize vegetation control only in accordance with accepted landscaping and horticultural principles. All work will be performed in a professional manner, and cuttings and other debris are to be removed at the time the work is performed. Vegetation may be chipped or mulched and spread uniformly on the site if approved in the permit. Trees that cannot be mowed or bush hogged may be trimmed or pruned provided the work will not permanently damage or destroy the trees, or weaken the condition of the trees so that they are susceptible to disease or insect infestation. Mitigating landscaping may be required to compensate for the tree removal.

3.11. RPVP permits may authorize the removal of dead or diseased trees, or the selective cutting of any other trees requested by the Permittee and approved by ARDOT. Only those trees as specified in the RPVP permit and approved by ARDOT may be removed. Mitigating landscaping may be required to compensate for the tree removal.

3.12. In no case will historic trees, landmark trees, or trees of significant landscaping or aesthetic value be removed, including trees that were planted as a part of a public or private highway beautification or enhancement project.

3.13. If a sign owner desires to restore visibility to a sign in front of an adjacent landowner not associated with the sign, written approval from the adjacent landowner must be obtained before an RPVP permit will be issued.

3.14. Access to sites adjacent to Interstate and other controlled access highways must be gained without using the main travel way of the highway. If ARDOT determines access from the travel way is the only feasible alternative, ARDOT may approve a Highway Access Safety Plan submitted by the Permittee as part of the RPVP permit.

3.15. The Highway Access Safety Plan shall comply with all work zone safety requirements in accordance with the Manual for Uniform Traffic Control Devices (MUTCD), ARDOT Standard Roadway Drawings for Standard Traffic Control for Highway Construction, and the current edition of the ARDOT Standard Specifications for Highway Construction. Traffic control devices shall be supplied, installed, and maintained by the Permittee.

3.16. The Highway Access Safety Plan will require an ARDOT inspector on-site for the duration that the Permittee or its representatives are adjacent to the Interstate or controlled access highway for work zone and vegetation control activities. The Permittee will be charged \$250 per day for each day the inspector will be required on-site. Any partial days will be counted as full days when assessing this charge.

3.17. The ARDOT inspector has the right to immediately terminate any activities by the Permittee or its representatives upon notice of any violation of the Highway Access Safety Plan or RPVP permit.

3.18. For access to a site adjacent to Interstate and other controlled access highways that is restricted by a fence, a gate may be requested to provide access for right of way vegetation control only. Gates will be permitted upon any required approval from the Federal Highway Administration (FHWA).

3.19. Any gate installed shall remain locked when the vegetation control activity is not underway. The Permittee will be fined \$200 for each time a gate is found unlocked and unattended unless corrected within 24 hours of being notified by ARDOT. This section does not apply if the lock and chain have been cut by vandals over which the Permittee had no control. However, upon discovery of the vandalism, the Permittee will make any necessary repairs within two business days.

3.20. Cutting, leaving openings, or any other form of destruction to ARDOT fences is not allowed, and the Permittee will be fined \$200 for each occurrence.

3.21. Access through permitted gates is prohibited for routine billboard maintenance such as changing sign messages. When gates are used for sign maintenance or roadway access, the Permittee will be fined \$200 per occurrence.

3.22. Vegetation control will not be allowed within 500 feet of National Parks; State Parks; County Parks or City Parks; Wildlife Management Areas; cemeteries; or where plantings are part of a public or private highway beautification or enhancement project.

3.23. At locations which are free from barriers between the State Highway right of way and the adjacent property and where mowing has previously been allowed by business owners or sign owners without an RPVP permit, mowing will be allowed to continue without an RPVP permit.

3.24. Vegetation control should not leave large, open spaces or gaps in the general outline of the tree. Shaping of trees to the extent practical may be allowed to control and direct the growth in a manner consistent with the remaining vegetation of the adjacent areas along the highway right of way. Shaping of trees shall only be allowed if performed under the direction of, or as prescribed in a plan design by a certified arborist. The general outline of the tree should not be changed if trimmed in accordance with this policy.

3.25. No topping of trees will be allowed.

3.26. RPVP permits granted for vegetation removal may require landscaping mitigation in the form of replacement plantings. If an applicant removes vegetation and the result is that a nonconforming junkyard or unsightly area also becomes visible, ARDOT may also require planting of smaller trees or vegetation of a sufficient height to screen the area. Landscaping mitigation requirements are to be determined by ARDOT. The initial cost and maintenance of these plantings shall be the responsibility of the Permittee. In lieu of plantings, a privacy fence may be installed with the permission of the land owner. The Permittee will be responsible for any maintenance or repairs to the fence as deemed necessary by the District Engineer.

3.27. Stumps shall be cut or ground flush with the ground and treated with an EPA-approved herbicide immediately after the stump is cut. Only the stumps are to be treated. The use of herbicides or chemicals on the grass or ground cover is not allowed. Spraying a EPA-approved herbicide along a privacy fence as described in Section 3.26 would generally be acceptable. However, there are restricted areas, such as well-head protection areas, that herbicide spraying would not be allowed. Identification of these restricted areas will be made during the environmental review process before issuing a permit.

3.28. All mowing or cutting must be accomplished with hand tools, wheeled machinery, or rubber tracked machines not exceeding three (3) tons. No steel track equipped machines are allowed. Grass and weeds may be mowed, but surface growth of at least four (4) inches

must be left for erosion control. Digging, scraping, bulldozing, clear cutting, uprooting trees, or “scalping” the ground is not allowed.

3.29. Vegetation control activities shall be conducted in a manner that does not obstruct or pose danger to motorists in their lawful use of the highway.

3.30. Vegetation control or work zone activities authorized by an RPVP permit shall be accomplished at no expense to ARDOT.

3.31. The Permittee is responsible for sprinkler systems, equipment, or devices authorized by an RPVP permit and assumes any risk of damage incurred by ARDOT while performing maintenance activities on highway right of way.

3.32. The Permittee is responsible for repairing any damage to the right of way as a result of vegetation control activities including but not limited to rutting, erosion, or damage to permitted utilities.

3.33. The Permittee shall be required to carry liability insurance with a limit of at least \$1 million per occurrence.

3.34. A performance bond of at least \$1,000 per site shall be required to ensure the restoration of highway right of way. In lieu of an individual performance bond for each site, sign owners may choose to post a standing performance bond in an amount of at least \$1,000 per site up to a maximum of \$50,000.

3.35. The Permittee fully agrees to hold harmless the Arkansas State Highway Commission and ARDOT, and their officers, agents, and employees from any and all damages of any nature to any person or property due to any performance or non-performance of any work authorized by the RPVP permit.

3.36. ARDOT may, with good cause, deny, revoke, or amend any RPVP permit. If a “sign” permit is revoked the Permittee has a right to request an Administrative Hearing.

3.37. All RPVP permits must be renewed in four-year cycles beginning in July 2022 (see Paragraph 3.3). All RPVP permits must be renewed at the same time regardless of the original date of issue. The permits will allow cutting up to four (4) times per year. The renewal fee is \$160 for a four-year renewal.

3.38. The Permittee must notify the appropriate ARDOT District Engineer a minimum of three (3) working days prior to performing any vegetation control activities. ARDOT, at its option, may arrange to have an inspector on site while work is being performed.

3.39. For RPVP permits that include a Highway Access Safety Plan, the Permittee must notify the appropriate ARDOT District Engineer a minimum of five (5) working days prior to performing any vegetation control or work zone activities in order to arrange for an inspector to be on-site.

4.0. VIOLATION OF PERMIT

4.1. If RPVP permit provisions are violated, the first offense shall be a \$500 fine for each individual offense and/or the surrendering of the State Billboard permit for any associated sign, subject to the right to an Administrative Hearing. A second violation from the same owner shall result in the denial of any future requests for RPVP permits for two (2) years, and for any associated signs, revocation of the State Billboard permit for that sign, subject to the right to an Administrative Hearing.

4.2. The owner must also provide a statement, signed and dated, agreeing to abide by the terms of the RPVP permit. The sign owner must also agree to remove the sign at no cost to ARDOT if the terms of the RPVP permit are violated by either the sign owner, landowner, or third parties contracted to carry out vegetation control activities.

5.0. PROCEDURES

5.1. RPVP permits are issued by ARDOT's District Engineer for the Highway District in which the vegetation control site is located and are issued in coordination with ARDOT Right of Way and Environmental Divisions, and FHWA as necessary.

5.2. Individual RPVP permits must be requested for each site using ARDOT's application form and include:

a. 8" x 10" photograph(s) of the State Highway right of way vegetation interfering with the view of the site and which is the subject of the RPVP permit request.

b. A specific written proposal of the vegetation control work to be performed on the highway right of way to restore the visibility of the site.

c. A drawing of the highway right of way area where the work is to be performed indicating the location of sprinkler systems, vegetation to be mowed, bush hogged, cut, trimmed, pruned, and/or removed on the right of way. The drawing shall also show the length of frontage along the highway right of way boundary of the tract of land adjacent to the proposed area of vegetation control.

d. Proof of liability insurance with a limit of at least \$1 million (see Paragraph 3.34).

e. A performance bond in the amount of at least \$1,000 per site issued or counter-signed by a resident Arkansas agent, or in the form of a cashier's check. In lieu of a performance bond for each site, a standing performance bond in the amount equal to at least \$1,000 per site up to a maximum of \$50,000 may be posted (see Paragraph 3.35).

f. A signed statement(s) by the landowner(s) of record of the land at the proposed site or the landowner(s) of record of an abutting tract(s) of land where the vegetation cutting will occur, indicating concurrence with the proposed work on

that portion of the highway right of way abutting the landowner's tract(s) (see Paragraphs 3.1 and 3.13).

g. An application fee (non-refundable) made payable to the Arkansas Department of Transportation in the amount of \$160 per site designated for vegetation control (see Paragraph 3.38).

h. A Highway Access Safety Plan as required by ARDOT's District Engineer (see Paragraphs 3.14, 3.15, 3.16, and 3.17).

5.3. For permit applications that meet the terms of this policy, the appropriate ARDOT's District Engineer will coordinate with ARDOT's Right of Way and Environmental Divisions and request concurrence prior to issuing an RPVP permit. ARDOT shall grant or deny these permits within sixty (60) days from the date on which the application was filed with the ARDOT's District Engineer.

5.4. For permit applications that do not meet the terms of this policy or require a Highway Safety Access Plan, ARDOT will respond accordingly. ARDOT's sixty (60) day review time will be suspended for the duration the Permittee is addressing ARDOT's responses.

5.5. The RPVP Permittee will advise ARDOT's District Engineer of planned vegetation control activities at least three (3) working days prior to beginning work. ARDOT, at its option, may arrange to have an inspector at the site while work is being performed (see Paragraph 3.39).

5.6. For RPVP permits that include a Highway Access Safety Plan, the RPVP Permittee shall advise the ARDOT's District Engineer of planned vegetation control activities at least five (5) working days prior to beginning work in order to arrange for an inspector to be on-site (see Paragraph 3.40).

5.7. Within thirty (30) calendar days from completion of work on a RPVP permit that included a Highway Access Safety Plan, the Permittee is required to deliver a fee made payable to the Arkansas Department of Transportation in the amount of \$250 per day for each day the ARDOT inspector reported to the site. Failure to make payment is considered a violation of the RPVP permit and will be handled in accordance with Section 4.0.