

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)

603 KAR 5:155. Vegetation management.

RELATES TO: KRS 176.010(2), 176.050(1), 177.106, 177.830(5), 177.990(2)

STATUTORY AUTHORITY: KRS 176.050(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the department to promulgate administrative regulations concerning the care and maintenance of roads in the Commonwealth. This administrative regulation establishes a vegetation management permitting process for the removal and pruning of vegetation on department right-of-way.

Section 1. Definitions.

- (1) "Advertising device" is defined by KRS 177.830(5).
- (2) "Department" is defined by KRS 176.010(2).
- (3) "Person" means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, cooperative, or any other group or combination acting as an individual or unit.

Section 2. Vegetation Management Permit Eligibility.

- (1) A permit for vegetation management to remove or prune vegetation, including vegetative obstructions to the visibility of an advertising device, located on public right-of-way under the jurisdiction of the Kentucky Transportation Cabinet, shall be obtained from the department, in accordance with this administrative regulation, prior to entry or disturbance of the right-of-way.
- (2) An applicant shall apply to the department for a permit for vegetation management to remove or prune vegetation by submitting a completed Application for Encroachment Permit, TC 99-1A form, to the Transportation Cabinet district office that is responsible for the area of the proposed vegetation management.
- (3) An application for a permit to remove or prune vegetation shall be considered by the department if the proposal:
 - (a) Improves the safety of the traveling public;
 - (b) Is necessary to eliminate hazards to personal property;
 - (c) Enhances visibility for the travelling public;
 - (d) Eliminates an unsightly condition and improves roadway aesthetics; or
 - (e) Removes undesirable vegetation listed on the department's Web site at www.transportation.ky.gov/permits/.
- (4) A permit to remove or prune vegetation shall not be issued for the purpose of increasing visibility of ~~any~~ advertising device currently in violation of KRS Chapter 177 or KAR Title 603.
- (5) Access to department right-of-way to perform vegetation management shall be from private property unless otherwise specified as part of the permit.

Section 3. General Requirements for Vegetation Management.

- (1) An applicant requesting a permit for vegetation management to remove or prune vegetation shall submit:
 - (a) A completed Application for Encroachment Permit, TC 99-1A form;
 - (b) A general description of work to be performed;
 - (c) A location map;

- (d) A detailed and scaled drawing showing the location of the vegetation proposed to be removed or pruned;
 - (e) The name, address, and phone number of the contractor that will be performing the work;
 - (f) A signed release from property owners whose property lines front the right-of-way where the vegetation management is proposed;
 - (g) A signed consent from a private property owner that gives the applicant access from the private property to the work site;
 - (h) A seeding and erosion control plan pursuant to the department's manual, Standard Specifications for Road and Bridge Construction;
 - (i) Evidence of bonding maintained until released by the department; and
 - (j) Proof of liability insurance equal to or more than \$1 million.
- (2) The following applicants are exempt from Section 3(1) (f), (g), (i), and (j) of this administrative regulation:
- (a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or
 - (b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.
- (3) An applicant shall:
- (a) Remove tree stumps and roots on a slope of 3:1 or less flush with the ground surface;
 - (b) Remove tree stumps and roots on a slope greater than 3:1 to a height of three (3) inches or less above the surrounding ground surface. The height shall be measured from the top of the stump or root to its base on the lowest side of the slope;
 - (c) Remove and dispose of cut material and debris from the state right-of-way as stated in the permit issued by the department;
 - (d) Fill, grade, and compact a hole or void created by the performed work with top soil;
 - (e) Use a seeding and erosion control plan;
 - (f) Not remove more than twenty-five (25) percent of the crown of each tree approved for pruning by the department;
 - (g) Perform work during the time frame stated in the permit; and
 - (h) Reimburse the department for any costs incurred associated with the vegetation removal and pruning permit.
- (4) Work shall not be performed until a permit is issued by the department.
- (5) If a tree approved to be pruned dies related to executing the permit for vegetation management, the department shall require the permittee to remove the dead tree from department right-of-way, mitigate for the loss of vegetation, and restore department right-of-way.
- (6) If damage occurs to vegetation not included in the permit for vegetation management, the department shall require the permittee to mitigate for the loss of vegetation and restore department right-of-way.
- (7) The permittee shall be solely responsible for damage or destruction to private property that occurs in the course of executing the permit for vegetation management.
- (8) The permittee shall indemnify the department and the Transportation Cabinet pursuant to the permit if claims are brought against the department or Transportation Cabinet by third parties for damages sustained in the course of executing a permit for vegetation management.
- (9) Tree removal or pruning shall not be performed from June 1 to July 31.

Section 4. Mitigation.

- (1) An applicant shall be required to mitigate as part of a permit for vegetation management for removal of any tree with a five (5) inch or greater diameter at breast

height (dbh), except:

- (a) Government agencies removing vegetation for purposes of installing or maintaining government facilities; or
 - (b) Public utility companies removing vegetation for purposes of installing or maintaining utility facilities.
- (2) For mitigation, the applicant shall make a ~~payment~~~~[contribution]~~ to the Kentucky Transportation Cabinet (KYTC) where the funding shall be used by KYTC to re-plant native trees at KYTC Stream and Wetland Mitigation sites or KYTC Pollinator Plots~~[Kentucky Natural Lands Trust (KNLT), www.knlt.org]~~. KYTC Stream and Wetland Mitigation sites are established in priority watersheds within Kentucky where aquatic threatened or endangered species are known to exist, and these sites exist to in-part protect the water quality of the streams in which these species occur. KYTC Pollinator Plots are established in an attempt to curb the listing of pollinator species on the Threatened or Endangered Species List.
- (3) The department shall calculate the ~~payment~~~~[contribution]~~ amount based on the lesser amount of \$150 for each tree removed with a five (5) inch or greater diameter at breast height (dbh) or \$2,000 per acre~~[pursuant to the department's Indiana Bat Conservation Memorandum of Agreement with the United States Fish and Wildlife Service]~~.
- (4) The department shall not approve a permit for vegetation removal prior to receiving proof of the required ~~payment~~~~[contribution]~~ from the applicant.

Section 5. Notice of Violation; Appeals.

- (1) The department shall provide notification by certified letter if a violation of this administrative regulation has occurred.
- (2) A person aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B.
 - (a) The request shall be made in writing within thirty (30) days of the certified letter.
 - (b) A request for a hearing shall thoroughly describe the grounds on which the hearing is requested.
 - (c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.
- (3) If a request for an administrative hearing is not received by the department or the violation is not remedied within (30) days of notice, the department shall take action to impose penalties as established in Section 6 of this administrative regulation.

Section 6. Penalties.

- (1) Any person who violates this administrative regulation shall:
 - (a) Be subject to a civil penalty as established in KRS 177.106;
 - (b) Mitigate for loss of vegetation in accordance with Section 4 of this administrative regulation; and
 - (c) Be responsible for all costs associated with the restoration of the department right-of-way to an acceptable condition including the required remedial measures provided for in Section 3(3) of this administrative regulation.
- (2) The department shall deny or revoke a permit that contains false or misleading information.

Section 7. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Encroachment Permit", TC 99-1(A), October 2020; and
 - (b) ~~["Indiana Bat Conservation Memorandum of Agreement", September 2012; and]~~
 - ~~[(c)]~~ "Standard Specifications for Road and Bridge Construction", June 1, 2019.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort,

Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Transportation Cabinet's Web sites at:

(a) <https://transportation.ky.gov/Permits>; and

(b) <https://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: October 9, 2023

FILED WITH LRC: October 13, 2023 at noon

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2023 at 11:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the guidelines and requirements of obtaining an encroachment permit to remove vegetation on Department of Highways right of way.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 176.050(1)(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to KRS 176.050(1)(i) by providing the requirements for vegetation removal encroachment permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will establish the regulatory requirements for vegetation removal encroachment permits as related to KRS 176.050(1)(i).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment changes the mitigation recipient from Kentucky Natural Lands Trust (KNLT) to Kentucky Transportation Cabinet. This amendment also changes how the mitigation is calculated.

(b) The necessity of the amendment to this administrative regulation:

Kentucky Natural Lands Trust (KNLT) has requested to be removed as the mitigation recipient.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to KRS 176.050(1)(i) by providing requirements for vegetation removal encroachment permits.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will assist in the effective administration of the statutes by providing a simplified mitigation process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects the Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch along with all individuals and businesses intending to apply for a vegetation removal encroachment permit.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Individuals and businesses seeking a vegetation removal encroachment permit will need to submit required documentation to the Transportation Cabinet for review. The

Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch will review the vegetation removal permit application and determine the required mitigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Individuals and businesses seeking a vegetation removal encroachment permit will be responsible for paying the mitigation fee. There are no known direct costs for the Transportation Cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The benefits will improve compliance with KRS 176.050(1)(i).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no additional costs associated with this amendment.

(b) On a continuing basis:

There are no continuing costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Road Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment does not directly or indirectly increase any fees, but does change the recipients of the fees.

(9) TIERING: Is tiering applied?

No, all encroachment permit applications for vegetation removal will be treated equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The amendment will impact the Transportation Cabinet, Department of Highways, Division of Maintenance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 176.050(1)(i), 177.106.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

There will be no effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Specific dollar estimates cannot be determined. Please see notes below.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

Specific dollar estimates cannot be determined. Please see notes below.

(c) How much will it cost to administer this program for the first year?

No change in cost is anticipated to administer this program.

(d) How much will it cost to administer this program for subsequent years?

No change in cost is anticipated to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Expenditures (+/-):The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There is potential for cost savings for the entities regulated with this administrative regulation.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There is potential for cost savings for the entities regulated with this administrative regulation.

(c) How much will it cost the regulated entities for the first year?

The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

(d) How much will it cost the regulated entities for subsequent years?

The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Expenditures (+/-):The amount, if any, will depend on the number of vegetation removal encroachment permits requested by the applicant, and the specifics of work covered under each permit.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.