



---

# Mowing and Haying in the State Trunk Highway Right of Way

Stakeholder feedback to the Commissioner of Transportation

March 1, 2018

---

Prepared by:

The Minnesota Department of Transportation  
395 John Ireland Boulevard  
St. Paul, MN 55155

Phone: 651-296-3000

Toll-Free: 1-800-657-3774

TTY, Voice or ASCII: 1-800-627-3529

Email: [info.dot@state.mn.us](mailto:info.dot@state.mn.us)

[MnDOT Website](#)

For the Mowing and Haying in the State Trunk Highway Right of Way Stakeholder Group

To request this document in an alternative format, call 651-366-4718 or 1-800-657-3774 (Greater Minnesota).  
You may also send an email to [ADArequest.dot@state.mn.us](mailto:ADArequest.dot@state.mn.us)

## Table of Contents

<b>Mowing and Haying in the State Trunk Highway Right of Way</b> .....	<b>1</b>
<b>Legislative Request</b> .....	<b>5</b>
<b>Executive Summary</b> .....	<b>6</b>
Background .....	6
Stakeholder group feedback to the Commissioner of Transportation.....	7
Legislative directive .....	12
Public engagement .....	13
<b>Introduction</b> .....	<b>15</b>
Legislative directive .....	15
<b>Public engagement</b> .....	<b>15</b>
Stakeholder group .....	15
Listening sessions and online input .....	24
Stakeholder group feedback to the Commissioner of Transportation.....	29
<b>Appendix A: Stakeholder group meeting summaries</b> .....	<b>35</b>
Aug. 23, 2017 – St. Paul, MN .....	35
Sept. 20, 2017 – St. Cloud, MN .....	36
Oct. 18, 2017 – Shoreview, MN .....	37
Nov. 15, 2017 – Mankato, MN.....	38
Dec. 6, 2017 – Rochester, MN .....	39
Dec. 13, 2017 – Maplewood, MN .....	40
Jan. 11, 2018 – St. Cloud, MN .....	41
January 18, 2018 – St. Paul, MN .....	42
Jan. 25, 2018 – St. Paul, MN .....	46
<b>Appendix B: Letter regarding Governor’s Executive Order 16-07</b> .....	<b>47</b>
<b>Appendix C: Listening session summaries by location</b> .....	<b>49</b>
Arden Hills.....	49
Crookston.....	49
Mankato.....	50

Marshall ..... 50

Metro ..... 51

Morris..... 51

Rochester ..... 52

St. Cloud ..... 53

Baxter/Brainerd ..... 53

Online input ..... 54

# Legislative Request

The discussion and recommendations are issued to comply with [Laws of Minnesota 2017, Chapter 15, Section 1, Subdivision 2.](#)

## Section 1. TRUNK HIGHWAY MOWING OR HAYING.

### Subdivision 1. Permits moratorium.

- (a) Except as provided in paragraph (b), the commissioner of transportation must implement a moratorium until April 30, 2018, on enforcing permits under Minnesota Statutes, sections [160.232](#) and [160.2715](#), or any other Minnesota statute or administrative rule, to mow or bale hay in right-of-way of a trunk highway.
- (b) This subdivision applies regardless of date of any permit issuance. This subdivision does not apply to right-of-way in which adjacent land is under the jurisdiction of the state or a political subdivision.

### Subd. 2. Recommendation to legislature.

- (a) No later than March 1, 2018, the commissioner of transportation must recommend to the legislative committees with jurisdiction over transportation, agriculture, and natural resources establishment of a permit or notification system to mow or hay in trunk highway right-of-way. The recommendation must be developed with input from agriculture and environmental groups.
- (b) The recommendation must contain at least the following elements:
  - (1) ease of permit application or notification;
  - (2) frequency of permits or notifications;
  - (3) priority given to the owner or occupant of private land adjacent to a trunk highway right-of-way;
  - (4) 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; and
  - (5) recognition of differences in the abundance of wildlife habitat based on geographic distribution throughout the state.

# Executive Summary

## Background

The Minnesota Department of Transportation has some 255,000 acres of land across the state, including 175,000 acres of green space, called right of way. Much of this land is adjacent to state roadways in the form of ditches or medians between four-lane roads. Highway right of way serves many important functions, including:

- Drains excess water away from roads
- Serves a safety function for vehicles that leave the travel lanes
- Provides a place for snow storage in winter
- Provides a location for public utilities (e.g., sewer, storm sewer, electric and communications lines)
- Contains desirable vegetation that improve highway aesthetics and provide control of erosion and drifting snow
- Provides habitat for pollinators, nesting birds and other small wildlife

MnDOT's permitting process to access this land for mowing and haying was applied differently in each of the eight MnDOT districts, and many people were working in the right of way without getting a permit because they did not know a permit was needed. To bring a consistent approach to permitting across the state, MnDOT created a standard permit, one for all districts to use to make it easy to apply and be consistent across all MnDOT districts.

The rollout of the standard permit was met with confusion and anger. Many people complained about the permit and the requirements within it.

The 2017 Minnesota Legislature established a moratorium on enforcing permits to mow or bale hay in the right of way of a trunk highway. The legislature also required that the commissioner develop recommendations for a permit or notification system with input from agriculture and environmental groups in [Laws of Minnesota 2017, Chapter 15, Section 1](#).

A stakeholder group was convened to review the challenges with administering this law as it relates to the various interests. MnDOT also organized nine informational listening sessions in each of MnDOT eight districts across the state to learn what the public thought of this issue and what it wanted the legislation to be.

With the information learned from the listening sessions, the stakeholder group developed a recommendation for the Legislature regarding mowing and haying.

# Stakeholder group feedback to the Commissioner of Transportation

The stakeholder group<sup>1</sup> provided feedback to the commissioner of transportation on potential permit process changes and suggested statutory changes. The permit process changes the group suggested could be implemented by the Minnesota Department of Transportation without statutory changes. Some stakeholder group suggestions cannot not be implemented without statutory changes, which are noted in this report. Some of the permit process changes recommended by the stakeholder group may require MnDOT to request additional resources.

This summary outlines the feedback provided by the stakeholder group. Below is a list of all the various feedback topics:

- Make applying for or notifying MnDOT of permit request easy
  - Implementing the permit changes
    - Phase-in the permit changes
    - Educate public of the changes first
  - Accessibility of the permit
  - Insurance
  - Security deposits and enforcement
- Frequency of permitting and priority assumptions
  - Abutting landowner applicant
  - Non-abutting landowner and out-of-state permit applicants
  - Mowing areas traditionally maintained as lawns
- Authority of adjacent local jurisdictions
- Recognition of differences in the abundance of wildlife habitat based on geographic distribution
  - Dates and amount of mowing and haying
- Other topics discussed
  - Safety and visibility of permittees
  - Requirement to carry permit while mowing and haying

Additional information about the stakeholder group's meetings is included in [Appendix A](#). Information regarding the related listening sessions can be found in the public engagement section of this report and in [Appendix C](#).

## Ease of permit application or notification

The legislature directed MnDOT to convene a stakeholder group to review and provide feedback on ease of the permit application or notification system. The stakeholder group provided a range of input on this topic which is described below. A minority of stakeholders oppose the permit requirement generally. These stakeholders

---

<sup>1</sup> A listing of organizations participating in the stakeholder group is provided in the public input section of this report.

participated in providing feedback on the permit process, despite their desire for the removal of the permit process.

## **Implementation of permit changes**

The stakeholder group highlighted that it will take time for the public to learn and adhere to changes in the permit process. MnDOT also indicated to the stakeholder group that some of the suggested changes may take time to implement. So, the stakeholder group determined that a phased approach for the implementation of permit changes and for permit applicant education is needed.

### **Phased implementation of permit changes**

The stakeholder group discussed at length the need for site-specific management of the right of way and how the permit process could support this desire. Using geographic information system to map the vegetation in the right of way and track permitted and unpermitted areas may aid in the development of a site-specific permitting process. MnDOT staff indicated that this would take several years and additional resources to implement, but could be included as an enhancement to the phased implementation approach.

### **Educating on permit changes**

Stakeholders suggested MnDOT develop a phased implementation plan to help educate and inform individuals regarding the updates to the permitting process. MnDOT will continue to require individuals who wish to mow and hay in the right of way to obtain a permit and will continue to provide resources to help individuals understand requirements. Under the phased implementation plan, MnDOT will begin by informing individuals about permit process changes, then shift towards administrative enforcement mechanisms once the permit process updates are well understood. Administrative enforcement may include auditing permits for adherence to special provisions, increasing security deposit amounts and denying permits for individuals who do not adhere to permit requirements.

## **Accessibility of permit application**

The stakeholder group and listening session attendees provided input that MnDOT make the permit application as simple and accessible as possible. To make the permit application more accessible, MnDOT may consider offering both in-person and online permit applications. The online permit system would then notify MnDOT staff that an application has been submitted and provide tracking assistance to ensure timely follow-up with the permit applicant. Individuals who wish to complete the permit application in person can go to the district office and receive assistance if needed. Individuals should also be able to choose to print the application from MnDOT's website and mail it in.

## **Insurance**

The stakeholder group supported insurance requirement changes made by MnDOT for the 2017 permit process. Individuals no longer need to designate the State of Minnesota as the third party insured. MnDOT also shifted from requiring to recommending a minimum of \$1 million in coverage per occurrence. Stakeholders supported MnDOT's 2017 change adding language to the permit application to clarify that the permittee performing the mowing and haying in the right of way should be covered under the insurance.

## Security deposit<sup>2</sup> and consequences for not having a permit

The stakeholder group supports MnDOT district staff continuing to set appropriate security deposit amounts for each permittee. MnDOT district staff can reduce or waive security deposits for abutting landowners, or their designee, depending on past performance and other factors. The stakeholder group largely supported MnDOT using the security deposit as an administrative enforcement measure<sup>3</sup>.

The stakeholder group also discussed enforcement and penalties for not obtaining a permit. The current penalty for not obtaining a permit to mow and hay in the right of way is a misdemeanor. According to [Minn. Stat. 609.02](#), a misdemeanor is considered a crime with a sentence of not more than 90 days or a fine not to exceed \$1,000. The stakeholder group provided input that a petty misdemeanor would be a more appropriate consequence for failing to obtain a permit. A petty misdemeanor is considered a violation with a fine not to exceed \$300 and does not typically involve a prison or jail sentence. Although the group recommended that mowing without a permit be considered a lesser crime, the group did not press for enhanced enforcement efforts.

## Frequency and priority

The legislature directed MnDOT to work with the stakeholder group to review and provide feedback on the frequency of permits or notification and the priority given to the owner or occupant of private land adjacent to a trunk highway right of way. Stakeholders suggested the following changes which address both of these topic areas.

### Abutting landowner permit applicant

The stakeholder group and listening session participants provided considerable feedback regarding abutting landowners interested in mowing and haying the right of way. This particular group recommended offering a multi-year permit with annual communication between MnDOT and the abutting landowner, or their assigned designee. The group also recommended the determination of the amount of security deposit required, or waiving it in some cases, be left to MnDOT staff. The authority to revoke a permit at any point is reserved by MnDOT. If abutting landownership changes, a new permit should be required for mowing and haying the right of way. Abutting landowners will continue to have priority for the adjacent right of way when applying before March 1. After March 1, abutting landowners may still apply for the adjacent right of way, however they will not have priority over other applicants.

It is recommended that MnDOT use a phased process to introduce the changes in the permit process described in this report. Initially the phased approach focuses on education about the changes in the permit process. After the process changes are well-understood by residents, the focus shifts for district staff from education to implementation, which may include both informal and formal methods of enforcement for non-compliance.

---

<sup>2</sup> The permit may require a cashier's check, certified check, money order, or performance bond. The stakeholder group used varying terminology to discuss the concept of a security deposit, including "performance bond."

<sup>3</sup> [Minnesota Statutes 3.736](#) allows MnDOT to collect for damages caused to the right-of-way by both permitted and non-permitted individuals.

## Non-abutting landowner and out-of-state permit applicants

The stakeholder group provided feedback that non-abutting landowners be required to obtain an annual permit. MnDOT retains the authority to set an appropriate security deposit or performance bond for non-abutting landowners and out-of-state applicants. Considerations for the amount of the security deposit or performance bond may include:

- distance requested in the permit
- past performance
- likelihood of satisfactory performance of mowing and haying the right of way

Based on the feedback of the stakeholder group, prohibiting out-of-state commercial mowing in Minnesota is recommended unless allowed by a governor's executive order; this would require legislation to implement.

## Mowing areas traditionally maintained as lawns

The stakeholder group recommended MnDOT exempt homeowners, organizations or businesses from the permit requirements to mow areas traditionally maintained as lawn on the right of way abutting their property. This may include mowing for visibility reasons near a driveway. This would require legislative changes. The legislature would need to clearly outline what can and cannot be mowed, as some plantings are left in the right of way intentionally for safety measures such as preventing snow drifts. MnDOT permit staff may educate on permit requirements or potentially perform administrative enforcement actions if individuals mow beyond what is reasonable without obtaining a permit. Any legislation proposed on this topic should specify the liability individuals accept when working in the right of way and direct individuals to MnDOT's permit standards.

## Authority of adjacent local jurisdictions

The legislature tasked the stakeholder group with providing input to the commissioner of transportation on the determination of the authority to mow or hay trunk highway right of way where adjacent land is under the jurisdiction of the state or a political subdivision. The stakeholder group supported MnDOT's practice of selectively entering memorandums of understanding or partnership agreements with other government entities to collaborate on maintaining state trunk highway right of way that is adjacent to land owned by other government entities or local jurisdictions.

Feedback from the stakeholder group supported the continuation of local control over local right of way. The group noted that many local jurisdictions do not currently permit for use of the right of way and that they would not have capacity to do so in the future. Local jurisdictions may continue to abide by applicable statutes, such as [Minn. Stat. 160.232](#), which mandates that mowing occur in August.

## Recognition of differences in the abundance of wildlife habitat based on geographic distribution

The legislature directed to the stakeholder group to provide input about differences in the abundance of wildlife habitat based on geographic distribution. To meet this directive, the stakeholder group reviewed information from the Department of Natural Resources regarding the distribution of public lands across Minnesota. MnDOT

staff also provided the group with maps illustrating how the state is divided based on geography for other programs, such as road weight restriction zones, spring frost-free dates, agroecoregions<sup>4</sup> and United States Department of Agriculture plant hardiness zones. Much of the information reviewed regarding habitat, pollinators and wildlife involved mowing dates and the overall amount of mowing allowed.

### **Dates and amount of mowing and haying**

The stakeholder group worked to understand the impacts of the dates and the amount of mowing and haying on the various interested parties. Stakeholders recognized that the current dates for mowing in [Minn. Stat. 160.232](#) (August 1– 31) do not meet the hay quality needs of farmers and are detrimental to monarchs and pollinators. Over several meetings, the group weighed the potential impacts of other date spans on agricultural interests, habitat, pollinators and other wildlife. Ultimately, stakeholders largely agreed that a system with no dates would be most beneficial to all parties. With an undated system, the group suggests that the right of way may be mowed only once by permittees (with limited opportunities for additional cuts at MnDOT’s discretion if additional cuts aligns with a site-specific vegetation management plan). Stakeholders differed in opinion regarding how much mowing should be permitted under a system with no dates. Some stakeholders prioritized agricultural needs as primary and that those would be best met with few additional requirements regarding the amount or timing of mowing. Other stakeholders prioritized pollinator and habitat needs, which would be best served by a permit that specified the amount of right of way managed using integrated roadside vegetation management techniques. These stakeholders suggested allowing mowing on half of the right of way and managing the other half using integrated roadside vegetation management techniques.

The stakeholder group developed a hybrid option of the differing viewpoints. The compromise specified that MnDOT may consider using site-specific management for permits in the right of way for a “take some, leave some” approach. This approach uses the permit process as a two-way communication tool to determine the appropriate amount of mowing for each site based on the vegetation present. Permit applicants can choose to partner with MnDOT by proposing a plan for how much of the right of way can be mowed and how much to leave for habitat. This solution serves both the need for quality hay by allowing for flexible mowing dates, while preserving corridors of habitat in the right of way. MnDOT regional permit staff may educate permit applicants about the importance of leaving quality habitat and rotational mowing for wildlife and pollinators. Education can also specify how much of the right of way is to be left un-mowed to maintain habitat. A few stakeholders urged MnDOT to ensure that the basic concept of leaving half of the right of way un-mowed for habitat not get lost in conversations between permit staff and applicants. Stakeholders agreed that areas of high-quality habitat may be protected from mowing at MnDOT’s discretion, while areas of lower quality habitat may be appropriate for more mowing. If an abutting landowner requests a permit to mow a high-quality habitat area that is not appropriate for mowing, MnDOT staff may attempt to assist in finding another location for the permittee. MnDOT may also revoke a permit at any point due to their responsibility to manage the right of way.

MnDOT may conduct audits to determine whether permittees are mowing more than the agreed upon amount. In the case of a permit violation, MnDOT staff may use administrative enforcement mechanisms such as increasing the security deposit or denying a future permit application.

---

<sup>4</sup> According to the Minnesota Department of Agriculture, [Minnesota has 39 agroecoregions](#). Each agro ecoregion is associated with a specific combination of soil types, landscape and climatic features, and land use.

## Other topics discussed

### Safety and visibility of permittees

Stakeholders generally supported MnDOT in continuing to require individuals to wear a high-visibility shirt or vest in the right of way when they are not on their vehicle. In 2017, MnDOT reduced the light requirement from as strobe light to a flashing amber light, as they are more readily available and less expensive. Additionally, vehicles in the right of way are to follow guidelines in [Minn. Stat. 169.522](#).

### Requirement to carry permit while mowing and haying

MnDOT staff discussed the reasons why MnDOT expects permittees to carry their permit on their person while performing work in the right of way. Each permit may describe any special provisions that are specific to the site where mowing and haying are being conducted. It is necessary for the permittee to be aware of these detailed special provisions while mowing or haying in the right of way. It was deemed necessary for permittees to have their permit with them when working in the right of way to adhere to the detailed special provisions in their individual permit. The Department of Public Safety supported this, citing the need of law enforcement to inspect a permit without delay to effectively resolve a dispute or complaint. Given this, stakeholders asked that MnDOT consider allowing permittees to carry an electronic version of the permit instead of a paper copy with them at all times while working in the right of way.

## Legislative directive

The 2017 Minnesota Legislature established a moratorium on enforcing permits to mow or bale hay in the right of way of a trunk highway. Additionally, the legislature required the commissioner of transportation to bring forward recommendations to the legislature for a permit or notification system to mow or hay in the trunk highway right of way.

The legislature outlined specific elements to be included in the recommendation:

- 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 be developed with input from agriculture and environmental groups. MnDOT engaged the services of a third party, neutral facilitator in June 2017 to assist in convening a stakeholder group which included representatives from these groups and other interested groups to review this law. This group met between August 2017 and January 2018. MnDOT also held nine listening sessions across the state to learn the public's opinion on the issue and to hear suggestions for potential future legislation.

## Public engagement

A public engagement plan was developed by MnDOT to seek input on mowing and haying in the state highway right of way. MnDOT hosted a series of listening sessions across the state, conducted broad media outreach, provided an enhanced online feedback form and mail-in options for feedback and convened an active stakeholder group. The stakeholder group was also asked to conduct outreach to their interest groups to solicit input. All feedback provided during the engagement was considered by the stakeholders and MnDOT.

## Stakeholder group process

The stakeholder group met nine times between August 2017 and January 2018. They first worked to build their common knowledge about environmental needs, agricultural needs and mowing and haying in the right of way. They used this common knowledge to provide comprehensive feedback to MnDOT.

The 18 organizations, or entities, represented in the stakeholder group included:

- Association of Minnesota Counties
- Izaak Walton League of America, Minnesota Division
- Minnesota Association of Townships
- Minnesota County Engineers Association
- Minnesota Department of Agriculture
- Minnesota Department of Natural Resources
- Minnesota Department of Public Safety
- Minnesota Department of Transportation
- Minnesota Farm Bureau
- Minnesota Farmer's Union
- Minnesota Honey Producers Association
- Minnesota Milk Producers
- Minnesota Sheriffs Association
- Minnesota Soybean Growers
- Minnesota State Cattlemen's Association
- Pheasants Forever/Quail Forever
- Pollinate Minnesota
- Washington County & Governor's Committee on Pollinator Protection

Topics reviewed by the stakeholder group included:

- MnDOT legal authority over the right of way vegetation
- 2017 permit process overview
- MnDOT permit data
- MnDOT rationale for mowing and permitting the use of right of way
- Agricultural and farming considerations
- Habitat, wildlife and pollinator considerations
- Local priorities and considerations
- Other state efforts
- Logistics of mowing and haying
- Listening session and online input summary

## Listening sessions

Nine listening sessions were held between October and December 2017. MnDOT gave a presentation about the permit process and stakeholder group process at each meeting, with a facilitator gathering input from attendees during an open public comment period. At the end of each forum, questions were answered and themes vetted. Facilitators compiled a comprehensive summary of listening session themes, along with site-specific summaries. This information was shared with MnDOT staff and the stakeholder group to be included in the input for the commissioner of transportation.

# Introduction

## Legislative directive

The 2017 Minnesota Legislature established a moratorium on enforcing permits to mow or bale hay in the right of way of a trunk highway. Additionally, the legislature 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.

The legislature outlined specific elements to be included in the recommendation, 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 agriculture and environmental groups. MnDOT hired a third party, neutral facilitator in June 2017 to assist in convening a stakeholder group that included representatives from these and other interested groups to review this law. This group met between August 2017 and January 2018. MnDOT also held nine listening sessions across the state to learn the public's opinion on the issue and suggestions for potential future legislation.

This document presents the results of the stakeholder group's assessment and feedback to the commissioner of transportation. Recommendations relate to the permitting process in the right of way and broader related issues such as mowing dates outlined in state statute.

## Public engagement

### Stakeholder group

The Mowing and Haying in State Highway Right of way Stakeholders Group<sup>5</sup> (stakeholder group) was created by identifying interest group representatives that expressed concerns regarding the mowing and haying issue during the 2017 legislative session. In addition to agricultural and environmental interests, this group also included local agencies who serve as road authorities or enforcement officials concerned they may be impacted by legislative or process changes in the right of way. The departments of Natural Resources and Agriculture

---

<sup>5</sup> [The Mowing and Haying in the State Highway Right of Way purpose document.](#)

reviewed the stakeholder list and provided recommendations for additional representation based on their knowledge of other concerned interest groups.

The 18 organizations or entities represented in the stakeholder group included:

- Association of Minnesota Counties
- Izaak Walton League of America, Minnesota Division
- Minnesota Association of Townships
- Minnesota County Engineers Association
- Minnesota Department of Agriculture
- Minnesota Department of Natural Resources
- Minnesota Department of Public Safety
- Minnesota Department of Transportation
- Minnesota Farm Bureau
- Minnesota Farmer’s Union
- Minnesota Honey Producers Association
- Minnesota Milk Producers
- Minnesota Sheriffs Association
- Minnesota Soybean Growers
- Minnesota State Cattlemen’s Association
- Pheasants Forever/Quail Forever
- Pollinate Minnesota
- Washington County & Governor’s Committee on Pollinator Protection

## Process

MnDOT convened the group, coordinated meetings, provided technical expertise, reviewed stakeholder feedback from the consultant and delivered the recommendations to the legislature. Another state agency provided facilitation, writing and other support.<sup>6</sup>The stakeholder group convened nine times between August 2017 and January 2018<sup>7</sup> to:

- **Organize the group’s structure and task** (e.g., frame issues, goals and scope)
- **Build common knowledge** by identifying interests of the group in mowing and haying in state highway right of way, including:
  - the process for safely, timely, cost-effective, well-managed right of way habitat that is communicated and understood
  - cost savings
  - MnDOT effectively and reasonably managing the right of way, safety for all persons in the traffic way
  - preserving and expanding habitat
  - safe and quality food for livestock

---

<sup>6</sup> Minnesota Management and Budget, Management Analysis and Development, under contract with MnDOT

<sup>7</sup> [Find meeting notes and other documents from the stakeholder group](#) here.

- site-specific right of way vegetation management
- **Identification of viable mowing and haying options including permit process changes** by considering listening session input, technical resources and information presented to the group and selection of options for further consideration.
- **Development of feedback on best options**, including crafting feedback to the commissioner of transportation.

A summary of meetings from the stakeholder group is included in [Appendix A](#).

## Building common knowledge

Facilitators led the stakeholder group through a process to identify information needed to build common knowledge about the complex issues surrounding mowing and haying the state highway right of way in Minnesota. The stakeholder group requested information regarding local considerations and priorities, mowing and haying logistics for citizens, pollinator information and information on state programs, expertise and data. MnDOT also provided contextual information regarding the 2017 permit process, permit data and research on practices and policies in other states.

This section of the report summarizes the information the stakeholder group reviewed. Through the process of building common knowledge, the stakeholder group worked to understand the varying perspectives related to mowing and haying the state highway right of way. This section is organized by topic area and is not intended to represent the order the stakeholder group discussed the topics.

### MnDOT legal authority over the right of way vegetation

At the stakeholder's meeting on Dec. 6, 2018, MnDOT legal counsel discussed MnDOT's legal authority to control vegetation on the right of way. MnDOT provided background information that the State of Minnesota holds property rights in fee, permanent easement and prescriptive easement. The stakeholder group conceded that the state has full authority to make all decisions and take all actions it deems appropriate for right of way held in fee. For best practices, MnDOT may research and formalize title to any property held by prescriptive easement. The stakeholder group's questions centered on property held by the state through an easement, which MnDOT addressed with a detailed analysis of statutory law.

At the Dec. 6 stakeholder meeting, MnDOT legal counsel detailed the statutory authority MnDOT has to manage and control vegetation in the right of way. This authority is based, in part, on legislative direction to the agency in statutes regarding trees ([Minn. Stat. 160.22](#)), noxious weeds ([Minn. Stat. 160.23](#)) and safety mowing ([Minn. Stat. 160.232](#)). One stakeholder organization expressed continued reservation on MnDOT's authority to control vegetation. MnDOT provided further consistent analysis on its right to manage and control the right of way, including its statutory authority to enter into agreements and arrangements for any highway purpose, including aesthetics ([Minn. Stat. 161.434](#)). Right of way vegetation management serves a highway purpose in that vegetation can control erosion, maintain road contours and improve aesthetics. Vegetation management also allows MnDOT to control and maintain sight lines, and allows for safer litter and debris removal.

## 2017 permit process overview

MnDOT staff provided an overview of the 2017 permit process to the stakeholder group. The stakeholder group reviewed each step and component of the permit process to identify possible areas for improvement.

Under the current process, an applicant submits a permit that is reviewed by MnDOT permit staff in the corresponding regional office. MnDOT permit staff determine if a permit has or has not been issued for the area requested in the permit and they also review an environmental GIS map for potential concerns. If the GIS map identifies potential environmental concerns, the permit application is further reviewed with the MnDOT Office of Environmental Stewardship. If there is an environmental concern or a permit has already been issued in the area requested, MnDOT staff contacts the applicant to offer an alternative mowing area. After review, but prior to issuing a permit, MnDOT staff requires a security deposit (typically in the form of a personal check) from the applicant and they outline special provisions indicating the requirements of the applicant's specific permit. The applicant must notify the MnDOT regional permit office for final inspection. If the mowing and haying is satisfactory, the security deposit will be returned to the applicant.

Permit applications submitted by abutting landowners and received by the department between Jan. 1 and Feb. 28 are given priority over all other applicants. Permit applications can be submitted by anyone after March 1 and are evaluated in the order received. The permittee must comply with the standard conditions to be eligible for a permit. The conditions include proving the applicant has minimum liability insurance coverage, meets safety requirements and understands the statutory restriction to mow only between Aug. 1 and 31.

Applicants must carry a copy of their permit while performing work in the right of way.<sup>8</sup>

## MnDOT permit data

MnDOT staff presented the following data to stakeholders regarding mowing and haying permits:

- The oldest mowing permit was issued in 1988.
- MnDOT has issued 490 mowing permits since 2006. Over the last three fiscal years, MnDOT has issued an average of 140 mowing/haying permits and yet the majority of permits issued have been in the most recent fiscal year.
- From July 1 2016 to June 30 2017, MnDOT received 363 mowing and haying permit applications. As of August of 2017, 330 permits were issued, 31 were being evaluated and only two were denied.

MnDOT issues permits for many other activities in the state highway right of way. Over the last three fiscal years, MnDOT received an average of 4,300 permit applications per year and denied an average of 20 permit applications per year. Examples of these permits (and their average numbers issued per year) include:

- miscellaneous work permits: 2,240<sup>9</sup>
- long form permits: 1,500
- access permits: 340
- drainage permits: 140
- rail bank permits: 40 permits
- temporary license agreements: 20

---

<sup>8</sup> [See the 2017 permit application, standards and requirements here.](#)

<sup>9</sup> Mowing and haying would be a type of "miscellaneous work". Other types of work have included utility maintenance work, parades, community gardens, and more.

## MnDOT perspective on mowing and issuing permits for use of the state highway right of way

MnDOT staff shared with the stakeholder group an overview of the mowing conducted by MnDOT staff in the state highway right of way, and the agency's rationale for issuing permits to others to mow and hay in the state highway right of way.

MnDOT's primary reasons for issuing mowing and haying permits include:

- Issuing permits to control the use of the right of way is a statutory requirement for the agency
- The permit is a communication tool that allows for the sharing of information between MnDOT and the permittees such as:
  - The use of herbicides and other chemicals used to control noxious weeds
  - Updates about construction projects and related timelines
  - Safety requirements
  - Damage concerns or questions

Primary reasons that MnDOT staff mow the right of way:

- Safety concerns, including visibility
- Vegetation control and management including brush control
- Blowing/drifted snow control
- Management of noxious weeds

Stakeholder group members requested information on how MnDOT determines where to mow, the amount of resources MnDOT uses for mowing and how MnDOT staff manage noxious weeds and other vegetation with mowing. MnDOT staff from district and specialty offices shared this information with the stakeholder group.

### Habitat, wildlife, and pollinator considerations

Staff from the Department of Natural Resources reviewed stakeholders' questions and provided information related to pollinators and habitat in the right of way. DNR staff leveraged agency expertise on a variety of topics such as nesting birds, native pollinators, honeybees and habitat preservation.

DNR staff shared that many types of wildlife and plants respond positively to mowing if it is done to foster habitat intentionally. Staff explained that each type of vegetation requires different management for different purposes. For the right of way to be a beneficial habitat for pollinators, a diverse array of native plant species is necessary. Examples were offered illustrating that areas in the right of way with Brome monocultures<sup>10</sup> are not as beneficial to pollinators. This means not all areas of the right of way should be considered beneficial habitat for pollinators.

While not all areas of the right of way are considered ideal habitat, the DNR noted that in many parts of the state, the right of way is the only area of grassland habitat left. Since 2007, Minnesota has lost approximately

---

<sup>10</sup> Brome monocultures are areas where the only plant growing is Brome grass. Brome will eventually form a dense mat excluding other species, making it more susceptible to invasion by other species including noxious weeds.

770,000 acres of Conservation Reserve Program<sup>11</sup>, more commonly called CRP,<sup>12</sup> land and continues to lose pasture and hay fields each year. DNR staff shared a map showing the percentage of public land in Minnesota by county, which serves as a proxy for grassland. Counties in northeast Minnesota typically have more than 20 percent public land, while counties in the southwest part of the state have less than 5 percent public land. The presenter used this information to illustrate that the right of way is especially important habitat in some areas of the state.

DNR staff explained changes in farming practices over the past several decades have also impacted habitat. Herbicide and pesticide use has increased, leaving fewer native plants in the field to benefit pollinators. Many farmers have moved towards tilling all available acreage. For instance, places that were often untouched in the past, such as the grass around fence posts, are now tilled to the fullest possible extent to yield a greater production area. One example of how this impacts pollinators is that herbicides and/or increasing tilled areas has largely eliminated weeds such as milkweeds, which monarch larvae rely on for food. The presenter shared that preserving grassland and habitat in the right of way may actually benefit agricultural yields. Strips of perennial cover in or near fields (sometimes called “Beetle Banks”) provide winter habitat for predatory insects, which then prey on crop-damaging insects.

### **Related state programs**

DNR and MnDOT staff shared information about two specific programs related to the right of way: the Roadsides for Wildlife Program and the Minnesota Monarch Highway Program. Both of these programs specifically relate to maintaining habitat in the right of way for pollinators and other wildlife.

[The Roadsides for Wildlife Program](#) incorporates native prairie species in roadside plantings and promotes the benefits of a diverse and undisturbed roadside environment. This program primarily consists of informational signs requesting specific sections of the right of way remain un-mowed and undisturbed, along with educating the public about the benefits of roadside habitat. However, there are no specific consequences or enforcement mechanisms in place if a Roadsides for Wildlife program area is mowed or disturbed.

[The Minnesota Monarch Highway Program](#) is part of the federal strategy resulting from a presidential memo<sup>13</sup> in 2014. Minnesota is one of six states collaborating along the Interstate 35 corridor, which is a main travel route for monarchs. Minnesota is focusing on improving habitat for monarchs in rest areas along I-35. This includes planting pollinator habitat at the Albert Lea rest area along with signage and other work at the I-90 interchange area. The Goose Creek rest area will have a larger pollinator habitat area and signage. Eventually this approach will be used in other rest areas across Minnesota. Additionally, MnDOT will continue to use native grass mixes for snow fences along I-35 wherever practicable.

---

<sup>11</sup>[The Conservation Reserve Program is a land conservation program administered by the Farm Service Agency.](#) In exchange for a yearly rental payment, farmers enrolled in the program agree to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality.

<sup>12</sup> [Conservation Reserve Program website.](#)

<sup>13</sup> <https://obamawhitehouse.archives.gov/the-press-office/2014/06/20/presidential-memorandum-creating-federal-strategy-promote-health-honey-b>

## Timing of mowing

DNR staff spoke with the group about the timing of mowing in relation to habitat, pollinators and wildlife. There are roughly 400 species of native pollinators in the right of way, which all have different lifecycles and needs, meaning that every week during the spring and summer there's a different native pollinator emerging.

This means there is no ideal time for mowing because any action has a related effect on one or more species. If mowing occurs too early, it may destroy nests for some grassland birds, while some young birds love to forage in short grass after mowing. Late summer mowing negatively impacts many pollinators as they rely on late-season blooms for food and/or plant stalks to overwinter or lay eggs in. Honeybees also rely on late-season flowers/blooms to build up energy reserves prior to winter. Cutting earlier in the season to maximize the quality of hay conflicts with nesting songbirds and gamebirds.

The current August mowing window is tied to dates in the federal farm bill and federal policy. After reviewing the relevant literature and speaking with waterfowl and pheasant experts, DNR staff suggested that the Aug.1 mowing date could move to July 15 without significant detriment. This change would benefit many pollinators, as mowing later in the season prevents the regrowth needed for honeybees and other pollinators. From a wildlife, pollinator and habitat perspective, what matters most is the total amount of land mowed, not necessarily the timing of the mowing. A compromise that would be beneficial to pollinators, wildlife and habitat is to have only half of the right of way mowed, leaving half as habitat. This would provide wildlife with both a consistent high and short cover for foraging and ensures pollinators have access to a variety flowers throughout the season.

## Considerations for honeybees

Members of the Minnesota Honey Producers Association shared with the stakeholder group the importance of the right of way for honeybees. They estimated the honey industry is valued at \$17 billion in the United States, with Minnesota listed as the seventh largest honey producing state. Honeybees are critical to national food supply and roadsides are an important part of their habitat. While honeybees are considered livestock by definition, many of this group's points and concerns are similar to those expressed by advocates for pollinators. Roadsides are critical for honeybees because farmland lacks the diverse flowers that it used to have. There are fewer cover crops and fence posts, a transition that occurred in the last 10-20 years, as farmers shifted towards tilling all available acreage. Increased pesticide and herbicide spraying resulted in less clover, which is a reliable food source for honeybees.

For honeybee habitat, earlier right of way mowing is better because plants and trees can bloom again later in the fall. Basswood trees are done blooming around July 15 or 20, and after that honey bees have few food sources. Bees make honey from about July 1 to Aug. 5. However, they still need flowers from mid-August to Sept.10 to allow them to prepare for winter.

## Governor's Executive Order 16-07

The mowing and haying stakeholder group reviewed [Executive Order 16-07](#),<sup>14</sup> particularly examining scope of the work and membership on the Governor's Committee on Pollinator Protection and the Interagency Pollinator Protection Team. The group noted that there were two shared stakeholder representatives between the Mow

---

<sup>14</sup> [Governor's Executive Order 16-07, "Directing Steps to Reverse Pollinator Decline and Restore Pollinator Health in Minnesota"](#).

and Hay in the State Highway Right of way stakeholder group and the GCCPH. Additionally, one MnDOT staff person served as a staff member supporting the stakeholder group for mowing and haying and was MnDOT's representative on the IPPT. MnDOT clarified the separate, but related goals of the IPPT, GCCPH and the stakeholder group. MnDOT explained that the outcome of the mowing and haying stakeholder group can have a more direct impact on how MnDOT manages its roadsides but will need to address all applicable laws, rules and regulations in the feedback to the commissioner. The GCCPH team may choose to present the stakeholder group's feedback to the governor as part of its proposal. A more detailed explanation from the MnDOT Assistant Commissioner for Engineering Services describing the links between the work of the mowing and haying stakeholder group, IPPT and GCCPH is included in [Appendix B](#).

## **Local priorities and considerations**

Several members of the stakeholder group representing local government entities or their associations explained why local government entities such as counties, cities and townships are interested in how MnDOT manages the trunk highway right of way. Presenters shared that MnDOT has jurisdiction over approximately 12,000 miles of roadways on the trunk highway right of way, while there are about 45,100 miles of county roads (note that figure does not include city or township roads). Presenters shared that the outcomes of stakeholder group may become the standard of care for all roadsides in Minnesota and so repercussions to all jurisdictions need discussion and consideration. Representatives from local government entities shared that often state agency best practices become statewide best practices, so that would include counties, cities and townships eventually adopting the state's practices.

Presenters shared that all 87 counties in Minnesota have their own approaches to managing the right of way in their jurisdiction. Many of these counties may not wish to implement a permit process because they may have less formalized processes that work well for their area. Many counties and townships do not have the manpower to implement and manage a permit process for their right of way. To further complicate matters, counties or townships may not have the same ownership or control over the vegetation in the right of way that MnDOT has obtained through easements.

Overall, presenters asked the stakeholder group to consider allowing for local flexibility in any feedback to the commissioner of transportation. Individuals representing local governments shared processes that work well for them, ranging from a relatively robust process of county staff interacting with adjacent landowners regarding the right of way to relatively informal systems with minimal formal enforcement. Regardless of the local process in place, the presenters shared their concerns that the system MnDOT implements as a result of this stakeholder process may trickle down to local governments, so the desire was that the resulting permit process specifically apply to state trunk highways only and be as minimally burdensome as possible to local governments.

## **Logistics of mowing and haying**

People who actually mow and hay the right of way described the logistics involved in accomplishing this task to the stakeholder group.

### **Mowing and haying equipment used in the right of way**

All right of ways are different and require different equipment. Generally speaking, mowing and haying the right of way requires a tractor, cutting equipment of different types and sizes ranging from 9 feet to 16 feet, a rake, a baler, a truck or trailer and manpower. Currently a rotary mower can range from 7 to 9 feet and a mower

conditioner ranges from 12 to 16 feet wide, both of which are towed behind a tractor. The depth and height of the equipment can be adjusted on most mowers, but as the tractor travels the right of way, the equipment will bounce up and down, so it is difficult to get a consistent height. The presenter shared that mowing to a height of 5 to 6 inches is a more realistic expectation for the haying equipment, as a higher height can make it difficult to rake the mowed area.

### **Local norms regarding mowing and haying the right of way**

In the area of the state where the presenter resides, a large majority of landowners either mow the adjacent right of way or know who is mowing it. If an individual wants to mow a right of way that is not adjacent to their property, they will ask the adjacent landowner for permission. There are informal community systems in parts of the state that have emerged over several generations, where families have been caring for the right of way for decades. The presenter shared that in the southwest region of the state, the majority of individuals are not mowing and haying miles of roadside, but are instead doing just a few miles close to home.

### **Caring for the right of way**

Many adjacent landowners take pride in caring for the right of way. This care may range from picking up litter in the spring to repairing holes and ruts. Mowing later in the season is more difficult, as the taller vegetation prevents the individual from seeing hazards in the ditch, such as metal or roadkill. Many adjacent landowners feel the right of way is an extension of their property and prefer a neatly-mowed right of way.

### **Timing of mowing and haying**

Individuals may mow and hay at different times due to a variety of factors. Some choose to mow when spring fieldwork is done. Weather is a large factor in the timing of mowing, as a clear window of good weather is required. It can take up to five days to mow, hay and bale an area.

After mowing, the grass must dry for approximately three days, then be raked, baled and removed from the right of way. High humidity can increase the time required to mow and hay, as it takes longer for the hay to dry.

Some individuals use the hay from the right of way for their livestock. Mowing and haying in the middle of June would be the optimal time for quality hay, as the feed quality diminishes every week after the middle of June. During the current mowing and haying timeframe in August, many farmers are not available and any hay gathered is usually used for bedding as there is not much nutritional value left.

### **Other state efforts**

MnDOT conducted research about other state policies and guidance on mowing and haying the right of way. MnDOT shared this information with the stakeholder group as a grid with detailed specifications regarding mowing practices and policies by state. State practices and policies vary widely and include:

- Iowa has tested and switched among a variety of mowing practices. Currently they do a minimal amount of mowing due to available resources.
- Missouri mows a 30-foot strip of the right of way three times per year.
- Ohio allows their regional districts to provide guidance for different roadside zones, including the shoulder, safety recovery zone and transition zone.

- South Dakota does not require a permit on non-interstate highways and has different mowing dates based on location in the state.
- Wisconsin does not require adjacent landowners to have a permit to mow the right of way.

The stakeholder group reflected on the great variety of policies and practices in other states. MnDOT staff noted that many of the other states included in the research had significant differences when compared to Minnesota. Minnesota is somewhat unique from the other states reviewed due to the greater distance from north-to-south within Minnesota, Minnesota's northern geography, the distribution of urban and rural areas and the unique plant, wildlife, and pollinator populations that reside in Minnesota. Ultimately, no single state was identified as an ideal model for Minnesota to follow, given the differences noted above and the current informal and formal local practices across the state in mowing and haying the right of way.

### **Key findings from building common knowledge**

The stakeholder group invested significant time learning about MnDOT's perspectives and practices, along with the differing viewpoints of group members. This information, combined with details regarding habitat preservation and the logistics of mowing and haying, developed the stakeholder group's shared understanding of the demands on the right of way. This helped them better understand the wide range of input from the listening sessions, and more fully consider the potential implications of their suggested input to the commissioner of transportation.

## **Listening sessions and online input**

MnDOT hosted nine listening sessions around Minnesota to gather public input. Listening sessions included a brief presentation by MnDOT about the permitting process and a period for open public comment and questions. An overall summary of listening session input is included in the next section of this report. Summaries of listening session themes, by location, are included in [Appendix C](#). The overall summary and the session summaries include input from the sessions, input provided on worksheets after the meeting and input provided online or by mail.

### **Listening session locations:**

Crookston

Date: Oct. 30, 2017

Time: 6-8 p.m.

Where: University of Minnesota Crookston, 2900 University Ave., Crookston, MN 56716

Marshall

Date: Nov. 8, 2017

Time: 6:30-8:30 p.m.

Where: Marshall Middle School - 401 South Saratoga Street, Marshall, MN 56258

St Cloud

Date: Nov. 9, 2017

Time: 6:30-8:30 p.m.

Where: St Cloud MnDOT Conference Center (MnDOT facility), 3725 12th St. N., St. Cloud, MN 56303

Mankato

Date: Nov. 14, 2017

Time: 6-8 p.m.

Where: South Central College - 1920 Lee Boulevard, North Mankato, MN 56003

Morris

Date: Nov. 15, 2017

Time: 6-8 p.m.

Where: U of MN Morris Conference Room - Science Auditorium, 600 E 4th St, Morris, MN 56267

Arden Hills

Date: Nov. 16, 2017

Time: 6-8 p.m.

Where: Arden Hills Training Center (MnDOT facility) -1900 County Road I West, Shoreview, MN 55126

Brainerd/Baxter

Date: Nov. 20, 2017

Time: 6-8 p.m.

Where: MnDOT Baxter (MnDOT facility), 7694 Industrial Park Rd, Baxter, MN 56425-8096

West St. Paul

Date: Nov. 21, 2017

Time: 6-8 p.m.

Where: Dakota Lodge at Thompson Park Center - 1200 Stassen Lane; West St. Paul, MN 55118

Rochester

Date: Dec. 6, 2017

Time: 6:30-8:30 p.m.

Where: MnDOT Rochester (MnDOT facility) - 2900 48th St NW, Rochester, MN

## **Listening sessions and online feedback summary**

The summary below compiles feedback from nine listening sessions throughout the state to gather input from the public on mowing and haying in the state trunk highway right of way. Additionally, MnDOT collected feedback online, which was included in the summary below. Facilitators summarized the information gathered from each session individually and highlighted the common themes and most salient points raised by the participants. The summary below highlights the most commonly voiced concerns and insights from these sessions and feedback.

### **Differing perspectives on appropriate use of the right of way**

There are clear differences between those who are for and against mowing and haying the right of way. The difference is largely between those interested in habitat conservation in the right of way and those who wish to mow and hay for agriculture purposes. A few individuals also presented concerns that are about taxpayers' interests in general, which are noted below.

There are three primary perspectives regarding use of the right of way:

### **Individuals or businesses who wish to mow and hay**

Individuals who wish to mow and hay the right of way include adjacent landowners, other private citizens, and in a few cases, businesses. Most individuals who mow and/or hay felt they were serving a public good by contributing to the upkeep and safety of the highways. Some individuals in this group expressed a strong pride in keeping the right of way mowed, expressing perceived ownership or stewardship of the right of way. A few participants underlined their feelings of perceived ownership by stating that they paid taxes to the middle of the road. A few also viewed the permit requirement as a “land grab” by MnDOT, which they described as similar to the buffer strip requirements. Many participants expressed they had been mowing the roadside for years and their knowledge of the land should be recognized. These stakeholders shared they have been mowing the right of way for many years without a change in their process, leading them to ask “why now?” in regards to the permit process. Many cited the presence of noxious weeds in the right of way as a primary reason for mowing.

Many individuals interested in mowing the right of way also wish to collect hay. Some individuals use the hay for livestock feed, while others use it for livestock bedding. Individuals interested in hay for livestock feed noted the timing of mowing is important to feed quality.

Several of those who attended the listening sessions expressed that the right of way was not an appropriate place for habitat as it reduces the chance of survival of pollinators and animals due to vehicle collisions. Several of these participants held the perception that the state had abundant public land that would be more appropriate for habitat and conservation efforts. Furthermore, a few participants stressed they do not come across nesting birds such as pheasants in the right of way.

This group of stakeholders expressed that their efforts mowing the right of way saved the state money- if individuals mow the right of way, MnDOT does not have to. A few individuals in this group expressed concern about the permit process potentially requiring the legislature to devote additional state resources to support staffing. Individuals haying the right of way expressed that it is a lot of effort with little financial reward, as hay values are generally low, and hay from the right of way is particularly low quality and low value.

### **Habitat conservationists**

Habitat conservationists view the right of way as public land, which should have limited-to-no use that benefits individual private citizens. They said that because haying produces private and commercial gains, it cannot be viewed as a public service. This group cites the noticeable decline in the numbers of pollinators, nesting birds and other animals combined with the decrease in habitat available in many parts of the state as reasons for preserving the right of way as habitat. Several individuals emphasized the importance of using the right of way to provide habitat corridors, which are more beneficial to some species than isolated areas of habitat spread across a region. They also desired a similar permitting process to allow individuals to not mow or hay the right of way to preserve habitat. A few commenters provided suggestions for more effective management, such as controlled burning. Lastly, while they recognized that farmers and landowners felt strongly about stewardship over the land, they stressed that farming practices have changed in recent decades leaving less acreage untilled. This, combined with limited public lands for habitat in parts of the state, contributed to their desire to maintain roadside habitat.

## Concerned citizens

While not as prevalent at the listening sessions, numerous online comments expressed the view that individual citizens or businesses should not profit off of public land. Some of these commenters leaned towards being pro-habitat, but others were more generally concerned that the state issues permits at no cost to permit recipients so they can potentially profit off of resources on public land. A few of these comments suggested that permit applicants should compensate taxpayers for the resources they are taking from public land.

## Reasons individuals wish to mow the right of way

Commenters expressed a variety of reasons why they wish to mow the right of way. The most common reasons noted for mowing are outlined below.

### Beautification

The majority of proponents of mowing the right of way expressed pride in having a neat right of way, especially adjacent to their land or property. They commonly cited beautification<sup>15</sup> and property value as a reason to ensure that the right of way is mowed and kept neat. Those who mow also stated that they also clean up trash from the right of way in an effort to keep it neat and tidy.

### Managing noxious weeds

Several participants expressed concern about noxious weed species such as thistle and wild parsnips. In particular, participants cited that they felt MnDOT was not properly controlling noxious weeds. These participants indicated that they mow the right of way to control weeds growing next to their property and keep them from spreading into their agricultural fields. Some commenters prefer mowing over spraying herbicides to control noxious weeds for environmental reasons, and for commercial reasons, as some farmers seek to have chemical-free products.

### Safety

A significant proportion of participants expressed concern about safety issues that arise from leaving the right of way un-mowed. Their comments included:

- The tall grass and cattails inhibit the ability to see deer, predators and other animals, which could lead to increased vehicle collision and accidents.
- Mowing is needed to allow for snow fences and to prevent drifting snow in the winter.
- The un-mowed right of way is hazardous to pollinators and other animals as many will end up as roadkill or on the windshield if highway right of way is preserved as habitat for them.

### Drainage

A few participants explained that they mowed to ensure that the right of way ditches would provide proper drainage and prevent flooding of their fields.

---

<sup>15</sup> Note that individuals in favor of using the right of way as habitat felt that natural, un-mowed vegetation provided greater beautification than mowing.

## Hay

Some individuals mow the right of way to collect hay. This is used for livestock feed, bedding and garden or other ground cover. In August, the feed quality of the hay is low, and many individuals who wish to collect hay from the right of way desire an earlier date for mowing and haying. A few commenters stated they either bought or sold hay from the right of way, and one or two commenters described it as a key income stream while others said it wasn't a money maker but was beneficial for new farmers just getting started.

### Comments about the permit process

Participants had varying perspectives on the permit process such as:

- Permit requirements are confusing.
- The monetary requirements to obtain permits are confusing.
- The permit process is onerous.
- The mowing equipment does not meet safety requirements for the permit (such as lights on vehicles)
- The security deposit is a barrier for some mowers and especially for new businesses who have limited resources and rely on mowing and haying for income. The deposit is viewed as a financial barrier with the concern they won't get their deposit back.
- The permitting process should focus on enhancing safety.
- MnDOT should manage the right of way in a cost effective manner in the best interest of all citizens.

### Recommendations for the permit process

Many participants had specific recommendations for changes to the permit process. The most commonly heard suggested changes are described below.

#### Priority and communication to adjacent landowners

A majority of landowners who provided feedback expressed that it was important that property owners adjacent to the right of way have priority to mow and hay. Additionally, they stated that it was important that they be notified if someone else obtains a permit to mow and hay the right of way adjacent to their property.

#### Timing of mowing and haying

A common theme emerged through the listening sessions. It was of both confusion and disagreement regarding the allowable dates for mowing and haying the right of way. Participants gave the following feedback on the statutory dates:

- Mow earlier in July when the hay has nutritional value for livestock.
- Have no date restrictions – this allows mowing when timing works best for schedules/weather.
- Allow no mowing other than safety cuts and snow control – this allows habitat.
- Have regionally graduated dates that take in to account the vegetation and climate of the different parts of the state.
- Mow earlier to help with noxious weeds (mowing in August may spread weed seeds).
- Consider rotational mowing (rather than date restrictions).
- Changing the dates potentially impacts pollinators and animals.

## Enforcement

Participants from all perspectives frequently inquired about enforcement of the permit. Comments related to enforcement were most commonly related to understanding the ramifications of not obtaining a permit and understanding the responsible agency and process for enforcement. Compliance was a focus for educating the public. A graduated, phased in approach to compliance was recommended to allow the public time to learn and understand the laws.

## Safety

Participants had different opinions about safety requirements. Safety requirements were changed in the permitting process by MnDOT earlier in the year (prior to 2017 legislation). Input from the stakeholders and listening sessions was that flashing lights were cost prohibitive for some older mowing equipment and should be evaluated for lower cost alternatives.

## Comments about MnDOT practices and communication

Several participants expressed a desire for more personalized contact between MnDOT and landowners while others wanted to be left alone. In general, permittees would prefer MnDOT to contact the adjacent landowner by phone with broader concerns or questions.

# Stakeholder group feedback to the Commissioner of Transportation

The stakeholder group<sup>16</sup> provided feedback to the commissioner of transportation on both potential permit process changes and suggested statutory changes. The permit process changes the group suggested could be implemented by the Minnesota Department of Transportation without statutory changes. Some stakeholder group suggestions cannot not be implemented without statutory changes, which are noted in this report. Some of the permit process changes recommended by the stakeholder group may require MnDOT to request additional resources.

This summary outlines the feedback provided by the stakeholder group. Additional information about the stakeholder group's meetings is included in [Appendix A](#). Information regarding the related listening sessions can be found in the public engagement section of this report and in [Appendix C](#).

## Ease of permit application or notification

The legislature directed MnDOT to convene a stakeholder group to review and provide feedback on ease of the permit application or notification system. The stakeholder group provided a range of input on this topic, which is described below. A minority of stakeholders oppose the permit requirement generally. These stakeholders participated in providing feedback on the permit process, despite their desire for the removal of the permit process.

---

<sup>16</sup> A listing of organizations participating in the stakeholder group is provided in the public input section of this report.

## **Implementation of permit changes**

The stakeholder group highlighted that it will take time for the public to learn and adhere to changes in the permit process. MnDOT also indicated to the stakeholder group that some of the suggested changes may take time to implement. So, the stakeholder group determined that a phased approach for the implementation of permit changes and for permit applicant education is needed.

### **Phased implementation of permit changes**

The stakeholder group discussed at length the need for site-specific management of the right of way and how the permit process could support this desire. Using geographic information system to map the vegetation in the right of way and track permitted and unpermitted areas may aid in the development of a site-specific permitting process. MnDOT staff indicated that this would take several years and additional resources to implement, but could be included as an enhancement to the phased implementation approach.

### **Educating on permit changes**

Stakeholders suggested MnDOT develop a phased implementation plan to help educate and inform individuals regarding the updates to the permitting process. MnDOT will continue to require individuals who wish to mow and hay in the right of way to obtain a permit and will continue to provide resources to help individuals understand requirements. Under the phased implementation plan, MnDOT will begin by informing individuals about permit process changes, then shift towards administrative enforcement mechanisms once the permit process updates are well understood. Administrative enforcement may include auditing permits for adherence to special provisions, increasing security deposit amounts and denying permits for individuals who do not adhere to permit requirements.

### **Accessibility of permit application**

The stakeholder group and listening session attendees provided input that MnDOT make the permit application as simple and accessible as possible. To make the permit application more accessible, MnDOT may consider offering both in-person and online permit applications. The online permit system would then notify MnDOT staff that an application has been submitted and provide tracking assistance to ensure timely follow-up with the permit applicant. Individuals who wish to complete the permit application in person can go to the district office and receive assistance if needed. Individuals should also be able to choose to print the application from MnDOT's website and mail it in.

### **Insurance**

The stakeholder group supported insurance requirement changes made by MnDOT for the 2017 permit process. Individuals no longer need to designate the State of Minnesota as the third party insured. MnDOT also shifted from requiring to recommending a minimum of \$1 million in coverage per occurrence. Stakeholders supported MnDOT's 2017 change adding language to the permit application to clarify that the permittee performing the mowing and haying in the right of way should be covered under the insurance.

## Security deposit<sup>17</sup> and consequences for not having a permit

The stakeholder group supports MnDOT district staff continuing to set appropriate security deposit amounts for each permittee. MnDOT district staff can reduce or waive security deposits for abutting landowners or their designee, depending on past performance or other factors. The stakeholder group largely supported MnDOT using the security deposit as an administrative enforcement measure<sup>18</sup>.

The stakeholder group also discussed enforcement and penalties for not obtaining a permit. The current penalty for not obtaining a permit to mow and hay in the right of way is a misdemeanor. According to [Minn. Stat. 609.02](#), a misdemeanor is considered a crime with a sentence of not more than 90 days or a fine not to exceed \$1,000. The stakeholder group provided input that a petty misdemeanor would be a more appropriate consequence for failing to obtain a permit. A petty misdemeanor is considered a violation with a fine not to exceed \$300 and does not typically involve a prison or jail sentence. Although the group recommended that mowing without a permit be considered a lesser crime, the group did not press for enhanced enforcement efforts.

## Frequency and priority

The legislature directed MnDOT to work with the stakeholder group to review and provide feedback on the frequency of permits or notification and the priority given to the owner or occupant of private land adjacent to a trunk highway right of way. Stakeholders suggested the following changes that address both of these topic areas.

### Abutting landowner permit applicant

The stakeholder group and listening session participants provided considerable feedback regarding abutting landowners interested in mowing and haying the right of way. This particular group recommended offering a multi-year permit with annual communication between MnDOT and the abutting landowner, or their assigned designee. The group also recommended the determination of the amount of security deposit required, or waiving it in some cases, be left to MnDOT staff. The authority to revoke a permit at any point is reserved by MnDOT. If abutting landownership changes, a new permit should be required for mowing and haying the right of way. Abutting landowners will continue to have priority for the adjacent right of way when applying before March 1. After March 1, abutting landowners may still apply for the adjacent right of way, however they will not have priority over other applicants.

It is recommended that MnDOT use a phased process to introduce the changes in the permit process described in this report. Initially the phased approach focuses on education about the changes in the permit process. After the process changes are well-understood by residents, the focus shifts for district staff from education to implementation, which may include both informal and formal methods of enforcement for non-compliance.

---

<sup>17</sup> The permit may require a cashier's check, certified check, money order, or performance bond. The stakeholder group used varying terminology to discuss the concept of a security deposit, including "performance bond."

<sup>18</sup> [Minnesota Statutes 3.736](#) allows MnDOT to collect for damages caused to the right-of-way by both permitted and non-permitted individuals.

## Non-abutting landowner and out-of-state permit applicants

The stakeholder group provided feedback that non-abutting landowners be required to obtain an annual permit. MnDOT retains the authority to set an appropriate security deposit or performance bond for non-abutting landowners and out-of-state applicants. Considerations for the amount of the security deposit or performance bond may include:

- distance requested in the permit
- past performance
- likelihood of satisfactory performance of mowing and haying the right of way

Based on the feedback of the stakeholder group, prohibiting out-of-state commercial mowing would in Minnesota is recommended unless allowed by a governor's executive order; this would require legislation to implement.

## Mowing areas traditionally maintained as lawns

The stakeholder group recommended MnDOT exempt homeowners, organizations or businesses from the permit requirements to mow areas traditionally maintained as lawn on the right of way abutting their property. This may include mowing for visibility reasons near a driveway. This would require legislative changes. The legislature would need to clearly outline what can and cannot be mowed, as some plantings are left in the right of way intentionally for safety measures such as preventing snow drifts. MnDOT permit staff may educate on permit requirements or potentially perform administrative enforcement actions if individuals mow beyond what is reasonable without obtaining a permit. Any legislation proposed on this topic should specify the liability individuals accept when working in the right of way and direct individuals to MnDOT's permit standards.

## Authority of adjacent local jurisdictions

The legislature tasked the stakeholder group with providing input to the commissioner of transportation on the determination of the authority to mow or hay trunk highway right of way where adjacent land is under the jurisdiction of the state or a political subdivision. The stakeholder group supported MnDOT's practice of selectively entering memorandums of understanding or partnership agreements with other government entities to collaborate on maintaining state trunk highway right of way that is adjacent to land owned by other government entities or local jurisdictions.

Feedback from the stakeholder group supported the continuation of local control over local right of way. The group noted that many local jurisdictions do not currently permit for use of the right of way and that they would not have capacity to do so in the future. Local jurisdictions may continue to abide by applicable statutes, such as [Minn. Stat. 160.232](#), which mandates that mowing occur in August.

## Recognition of differences in the abundance of wildlife habitat based on geographic distribution

The legislature directed to the stakeholder group to provide input about differences in the abundance of wildlife habitat based on geographic distribution. To meet this directive, the stakeholder group reviewed information from the Department of Natural Resources regarding the distribution of public lands across Minnesota. MnDOT staff also provided the group with maps illustrating how the state is divided based on geography for other

programs, such as road weight restriction zones, spring frost-free dates, agroecoregions<sup>19</sup> and United States Department of Agriculture plant hardiness zones. Much of the information reviewed regarding habitat, pollinators and wildlife involved mowing dates and the overall amount of mowing allowed.

## Dates and amount of mowing and haying

The stakeholder group worked to understand the impacts of the dates and the amount of mowing and haying on the various interested parties. Stakeholders recognized that the current dates for mowing in [Minn. Stat. 160.232](#) (Aug. 1– 31) do not meet the hay quality needs of farmers and are detrimental to monarchs and pollinators. Over several meetings, the group weighed the potential impacts of other date spans on agricultural interests, habitat, pollinators and other wildlife. Ultimately, stakeholders largely agreed that a system with no dates would be most beneficial to all parties. With an undated system, the group suggests that the right of way may be mowed only once by permittees (with limited opportunities for additional cuts at MnDOT’s discretion if additional cuts aligns with a site-specific vegetation management plan). Stakeholders differed in opinion regarding how much mowing should be permitted under a system with no dates. Some stakeholders prioritized agricultural needs as primary and that those would be best met with few additional requirements regarding the amount or timing of mowing. Other stakeholder’s prioritized pollinator and habitat needs that would be best served by a permit that specified the amount of right of way managed using integrated roadside vegetation management techniques. These stakeholders suggested allowing mowing on half of the right of way and managing the other half using integrated roadside vegetation management techniques.

The stakeholder group developed a hybrid option of the differing viewpoints. The compromise specified that MnDOT may consider using site-specific management for permits in the right of way for a “take some, leave some” approach. This approach uses the permit process as a two-way communication tool to determine the appropriate amount of mowing for each site based on the vegetation present. Permit applicants can choose to partner with MnDOT by proposing a plan for how much of the right of way can be mowed and how much to leave for habitat. This solution serves both the need for quality hay by allowing for flexible mowing dates, while preserving corridors of habitat in the right of way. MnDOT regional permit staff may educate permit applicants about the importance of leaving quality habitat and rotational mowing for wildlife and pollinators. Education can also specify how much of the right of way is to be left un-mowed to maintain habitat. A few stakeholders urged MnDOT to ensure that the basic concept of leaving half of the right of way un-mowed for habitat not get lost in conversations between permit staff and applicants. Stakeholders agreed that areas of high-quality habitat may be protected from mowing at MnDOT’s discretion, while areas of lower quality habitat may be appropriate for more mowing. If an abutting landowner requests a permit to mow a high-quality habitat area that is not appropriate for mowing, MnDOT staff may attempt to assist in finding another location for the permittee. MnDOT may also revoke a permit at any point due to their responsibility to manage the right of way.

MnDOT may conduct audits to determine whether permittees are mowing more than the agreed upon amount. In the case of a permit violation, MnDOT staff may use administrative enforcement mechanisms such as increasing the security deposit or denying a future permit application.

---

<sup>19</sup> According to the Minnesota Department of Agriculture, [Minnesota has 39 agroecoregions](#). Each agro ecoregion is associated with a specific combination of soil types, landscape and climatic features, and land use.

## Other topics discussed

### Safety and visibility of permittees

Stakeholders generally supported MnDOT in continuing to require individuals to wear a high-visibility shirt or vest in the right of way when they are not on their vehicle. In 2017, MnDOT reduced the light requirement from as strobe light to a flashing amber light, as they are more readily available and less expensive. Additionally, vehicles in the right of way are to follow guidelines in [Minn. Stat. 169.522](#).

### Requirement to carry permit while mowing and haying

MnDOT staff discussed the reasons why MnDOT expects permittees to carry their permit on their person while performing work in the right of way. Each permit may describe any special provisions that are specific to the site where mowing and haying are being conducted. It is necessary for the permittee to be aware of these detailed special provisions while mowing or haying in the right of way. It was deemed necessary for permittees to have their permit with them when working in the right of way to adhere to the detailed special provisions in their individual permit. The Department of Public Safety supported this, citing the need of law enforcement to inspect a permit without delay to effectively resolve a dispute or complaint. Given this, stakeholders asked that MnDOT consider allowing permittees to carry an electronic version of the permit instead of a paper copy with them at all times while working in the right of way.

# Appendix A: Stakeholder group meeting summaries

**Aug. 23, 2017 – St. Paul, MN**

## Welcome and administrative tasks

Nancy Daubenberger, assistant commissioner for the Engineering Services Division at MnDOT, welcomed the stakeholders and thanked them for their time, involvement and input in the process. She highlighted that the reasons for gathering this group were twofold:

1. Gathering a stakeholder group to work through this issue.
2. The legislature put a hold on enforcing the mowing law and directed MnDOT to conduct public engagement and then make permitting recommendations.

## Background and legislation

Nancy Daubenberger shared a PowerPoint that highlighted why MnDOT manages its right of way and competing interests in it. She provided historical context for legislation and gave an overview of the permit process.

## Use of MnDOT right of way and current permitting process

Joe Pignato, assistant office director for Land Management, shared information regarding the types of permits and the number of permits approved. He answered questions from the group about the presentation, including why MnDOT uses permits for this process. Stakeholders requested more information about where in the state permits have been issued.

## Group purpose, ground rules and future meetings

The group reviewed an initial scope document outlining the priority areas of discussion. The recommendation on stakeholder group activities is due to the legislature on March 1, 2018.

MnDOT clarified that although other groups are focused on pollinator issues, this group is focused on the permitting process and how to design a process that meets all the demands on our roadsides from multiple stakeholders while maintaining the safety of the travelling public and balancing MnDOT's need for communication with those using their right of way.

The group provided feedback on the tentative plan for collecting information from the public via listening sessions and online input. MAD also led a discussion on future group meeting logistics.

# Sept. 20, 2017 – St. Cloud, MN

## Welcome and administrative tasks

The group approved the previous meeting notes and discussed the schedule of listening sessions and stakeholder meetings. Both sets of meetings will be held around the state. Based on group feedback, MnDOT will conduct six listening sessions instead of the planned four.

## Background information and discussion

Nancy Daubenberger reviewed two key statutes with the group in response to questions at the previous meeting:

- One statute restricts full mowing in ditches to just the month of August and applies to all roadways in Minnesota.
- Another statute prohibits various activities in MnDOT's state highway right of way to ensure safety, and gives MnDOT the authority to issue permits. MnDOT's permitting authority only includes state highways. The stakeholder group is charged with reviewing MnDOT's permitting process and recommending changes.

Daubenberger highlighted that for purposes of maintaining safety and infrastructure, MnDOT needs to preserve the permitting process while ensuring that the permitting process is as workable as possible so that individuals with permits can carry out necessary activities, and MnDOT can monitor permits for safety, habitat preservation, infrastructure and other potential concerns.

Joe Pignato provided data to the group regarding permits. Stakeholders requested additional information from MnDOT at future meetings.

## Stakeholder interests

Management Analysis & Development asked the group about their key interests regarding the issue of mowing and haying on state Right of Way trunk highways. Stakeholders spent time individually answering questions and then starred their top two most critical interests. Stakeholders split into pairs to talk about their ideas and put key ideas on cards to share with the group. The key interest areas identified by the stakeholders were:

- A process for safety, cost-effective, timely, well-managed right of way habitat that is communicated and understood
- Cost savings
- MnDOT effectively and reasonably manages the right of way
- Safety of all persons in traffic-way
- Preserve and expand habitat
- Safe and quality food for livestock, including honey bees, which are considered livestock
- Site-specific right of way vegetation management

# Oct. 18, 2017 – Shoreview, MN

## Welcome and administrative tasks

The group approved the previous meeting notes. In response to requests at past meetings, MnDOT provided a letter discussing how this group intersects with several others. MnDOT staff clarified that when MnDOT makes any kind of change or recommendation to the commissioner, they have to take into consideration all laws/rules/executive orders if there's a potential impact. Stakeholders also submitted requests for additional information from MnDOT.

## Identifying other state's efforts

Nancy Daubenberger provided a handout about permitting in other states. She also compiled a document summarizing policies and guidance on mowing and haying from other states. She highlighted that Iowa said they have tried various mowing practices and now do a minimal amount of mowing from a resource standpoint. The group discussed MnDOT's mowing practices; MnDOT shares that it mows brush at an early stage of life before it requires costly timber cutters. Stakeholders asked questions about other states' policies and noxious weeds, and MnDOT answered that it did not learn about that, but that the group could ultimately provide feedback about enforcement.

## Overview of the current permit process

Joe Pignato gave a presentation on the current permitting process. He noted that they use an environmental map to determine if there's an environmental concern regarding the area of the requested permit. He also answered questions from members to clarify the process. For example, MnDOT often does not review sites that individuals have requested a permit for in person, but rather rely on existing MnDOT photographs and maps.

## Review and discussion of permit process

The stakeholder group reviewed the scope and interests documents, which were used as the boundaries for the permit process conversation. The group walked through the steps of the permitting process and identified key areas for discussion in the future. This conversation focused on gaining a shared understanding of the current reality of the permitting process.

The group discussed how the Aug. 1-31 mow and hay dates were set. It correlates to dates for each region identified in the Farm Bill to allow for a nesting period for grassland birds. The dates vary by state/region. These dates have been in Minnesota Statute since approximately 1985 by a unanimous vote to protect and enhance roadside habitat. Among other things, mowing and haying in August allows residual cover to grow up for nesting season, and allows more regrowth and plants for pollinators.

The group discussed the effects of potential changes to the process, such as changing the start date or allowing mowing on alternate sides of the road each year.

# Nov. 15, 2017 – Mankato, MN

## Listening session update

The stakeholder group discussed themes from the listening sessions to date.

## Information sharing

Stakeholders were provided with information in response to the Oct. 18 meeting activity where they identified what they want to know and what they want others to know. Individuals presented on three topics, and answered questions after each presentation:

**Logistics of mowing and haying:** Krist Wollum shared information regarding the process of mowing and haying. He described the equipment needed and the process and habits of harvesters. Those mowing and haying would prefer to mow and hay earlier in the summer because it yields better quality feed for livestock. Other members added that there is a higher risk of mowing later in the season because you cannot see hazards in the ditch. He explained that many people do not know about the August timeframe and as a result do not follow it. They do not always understand that they should get a permit.

**Honeybees:** Dan Whitney and Erin Rupp described how roadsides are critical for bees because farmland doesn't have the diverse flowers that it used to ten to 20 years ago. Bees need flowers from mid-August to mid-September for good forage to overwinter. In terms of moving up the mow-hay season, late June through early July would give flowers enough time to regrow for pollinators; later than that would hurt the bees more.

**MnDOT:** Jed Falgren, Maintenance Engineer for District 7, explained that MnDOT permits because it is statutorily required to. MnDOT mows to improve visibility, sight corners, and clear zones. MnDOT also mows for vegetation control and management, such as brush control, which can be important in controlling blowing snow in the winter. MnDOT is most concerned about the safety of the motoring public and the individuals in the right of way. MnDOT uses the permit process to share information with right of way users on noxious weeds and herbicides, upcoming products, and sometimes damage to the right of way. Jed emphasized that the general experience is that farmers take care of the property.

If private individuals stopped mowing, MnDOT would mow the top cuts, but the ditch bottoms and back slope would not be mowed in all circumstances. MnDOT would mow more than they currently do, but would not mow to the extent that haying/mowing is done by individuals.

## Review of permit process

Based on the previous meeting's conversation, the group discussed portions of the permit process. The stakeholder group had a robust conversation about a potential online process. MnDOT clarified that the online permitting process being considered would allow people to submit a permit application online, and then MnDOT staff would review and approve it. The group also discussed potential changes to requiring individuals to carry their permit when working on the right of way, and to the performance bond or security deposit process.

# Dec. 6, 2017 – Rochester, MN

## Welcome and administrative tasks

The group approved the previous meeting notes and reviewed the group's purpose and charge. Members discussed which areas they had already learned about, and which areas they needed to spend more time on yet. Although some people recommended there be no permit process or that no mowing be allowed, these cannot ultimately be MnDOT's recommendation. The state legislature has charged MnDOT with establishing a permit or notification system to mow or hay in trunk highway right of way.

Members listened to an update on the themes coming from the listening sessions occurring around the state.

## Information sharing

Stakeholders were provided with information in response to the Oct. 18 meeting activity where they identified what they want to know and what they want others to know. Individuals presented on three topics, and answered questions after each presentation:

**Local government:** The local government group outlined their perspectives and concerns regarding the permitting process for mowing and haying. The outcomes of this working group will become the standard of care for all roadsides in Minnesota. State best practices often become statewide best practices, meaning counties eventually adopt what the state does. Local governments have their own approach to managing their right of way and appreciate having the flexibility to do so. They may not want to implement their own permit processes. Local units of government want to be able to mow for noxious weeds in their right of way.

**DNR and Habitat:** Greg Hoch from the DNR explained that mowing/haying can be beneficial to wildlife and plants, but it depends on how you do the mowing. In many parts of state, ditches are really the only grassland habitat left. Every management action will be beneficial or detrimental to different species. Mowing too early may destroy nests for grassland birds, but young birds love to forage after mowing. Mowing too late is bad for pollinators and can spread invasive species. There's no perfect window for mowing. From a wildlife and habitat perspective, what matters most is the overall amount of mowing not the timing of the mowing. Ideally, it would be beneficial for wildlife and pollinators to take half and leave half of the ditches.

**MnDOT legal presentation:** Angela Forsythe from MnDOT's Office of Chief Counsel presented on MnDOT's statutory authority to regulate trunk highway right of way; to require insurance from anyone applying for and receiving a permit to mow and hay in the right of way; and the MnDOT highway sponsorship program.

## Next steps

The group reviewed the additional topics to cover in the future, and identified the decision points ahead of them: timing, geography/quantity, prioritization for and types of permits, frequency of permit renewal, reviewing statutes, and deposit requirements and simplification of permit.

# Dec. 13, 2017 – Maplewood, MN

## Welcome and administrative tasks

The group approved the previous meeting notes and discussed MnDOT's lack of enforcement authority; they can choose not to renew a permit, but cannot issue a citation to violators.

## DNR update

DNR brought maps showing public lands in Minnesota and grassland habitat changes, which is not spread equally throughout the state. A significant amount of grassland habitat has been lost a significant amount in the past 10 years.

## Base assumptions

Many members of the group agreed on the following statements:

- 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
  - Noxious weeds
  - Enforcement

Some requested additional information supporting the statement that MnDOT has legal authority to manage the right of way.

## Permit process discussion

The group discussed possible changes to these pieces of the process:

- **Timing:** changing to no time restrictions; having zones; emergency considerations; changing to July 15 start; switching to take some/leave some model
- **Priority to adjacent landowners:** current system; enhancements to priority to adjacent landowner system; transfer adjacent owner priority; fee-based system
- **Quantity:** mow every other year with no date restriction; mow every other side of the road; rotate parts of ditch mowed/hayed; cut some early and the rest later

# Jan. 11, 2018 – St. Cloud, MN

## Welcome and administrative tasks

The group approved the previous meeting's notes. A question was raised about the 12/6 meeting notes regarding the number of new acres of CRP enrolled. MnDOT will coordinate with DNR to obtain an answer.

## MnDOT Enforcement Update

Terry Conden shared MnDOT's overall enforcement procedures, which ranges from informal or "soft" enforcement to more formal actions. There are many districts who oversee permits at the local level. While they're out there, they ensure there's no illegal activity such as encroachment. The permit staff have a "notice of violation" which is handed out individuals doing illegal activity in the state highway right of way, and staff have a verbal conversation with the individual performing the activity. It provides the state statute and often the permit staff will show them the highway maps. If the illegal activity continues to be performed, they send a certified mail letter to document it. In order to have state patrol enforce, the state patrol would need to catch them doing the activity in the right of way, which would then go to the county attorney. The permit staff manage compliance, while the state patrol may do more formal enforcement. Training of local enforcement varies across jurisdictions. If illegal mowing is noticed after the fact, enforcement may go ask a farmer about it and have the conversation.

## Listening sessions summary

Farmers who do mowing, haying, litter pickup and weed control in the right of way – how much does this save MnDOT? That is difficult to quantify. MnDOT acknowledges that farmers sometimes mow where they'd mow, which saves the state money, however farmers also mow areas that MnDOT wouldn't mow, or that MnDOT wouldn't mow as frequently– so in that case, it is not a savings to the state.

## MnDOT requirements overview

Nancy Daubenberger shared MnDOT's priorities: First, ability to manage their Right of Way – flexibility to do what needs to be done in the right of way to manage vegetation, snow control, noxious weeds, and brush. Second, proof of liability insurance in written form from permitted individuals. Third, consistency in the right of way management. Fourth, compliance with state statutes and other requirements, including executive orders.

## Stakeholder input on permit process and legislation changes

The group brainstormed several potential suggestions. The first idea was take all, one cut per year, June 15 – Aug. 1. There was not consensus, this requires further discussion. The second idea was take half/leave half width of right of way from easement to the fence cut. The current statute specifies 8 feet wide and MnDOT would prefer it reads "a single swath with a maximum of 16 feet" to allow for variances in width of equipment. Finally, permit: 5 years for adjacent landowner with annual communication among permittee, landowner or designee.

# January 18, 2018 – St. Paul, MN

## Welcome, agenda review, introductions

Charlie Petersen, consultant from Management Analysis and Development, welcomed the group to the meeting and gave an overview of the agenda. He opened the meeting by reviewing the legislative charge for the group, including the role of the stakeholder group in providing input, the role of the commissioner of transportation in making a recommendation to the legislature, and the role of Management Analysis and Development, or MAD, as third-party facilitators and documentarians.

## Review and approval of prior meeting notes

Jan. 11 notes – Request to include attachment with meeting notes

Dec. 6 notes – no comments or changes

Dec. 13 notes – no comments or changes

## Stakeholder Group input on permit process and potential legislation changes

Charlie Petersen reviewed the ideas discussed in the previous meeting, including:

- Take half leave half with no date restrictions, allowing for safety cut
- A date-restricted process similar to current permit process, with the potential of changing the dates

MnDOT staff shared a series of maps assessing geographic differences and regions across the state related to environmental or other factors. This introduced an idea of graduated dates across the state.

The group reviewed the three different options related to timing and quantity and discussed the pros and cons of each option.

### Take half – leave half:

- Nuances to this could involve dates
- Half of the right of way (front or back half) - Last time, talked about the width of the right-of-way – taking half of that
- One-cut done by non-MnDOT/non-road authority
- Within that aspect, annual communication between MnDOT/permittee would provide special provisions
- Idea of farmers doing an early and/or late cut for snow/noxious weeds with MnDOT's approval

### Take some – leave some

#### Pros:

- Provide habitat all summer long
- Provide quality hay for farmers
- Fair option for many
- Could say downslope instead of half – would be more understandable
- Flexibility for farmers – acknowledges that farmers are stewards of the lands, also provides habitat

- Provides MnDOT with detailed info about farmer's plans for management
- Most fair option – helps climatological impact, who lives on what side of the road, etc.
- If done on a rotation, helps brush control
- Safety – back slope safer to cut
- MnDOT could in some cases request a farmer do a late-fall full cut instead of half for snow control/other reasons – flexibility – broadens who could do the snow cut (Pheasants need grass to overwinter)

**Cons:**

- Management of this would be difficult for MnDOT
- Difficult to define half
- What's left may not be the best/aesthetically pleasing – farmers may leave noxious weeds, which then MnDOT would have to come cut, so then the whole right of way is cut
- Defining the right of way line is difficult
- Would it be specified to be half of the mowable right of way or something else? What if there's a 100 foot right of way with 25 feet of trees?
- Fences may not be on the right of way line – they control access
- Safety – in slope or front slope is dangerous to cut. Don't want bales stored there
- IF take half/leave half leaves more grass standing, MnDOT may have to do more snow control mowing in the late fall. (MnDOT may do more mowing in this case than they are currently)
- How do we control the weeds in the half that is un-mowed?

**Defined time (what's in statute now, possibility of adjusting the date)**

**Pros:**

- Simple for public to understand
- Easy for MnDOT to manage
- Influences different plant communities if set earlier – mowing in August influences spread of parsnip, thistle, and noxious weeds. Could reduce noxious weeds on roadways – current statute allows government to mow any time for safety or noxious weeds
- Farmers take stewardship instead of state

**Cons:**

- Wrong dates could increase noxious weed spread
- No good date for mowing for Monarchs after middle of July
- No universal date that works for all pollinators, wildlife, vegetation
- Date may not meet needs of a constituent group

**Staggered dates/region specific**

There was some limited stakeholder support for this, however these stakeholders look to MnDOT/DNR for what the staggered dates or regions should be. DNR staff shared that if mowing occurs early so we miss the monarchs, we're at the peak of pheasant, waterfowl, songbird nesting – as mowing creeps into June, wildlife would be more impacted in the southern part of the state. A stakeholder stated this does not address concerns from environmentalists heard at listening sessions.

**Pros:**

- Incorporates climate variability and wildlife needs
- May minimize impacts

- Best quality hay could be taken from trunk highway right of way – there's a lot of variability in the quality/type of hay out there in general, requires different cutting dates
- May allow for re-nesting/re-growth of some habitat/wildlife
- If done on a rotation, helps brush control

**Cons:**

- Confusing – would take more education efforts to have public understand
- You're going to have to draw the line somewhere –someone right on the other side of it won't agree with the line
- Enforcement would be difficult right around boundaries
- there's a lot of variability in the quality/type of hay out there in general, requires different cutting dates

## Final input on key points

- Abutting applicant permit: could be a multi-year permit with annual communication between landowner and MnDOT (as long as the ownership stays the same, with MnDOT having the authority to revoke at any point). Can be issued to their abutting landowner or their assigned designee.
- MnDOT should use a phase-in process for new permitting process and provide education.
- Insurance: The current language in the permit is acceptable. Clarify that the person doing the actual mowing/baling should be covered under the insurance.
- Performance bond: Tort claim act allows MnDOT to collect for damages. Stakeholder support to leave it up to the regional office staff about whether a deposit is required and empower them to address bad actors.
- Safety lights/visibility: Vest or high-visibility shirt needed if an individual is off the vehicle. MnDOT will provide a vest if needed. Light requirement has already been reduced from a strobe light to a flashing amber light, as they are more available and reasonably priced. Slow moving vehicle marker as required. Vehicle should be clearly visible from 600 feet the rear (as per slow moving vehicle statute to 169.522) and follow the rules of the road.
- Aesthetic or visibility mowing: No permit should be required for mowing land traditionally maintained as lawn (for reasons such as aesthetic mowing, visibility mowing). MnDOT regional permit staff have the role of educating individuals who mow more than what is reasonable without a permit. Road authority has the authority to determine what can and cannot be mowed (example of safety – plantings to prevent snow drift) and when the highway sponsorship program is a more appropriate avenue. This may require legislation change and liability awareness wording.
- Non-abutting landowner and out of state applicants: Annual permit for non-abutting landowners. If the adjacent landowner requests it, they have priority until March 1<sup>st</sup>. MnDOT regional staff have authority to set an appropriate performance bond. General support for no out of state commercial mowing unless by executive/governor's order.

Other discussion points:

- 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.
- MnDOT is open to MOUs with other government entities to enter agreements to manage right of way that is adjacent to land owned by other government entities.

- Individual citizens or businesses can use the roadsides for wildlife program or highway sponsorship programs as avenues to potentially preserve habitat in the right of way.
- Carrying permit on your person – an electronic or paper copy is acceptable. Permittees are requesting to come onto state highway right of way to perform work – how is it detrimental to carry it with them? Do they understand the permit requirements and are they the permittees?

## Legislative charge review

The group reviewed the legislative charge and agreed they had covered all required topics, as follows:

Ease of permit application/notification:

- Updated to be cumbersome
- Improvements make it a more effective communication tool
- Increased flexibility in permit process
- Moving to an automated online process and in person application option provides greater ease

Frequency of permits/notification:

- Phase in educational period
- Extended permit period for adjacent landowners with annual check in

Priority given to the owner/occupant of private land adjacent to trunk-highway right of way:

- Time frame for priority application
- Specific permit exemptions for lawns suggested

Right of way with adjacent land under jurisdiction of local government:

- Highway sponsorship program
- Roadsides for wildlife
- MOU with other government entities

Abundance of wildlife habitat based on geographic distribution throughout the state:

- Considering timing of mowing
- Reviewing amount of mowing

Next meeting:

- Assigned MNDOT to look at non-adjacent landowner aspect and exemption for aesthetic mowing
- Finalizing any loose ends – when considering timing/amount options, clarify if one cut or more
- A permit violation is currently a misdemeanor (90 days in jail). Would like to consider revising statute to have it be a petty misdemeanor (fine of \$300 – if you pay the fine, do you still get the hay)

# Jan. 25, 2018 – St. Paul, MN

## Welcome and administrative tasks

The group reviewed the previous meeting notes. The group provided a few minor edits.

## Stakeholder group input on timing and quantity

MnDOT staff reviewed stakeholder input to create a list of potential date and amount options. The stakeholder group provided additional feedback regarding the pros and cons of each option.

- 1A: No date restrictions, assumes one cut and that permittees will take some and leave some on each side of the road.
- 1B: Allow mowing and haying on the south and east (e.g. increasing mile posts) side of the roads May 20 – June 20, and allow mowing and haying on north and west (decreasing mile posts) side of roads after July 15
- 2A: No date restriction
- 2: B Prior to July 1
- 2C: June 15 – Aug. 1
- 2D: July 15 – Aug. 31
- 2E: August 1 – Aug. 31
- 2F: Graduated dates throughout the state (region specific)

## Timing and amount preferences

The stakeholder group provided input on their top preferences for the options listed above. Facilitators calculated a rough count of the preferences, noting that about one-third of the group was not present. The first choice for all present was an option without a date, one-third of the total group (including those not present) preferring 1A and one-quarter preferring 2A. Based on their stated preferences, the group collaborated to develop a hybrid model, Option X. Option X would have no date, allow for one cut in most circumstances, and utilize the permit as a communication tool for site-specific vegetation management, education, and clear definition of what should be mowed and un-mowed in each permitted area. Option X would maximize mowing in areas of low-quality habitat, and allow MnDOT to shift approaches and minimize mowing in areas of high-quality habitat. MnDOT staff could help a permit applicant find a suitable place to mow if the area they initially requested is reserved for habitat. Option X would be phased in, requiring additional MnDOT resources to implement and educate the public.

## Closing and recognition

Nancy Daubenberger thanked the stakeholder group members for their engagement and willingness to provide input to the commissioner of transportation.

# Appendix B: Letter regarding Governor's Executive Order 16-07

October 13, 2017

To: Mowing and Haying in the State Highway Right of Way Stakeholders Group

RE: Linkage between the efforts of the Mowing & Haying in the State Highway Right of Way Stakeholders Group and the Governor's Executive Order 16-07

Greetings,

This letter is in response to the request for written clarification on the linkage between Governor Dayton's Executive Order (EO) 16-07 Interagency Pollinator Protection Team and the Mowing and Haying in State Highway Right of Way Stakeholders Group (M&H group).

There are three groups working on these efforts: the M&H group, the EO16-07 Interagency Pollinator Protection Team (IPPT), and the EO16-07 Governor's Citizen Committee on Pollinator Health (GCCPH). In developing the M&H group, MnDOT selected representatives who are working on these other efforts to ensure coordination, specifically,

- Tina Markeson is MnDOT's representative on the IPPT, as well as a staff member of the M&H group;
- Erin Rupp with Pollinate Minnesota and Dan McSwain with Washington County Natural Resources are part of both on the GCCPH, as well as members of the M&H group.

We expect that these people will represent the perspectives of the IPPT and GCCPH and ensure that the work of the M&H reflects their concerns and goals for pollinator habitat. These three groups have some intersecting goals, as follows:

**Goal of IPPT:** interagency cooperation to develop cross agency policies and programs and to develop statewide pollinator goals and metrics.

**Goal of GCCPH:**

- Promote statewide collaboration on pollinator protection efforts;
- Raise public awareness of pollinator issues;
- Review and comment on agency pollinator programs, reports, and recommendations; and
- Identify and support opportunities for local and public-private partnerships.

GCCPH has the ability to make recommendations to the Governor on state agency programs and other statewide partnerships and efforts.

**Goal of M&H Group:** (language directly from bill)

- ...establishment of a permit or notification system to mow or hay in trunk highway right of way. The recommendation must be developed with input from agriculture and environmental groups.
- The recommendation must contain at least the following elements:
  - (1) ease of permit application or notification;
  - (2) frequency of permits or notifications;
  - (3) priority given to the owner or occupant of private land adjacent to a trunk highway right of way;
  - (4) 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; and
  - (5) recognition of differences in the abundance of wildlife habitat based on geographic distribution throughout the state.

While the outcomes of all three teams will have impact statewide, the outcome of the M&H group will have a more direct impact on how MnDOT manages its roadsides. The outcome of the M&H group can be taken up by the GCCPH team as a program to expand to counties/cities, should the GCCPH team choose to present this to the Governor as part of their proposal.

I hope this provides the clarification you are seeking.

Sincerely,

Nancy Daubenberger, P.E.  
Assistant Commissioner for Engineering Services

CC:

# Appendix C: Listening session summaries by location

## Arden Hills

Nov. 16, 2017

Number of participants: ~12

**Conservation:** A majority of the participants expressed the need to conserve the right of way as critical habitat for animals and insects. A participant noted that the right of way is mowed before the August 1<sup>st</sup> date, despite the permit process. They also suggested that MnDOT staff could identify areas that do not need to be mowed for safety reasons, and also mowing on a rotation, and other creative ways to conserve roadside as habitat. Another participant encouraged prescribed burning of roadsides as opposed to mowing. Another inquired about mowing dates that are more suitable for protecting pollinators (August 1<sup>st</sup> better to ensure survival of pheasants). However, one participant expressed that there was plenty of public land for habitat in Minnesota. They stated that they preferred not to use chemicals to manage noxious weeds along their property so prefer mowing.

## Crookston

Nov. 8, 2017

Number of participants: ~45

**Beautification:** Two highways run through the city and ditches are mowed for beautification purposes. Several participants stressed the pride people take in keeping ditches adjacent to their property neat and tidy.

**Safety:** Majority of participants stressed that leaving the right of way un-mowed is a safety concern. The tall weeds and cattails cause deer and other animals to be close to the road increasing vehicle collision and endangering human life and that mowing makes it easier to see animals. Additionally, several participants also mentioned that leaving the right of way un-mowed causes living snow fence to be too close to the road causing the snow to drift on the roads.

**August 1<sup>st</sup> date:** Majority of participants expressed that they did not understand why the law required them to wait till August 1st to mow. Participants noted that it was easier to mow in July because farmers may be busy with harvesting in August, July is a good time to get hay and August is not, and additionally it is difficult to mow in August due to seeds that fly from the weeds at that period.

**Maintenance and noxious weeds:** Several participants expressed concern over noxious weed and how mowing in June (or before August) is key to keeping it down. Some participants also expressed that a new noxious weed (Burnet Saxifrage) has been discovered on their property and that they needed to control it.

**Drainage:** Participants expressed that ditches do not drain properly if not mowed, causing back up in to fields. Additionally the expressed the optimal time for mowing the ditches are when they are dry, rather than wait for August.

**Permit process:** Participants expressed frustration and confusion about the permit application and enforcement process. Some expressed concerns about the requirements including helmet, insurance, payment and bonding for permits. Additionally a participant expressed confusion about dates when adjacent property owner gets first priority to mow.

**Right of way as habitat:** Participants expressed that they did not understand why the right of way has to be a habitat for pollinators.

## Mankato

Nov. 14, 2017

Number of participants: ~30

**August 1 Mowing Date:** Majority of farmers expressed that the time allowed to mow does not provide quality hay. Several farmers expressed that they provide a service by mowing the right of way, and in return they would like quality hay and that by August 1st, the hay along the highways is of poor quality. A few participants noted that having access to the right of way to mow hay was especially cost effective for hobby farmers who do not have a lot of resources to get quality hay. Some participants noted that the date is too late in areas north of Alexandria; they suggested, depending on the type of vegetation in the right of way, that a graduated cutting schedule may be useful. One participant also suggested allowing mowing twice to control weeds, allowing some burning on right of way, as well as allowing some rotation to cutting cycle.

**Permit process:** Majority of participants raised concern about several aspects of the permit process, including a) requirement for safety equipment, insurance, b) allowing landowners first priority to mow right of way adjacent to their property. Participants also inquired about responsibility to enforce the permits and ensuring penalty for non-compliance.

**Safety:** Several participants expressed that the leaving the right of way un-mowed is a safety concern as wildlife can be near to the road resulting in increased vehicle collision.

“Don’t let children play along the road – shouldn’t allow our pollinators to do that as well. Coyote track along the road – they’ll find the pheasants.”

**Habitat loss for wildlife/ pollinators:** A minority of participants expressed that the right of way is the only habitat left for pollinators such as honey bees, and other wildlife in heavily farmed areas. Several expressed the noticeable loss of pollinators in the region and underlined the important of safeguarding right of way as habitat for them. Two participants also expressed that the permit process does not accommodate those who wish to leave right of way untouched and that that there is weak enforcement of the statute for protection of habitat and conservation.

## Marshall

Nov. 8, 2017

Number of participants: ~68

**Maintenance:** Several participants expressed concern over noxious weeds, including thistle and leafy spurge in the right of way that need to be controlled by mowing before they spread and seed. A few others also noted that they take pride in cleaning the ditches and keeping it free of garbage. Several suggested moving the date up

in order to control the weeds. Many of those present expressed frustration that the state does not recognize that the farmers were providing a service for free, when it would otherwise require unionized employees to maintain the right of way.

**Permit process:** Majority of participants raised concern about several aspects of the permit process, including onerous requirement for safety equipment, insurance, lights etc. A participant explained that in order to reduce damage to equipment, farmers typically mow roadside ditches using old equipment that do not meet the permit requirements. Another participant expressed that it is burdensome to renew the permit each year and that it would be useful for the permit to be valid for more than a year. A handful of participants also inquired about enforcement and requested clarity on the penalty for non-compliance.

**Safety:** Several participants noted that mowing the right of way reduced vehicle collision with animals such as deer, and kept other wildlife away from the roads. Several noted that roadsides are not appropriate places for creating habitat for animals and pollinators and shared anecdotes of accidents and incidents involving wild life that have affected members of their community.

## Metro

Nov. 21, 2017

Number of participants: ~14

**Conservation:** Majority of those present expressed the need to preserve right of way as critical habitat. Several expressed support for the permit process and mowing date. A stakeholder noted that it was important to distinguish between mowing and haying, that mowing serves as an important management tool while haying allows taking from a public resources which is not the purpose of the state right of way. **Noxious weeds:** A few participants expressed concern about noxious weeds and how it needs to be managed. One participant suggested examining programs carried out by other states such as Iowa or Kansas. Another participant also inquired about what MnDOT is doing to control noxious weeds such as wild parsnips.

**Enforcement:** Several of those present inquired about the permitting process and enforcement of the statute. MnDOT clarified that law enforcement would enforce the statute and that state patrol is part of the stakeholder group. One participant also inquired about legislation regulating private benefits from a public asset. Representative Hansen expressed his willingness to support this issue.

## Morris

Nov.15, 2017

Number of participants: ~30

**Noxious weeds:** Majority of participants expressed concern over noxious weeds (Canada thistles) suggesting that by not controlling them it creates a major liability for farmers. A few also expressed that the farmers are doing a service by maintaining the roads by mowing and cleaning up garbage from the roadside.

**Permit process:** One participant expressed that it was important to give priority to adjacent landowner and that the first right of refusal should be to those owners. They also suggested that the permit should be paperless and that the August date needs to be changed.

**Quality of Hay:** A few participants discussed the quality of hay that would be yielded because of the cut date in August.

**Conservation:** A minority of participants expressed the need to conserve roadsides as critical habitat. They cited the noticeable decline in birds and insects, specifically those that use ditches for nesting, and suggested ways to manage them more effectively, including planting native seed mixes and mowing on a three-year rotation. One participant also suggested that MnDOT should urgently consider Iowa's Integrated Roadside Vegetation Management (IRVM) program. However, majority of those present expressed that there is a lot of public land available for conservation and that roadsides are not appropriate for this purpose.

**Safety:** Several of those present noted that leaving the right of way un-mowed causes significant safety issues, that large animals can hide behind tall grass causing increasing collisions.

**Drainage:** One participant also expressed that proper drainage is critical to control flooding and that un-mowed ditches compromise drainage, and allows trees and cattails to grow which impede water flow.

## Rochester

Nov. 09, 2017

Number of participants: ~10

**Maintenance:** Several participants expressed that mowing the right of way helps control noxious weeds and invasive species such as Canada thistle and wild parsnip. Several stated that MnDOT did not appear to control these and they needed to mow before the August 1<sup>st</sup> date to ensure it did not spread around their properties. Some also expressed that they preferred to mow over spraying herbicides which is indiscriminate and more harmful for pollinators. One participant also expressed that MnDOT and DNR are not taking responsibility to control noxious weeds as per statute 160.23.

**Permit process:** A few participants expressed confusion about the permit process, including whether permits are required to mow driveways. Another participant outlined that in South Dakota, people have to bid to get the right to bale, and they mow and hay well before 1<sup>st</sup> of August, but that they did not have requirements such as safety vests. A participant also expressed concern about whether needing permits would become common place and be required for county and township level also. One participant suggested mailing survey utilizing Self Addressed Stamped Envelopes (SASE) to landowners adjacent to right of way to gather information about intention to mow/hay, and using the responses as permits. Another participant also suggested managing and issuing permits on a graduated scale depending on the region. Several times, participants inquired about costs associated with acquiring a permit.

**Enforcement:** A participant expressed that they had received a letter from MnDOT stating that his crops were encroaching the right of way. They felt that it could have been resolved by calling them in person and utilizing MnDOT resources for resolving other highway related issues.

**Conservation:** A minority of participants expressed the need to conserve the right of way as habitat for pollinators and other protected animals. A participant stated that pollinators such as monarchs only eat milkweed leaves, and that in order to guarantee survival, need to ensure there is no mowing till end of August. One participant suggested rather than mowing the right of way, landowners could spot mow to control noxious weeds. However, majority of participants did expressed that the right of way is not an appropriate place for pollinators, and that MnDOT needs to work with DNR to utilize other areas for conservation. A few participants

suggested a bounty on pheasant nest predators such as (foxes, coyotes) rather than not mowing the right of way could be more useful to protect pheasants.

**Safety:** Majority of participants expressed that leaving the right of way un-mowed is a safety concern as tall grass hides deer and other large animals. Several expressed that they have never hit protected wildlife (such as pheasants) during all the years they have been mowing.

## St. Cloud

Nov. 09, 2017

Number of participants: 18

**Maintenance:** Several participants expressed that mowing has helped manage noxious weeds and invasive species, such as wild parsnip. A participant expressed that mowing is better than spraying herbicides specifically for those farmers who do not wish to use chemicals in their fields. One participant also expressed that the legislation language allows for mowing to control weeds, specifically mowing before it seeds. Another participant expressed that they mow and clear out the ditches to keep it free of garbage.

**Permit process:** Majority of those present expressed that the requirements for acquiring a permit are onerous. Another expressed that they lacked understanding over the August 1<sup>st</sup> date, and how it was determined. One participant also expressed that the date is too late especially for those trying to control noxious weeds.

**Enforcement:** A few present noted that while the statute has been around since the 1980s, there has not been effective enforcement of it. Several inquired about agency responsible for enforcement of it.

**Safety:** A few present noted that roadsides are not appropriate places for conservation, and that it is a safety concern to create habits that can lead to large animals being close to the road.

## Baxter/Brainerd

Nov. 20, 2017

Number of participants: ~11

**Safety:** Many attendees suggested that safety be the primary consideration for the right of way. Mowing makes it easier for drivers to see deer and other animals.

**Dates:** The majority of attendees expressed that the date window was too late for quality feed and too short given the potential for wet weather in August. Attendees expressed a primary preference for no date restrictions, and a secondary preference for a mowing and haying window of July 15<sup>th</sup> – August 31<sup>st</sup>.

**Mowing as a public service:** Attendees expressed that they feel they save the state money by mowing the right of way, and also provide a public service by cleaning up garbage in the right of way.

**Performance bond or security deposit:** Attendees expressed a preference for no performance bond. If a performance bond is required, attendees expressed a preference for one performance bond for each individual, regardless of the number of permits or miles of right of way they mow.

**Permit process:** Attendees stated that most adjacent landowners aren't thinking about mowing and haying the right of way in February or March, and so it may not occur to them to obtain a permit in that timeframe. Attendees felt adjacent landowners should be able to obtain a permit closer to when they would like to mow.

## Online input

Almost 270 comments were received online. This was combined with other input MnDOT received through the mail and other channels. Unique themes from the online comments included government red tape and concerned citizens, which are described below. These new themes are followed by ideas that were also heard at the listening sessions, including beautification, adjacent landowner concerns, safety, cost concerns, habitat preservation, timing of mowing and haying, noxious weeds and enforcement.

### Government red tape

A minority of comments describe the permit process overall as red tape, often using phrases like "if it's not broke, don't fix it." Several comments expressed that this would disrupt informal local practices for mowing and haying and would pit neighbor against neighbor. Generally, these commenters desired no permit process of any kind.

- "It's another layer of government red tape when the farmer owns the land."
- "It [is] always people with no real link to the land to take it from those who do. Farmers and ranchers have been saving the state money by taking on the maintenance of right of ways."
- "The permitting process adds an extra layer of government compliance resulting in no net gain for the state's economy. The ruling is not productive- the ditches have been maintained effectively for many years and have been at no direct cost to state residents."

### Concerned citizens and public interest

Notably, a sentiment that was not as frequently expressed at listening sessions but was repeated often in the online comments was that taxpayers don't want to provide free hay for farmer's business operations. These comments were occasionally linked with a desire to preserve habitat, however the sentiment was often a stand-alone comment.

Several quotes on this include:

- "Roadside right of ways are technically public land and should be managed in the public interest, not in the interests of private individuals or corporations."
- "We think that everyone needs to be on the same page and realize that individuals do NOT own this land, rather the state as a whole owns it, and the state should be the one directing the care and upkeep of said land, not individual landowners whose property may adjoin said ditches or be in close proximity to these ditches. This land does not, as some mistakenly think, exist to serve their individual needs."
- "Mowing ditches is the equivalent of me going to a state park and digging up trees and selling them."
- "Allow mowing only once during year between July 20th- August 15th. Anyone mowing and harvesting hay on right of way must pay to DOT the market rate for the hay harvested. There should be no free

ride. Do not issue emergency orders because of drought conditions to go around these rules. It is a business we do not need to bail out.”

- “Any mowing of these state resources needs to be carefully evaluated, subject to permitting where appropriate, and the People of Minnesota need to be adequately compensated where utilization of their resource is allowed.”

## Pride in the land and beautification

Several individuals in favor of mowing and haying felt that mowing helped keep their property neat and presentable. (This sentiment was not specifically tied to yards.)

- “As a rural resident, I like to keep the road ditch in front of my residence mowed. The road ditch is an extension of my front yard. As a rural resident, I take pride in how my property looks- the same as someone living inside the city limits on the same highway.”

Likewise, several individuals in favor of conserving habitat took pride in Minnesota’s native plants and wildflowers and felt that natural roadsides were attractive. Several comments expressed displeasure with “cosmetic mowing,” however it was unclear whether this was specific to mowing done by MnDOT, individuals or overall mowing.

## Adjacent landowners

Individuals in favor of mowing and haying were consistently supportive of giving permit priority to adjacent landowners. One suggestion included a five-year permit for adjacent landowners or requiring individuals to obtain the permission of adjacent landowners prior to obtaining a permit. Several recommended providing an exception or provision for maintaining lawns that did not require a permit.

## Safety concerns

Safety concerns were a common theme, however there were several differing points of view within this area:

- Some individuals are concerned that tractors without appropriate lights or reflectors present a danger to the traveling public
- Some comments expressed concern about bales being left for extended periods on the right of way
  - “I know that there are some farmers who bale the state ditches and use this hay for their own cows and maybe some horses. But what I see going on from Dawson to Monte on 212 is mostly one person mowing and baling most of the ditches. He does not have livestock. He bales the road ditch and then stores the hay and sells it. I think if we have someone harvesting all of this hay, which amounts to many acres with no investment that it would be okay for the state to require a permit & proof of liability insurance because of the exposure encountered by leaving these bales in the ditch overnight and even for a few hours. The ditches are purposely designed with gentle slopes to prevent injury and death - an 800# round bale struck by an auto could be devastating. And with mile after mile being mowed and baled the exposure is even more prominent.”

- Many comments expressed concern that not mowing the right of way would lead to more collisions with wildlife and a danger to the travelling public. Within this was the idea that pollinators near the roadsides will be smashed by cars. One commenter provided a few articles about why this is actually untrue, and pollinators near roadsides with adequate habitat are less likely to go into the road.

## Cost concerns

Cost came up in several different ways in the comments. Several commenters expressed that the performance bond or security deposit was a barrier for smaller or newer businesses. Additionally, the perception that adjacent landowners pay taxes to the center of the road, and are thus entitled to right of way vegetation was repeated several times.

## Noxious weeds

Several comments requested that MnDOT do more to control noxious weeds. A few individuals expressed that allowing mowing and haying by private parties further allows the spread of noxious weeds. Additionally, individuals who mow and hay stated that they often do so in order to control the spread of noxious weeds.

## Habitat preservation

Many comments centered on preserving habitat in the right of way. Commenters frequently emphasized the importance of corridors for native pollinators, along with the decreasing availability of habitat in some parts of the state. Related to habitat preservation, a few commenters requested that there be minimal spraying for ecological reasons, however several individuals also commented requesting more targeted spraying to control noxious weeds.

## Timing of mowing and haying

Many individuals commented regarding the date for mowing and haying, with a few themes emerging:

- Commenters wishing to preserve habitat felt that keeping the August mowing dates was important to benefit birds and pollinators. Several commenters emphasized the importance of re-growth in the fall for honeybees and other pollinators.
- Commenters wishing to mow and hay suggested either removing the date requirements altogether, or changing the date to allow for mowing either beginning July 15 or June 15. These individuals expressed that the feed quality is low for August hay, and waiting to mow until August allows for noxious weeds to go to seed.
- As an alternative to the dates, there were several suggestions for rotational mowing, either leaving part of the ditch consistently un-mowed, allowing mowing in alternate years, or staggering mowing dates across the state. One commenter also suggested site-specific mowing using mapping technology.

## Enforcement

Several comments expressed a desire for increased enforcement for individuals who do not get permits or who mow outside of the August dates. Recommendations included “enforcement with teeth” such as issuing a fine or other criminal penalty. On the other hand, several commenters in favor of open mowing and haying expressed that they would continue to do as they please, given that there is no real enforcement.

“The landowners need to be reminded that the state purchased the right of way from them or a previous landowner. Payment was made for that right of way with our tax dollars from the state, which means the state makes the decisions on that land. This is why it is unfortunate the statute hasn’t been enforced. There have been many years of mowing/haying at inappropriate times. This makes it hard to enforce now, but it must be enforced. It is the right thing to do. They knew it back then when the statute was written, and we know it now. The wildlife need has not changed.”

## Other suggested solutions

- “I would like to urge MnDOT to adopt vegetation management strategies in keeping with the recommendations from the FHWA, outlined in "Pollinators and Roadsides: Best Management Practices for Managers and Decision Makers" (FHWA-HEP-16-020) and "Roadside Best Management Practices that Benefit Pollinators: Handbook for Supporting Pollinators through Roadside Maintenance and Landscape Design" (FHWA-HEP-16-059). Specifically, a mowing schedule and permitting system for private haying of public lands that limits haying & mowing to the autumn to the greatest extent possible. Public rights of way are a vital resource for threatened pollinators, and need to be managed to help preserve these incredibly beneficial insects. While it may be difficult for an individual agricultural producer to weigh the value of insect habitat over the direct cost of bales of hay, the ecological services the rights of way provide will benefit ALL Minnesotans, including - even especially - adjacent landowners. We need to be steadfast in managing public lands to provide public benefits, and allowing local residents to profit from them where it does not impede public good; not vice versa.”
- MnDOT should create performance measures to evaluate success of outcome of stakeholder group changes and better track costs of mowing and haying to understand potential for savings
- “Total number of permits should be regulated by DNR to maintain wildlife populations”