

# Mowing & Haying in the State Right of Way Stakeholder Group Meeting Notes

*Rochester Building, Mississippi River E&W Conference Rooms*

*MnDOT District 6, 2900 48<sup>th</sup> Street NW, Rochester, MN*

**December 6, 2017 from 12:30 to 4:30 p.m.**

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**In attendance:** Captain Casey Meagher, Eran Sandquist, Richard Fetterly, Nancy Daubenberger, Dan MacSwain, Wayne Sandberg, Emily Murray, Cole Ruppercht, Craig McDonnell, Cori Calhoun, Bob Meier, Phone: Erin Rupp, Lon Aune, Steve Fenske, Lucas Sjostrom , Thom Petersen, and Lori Cox.

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## Welcome and introductions

Charlie welcomed the group and provided an overview of the agenda. Stakeholders introduced themselves to the group.

## Meeting note review and approval

The stakeholder group had no comments or changes to the meeting notes. They were unanimously approved with the acceptance of track-change edits included in the draft sent by MnDOT.

## Purpose and charge

Charlie reviewed the purpose and charge document with stakeholders. He highlighted that communication in some form between MnDOT and the person who is mowing and haying is what we're here to talk about – whether it's a notification or a permit.

Charlie highlighted areas that need to be included in recommendations from the MnDOT commissioner and the group reflected on what areas have been covered in previous meetings or still need further discussion. Note that this conversation was focused on whether the group previously spent time building common knowledge on a recommendation element, not that the group has come to a consensus on what the recommendation should be.

<b>Recommendation element</b>	<b>Status</b>
1. Ease of permit application or notification	Discussed in previous stakeholder meetings
2. Frequency of permits or notification	Discussed in previous stakeholder meetings

Recommendation element	Status
3. Priority given to the owner or occupant of private land adjacent to a trunk highway right-of-way	Discussed in previous stakeholder meetings
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	MnDOT staff shared that they understand this to be land in state ownership (not just MnDOT) adjacent to the highway right-of-way. MnDOT highlighted that they have ongoing discussions about managing the right-of-way in collaboration with other state agencies, such as DNR. The DNR noted that most of that referenced land is adjacent to County Roads.
5. Recognition of differences in the abundance of wildlife habitat based on geographic distribution throughout the state.	Covered in DNR presentation at 12/6 meeting, however group determined they would like additional information.

**Questions and answers:**

**Question:** Is this work and the compilation of it, going to the commissioner or someone else?

**MnDOT answer:** The work of this group will culminate in recommendations from the Commissioner of Transportation as required by the legislation, and we'll provide a memo outlining what's come up in the listening sessions and stakeholder group. While folks have made suggestions that there be no permit process or no mowing allowed, those cannot be a recommendations from MnDOT. **The State Legislature has charged MnDOT with establishing a permit or notification system to mow or hay in trunk highway right of way.** MnDOT is open to be steered down a different path in regards to changes in our current permit process by this group, but our final recommendations will not include anything that's not workable.

The group had a conversation about a stakeholder's concerns regarding other individuals or entities that are interested in maintaining roadside habitat along land that they own adjacent to the right-of-way. MnDOT highlighted that the stakeholder group is specifically here to discuss a permit to do work in the right-of-way. The Highway Sponsorship program is the vehicle for individuals or entities that would like to preserve and/or manage their adjacent right-of-way. Outside of the Highway Sponsorship Program, MnDOT will issue permits to do work as they deem appropriate in the right-of-way, regardless of what the adjacent land is used for.

**Question:** Would MnDOT like to stick to these recommendation elements, or can this group add other elements to the recommendation?

**MnDOT:** We're not constrained to these, we just need to ensure our recommendations hit on these five areas.

## Listening session update:

**Morris:** Approximately 30 attendees. The majority of attendees were from the agricultural perspective, with a smaller minority from the habitat perspective. Concerns of the agricultural community in attendance echoed themes at other listening sessions, such as safety and concerns regarding noxious weeds. Individuals sharing from the habitat perspective emphasized the importance of corridors of habitat along roadsides, and shared research on the importance of maintaining this.

**Baxter:** Approximately 10-15 attendees. Few individuals signed up to speak initially. Attendees were primarily from the agriculture perspective, and spent time asking questions about the details of the permit process, and providing feedback about the performance bond being a potential barrier for some farmers, along with concerns about safety and the August date.

**Arden Hills:** Approximately 11 attendees. Primarily environmental or habitat perspective.

**West St. Paul:** Approximately 13 or 14 attendees, four spoke. Conversation focused on maintaining and managing habitat. A previous employee of the US Fish and Wild life Service shared a history on wildlife management. New questions arose around enforcement such as: Would legislation be needed for MnDOT to enforce? Commercial haying was brought up, as several folks said this was problematic, and may require increased enforcement.

**Online comments:** Compiling on a weekly basis. Across the board from both ends. We hear more about the pollinators. The trends we're hearing at the listening sessions are comparable to what we're hearing in the online comments. Online input will be closed on 12/12.

## Sharing:

There were several presentations to address items from the chart created by stakeholders at the 10/25 meeting where they answered the questions "What do you want to know?" and "What do you want others to know?" The sharing section of the meeting ended with stakeholders reviewing the chart and discussing whether all items were addressed.

## Sharing: Local Government

The local government group shared a PowerPoint outlining their perspectives and concerns regarding the permitting process for mowing and haying. Key points include:

- MnDOT has jurisdiction over about 12,000 miles of roadways on the trunk highway right-of-way. There are about 45,100 miles of county roads. Township and city roads are not included in that number.
- 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.
- There's 87 different county approaches to managing all these miles of right of way. Counties and townships wish for flexibility in how they manage their right-of-way. They may not want to implement a robust permit process, and the local governments feel the current process they use is working well for

them. Presenters expressed that many counties or townships don't have the manpower or desire to implement a permit process. In some instances, counties or townships may not have the same ownership or control over the vegetation on the right-of-way that MnDOT has based on their negotiated easements.

- Presenters want to ensure local units of government can mow for noxious weeds in the right-of-ways they manage
- It is unlikely that local sheriffs will have an interest in enforcing permits, as they are local elected officials.
- Presenters asked that the stakeholder group keep in mind that there's a desire for local flexibility.

### **Discussion about the local government interests presentation**

Questions and discussion on the presentation included clarifying that most counties have truly informal processes related to managing their right-of-way, and practices differ between counties. Some counties have a phone call notification process, other counties just expect landowners to mow based on historical knowledge. Counties manage their right-of-way differently, with some mowing odd roads in odd years and even roads in even years. County management depends on their available resources and varies.

Washington County shared about an annual permit process they use so landowners can manage noxious weeds in their adjacent right-of-way, as they have citizens who specifically do not want the county to spray there. Another more rural county has citizens who call requesting the county spray for noxious weeds, or landowners will also spray the right-of-way themselves to control noxious weeds.

**Stakeholder comment:** The things we've been talking about are fairly longstanding – people have mowed for a long time. It's been working but we know at the same time we've been losing a lot of habitat – our native pollinator and butterfly populations are going down. When we think about formal and informal agreements, we should consider how to protect pollinators. On one of the slides, you talked about supporting farmers, but we're also looking at loss of habitat/pollinators. We should consider supporting bee farmers, organic farmers, farmers, markets, etc. We should consider the needs of all.

### **Sharing: DNR and Habitat**

Greg Hoch from the DNR shared a presentation to address many of the habitat, pollinator and other environmental related items on the "what do you want to know" chart. Key points from the presentation include:

- Mowing/haying can be beneficial to wildlife. It is in the details of how you do the mowing – many types of wildlife and plants will respond positively to mowing.
- In many parts of state, ditches are really the only grassland habitat left. This is not ideal, but it is a reality. Since 2007, we've lost 770,000 acres of CRP. Minnesota is still losing pasture and hay fields each year.
- From a monarch perspective, there are fewer milkweeds in fields. Herbicides have eliminated the weedy milkweeds in the fields that Monarchs have used in the past.

- Greg shared a map of the state showing public lands. Northeast Minnesota has a lot of public land. The Southwest part of the state has very little public land or grassland.
- All ditches are not equal from a wildlife perspective. Some ditches have a diverse array of native plant species which are beneficial for pollinators, while others have brome monocultures which are not as beneficial to pollinators. Each type of vegetation requires different management for different purposes.
- The Roadsides for Wildlife Program uses signage to ask people not to mow specific sections of roadside, including private property and public wildlife areas. It was noted these signs may have limited efficacy in some instances, as people sometimes still mow in areas where the signage is present.
- It is unknown how many acres of roadsides there are and how many acres of the roadsides are currently mowed.
- Agricultural benefits of having grass and habitat in the ditch were shared, including Beetle Banks. Beetle Banks are strips of perennial cover in the middle of a field, which provide habitat for predatory insects over winter. Crops can benefit from having predatory insects nearby to prey on crop-damaging insects.
- Invasive weeds – If you cut too late, you’ve turned your mower into an invasive species spreader.
- Every management action will be beneficial or detrimental to different species. Every action has an effect, such as if mowing occurs too early, it may destroy nests for grassland birds. However, young birds love to forage after mowing. Mowing too late is bad for pollinators and can spread invasive species. Mowing over noxious weeds or invasive species after they have gone to seed further spreads the seeds of these species. There’s no perfect window for mowing.
- Cutting to maximize the quality of hay can conflict with nesting of songbirds and gamebirds. Every week during the spring and summer there’s a different native pollinator emerging. The current August 1<sup>st</sup> mowing date is tied to the Farm Bill and federal policy. Greg surveyed the literature and talked to waterfowl/pheasant experts, who felt the date could move to July 15<sup>th</sup> without too much detriment. This would benefit many pollinators, as mowing later in season is prevents the regrowth needed for honeybees and other pollinators.
- 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. Harvesting all grass and flowers leaves wildlife with no cover or flowers for pollinators. Leaving half of the ditch unmowed leaves high cover for hiding in and short cover for foraging.
- The Monarch Highways Program covers I-35, and is part of the federal strategy that came out of the presidential memo. Six states are collaborating along the I-35 corridor, which is considered a main vein for monarchs. The program has a logo, but due to signage restrictions you won’t see it on highways. Minnesota is focusing on rest areas along I-35, however additional efforts are needed. Minnesota is doing work at Albert Lee rest area, including the planting of pollinator habitat at the I-90 interchange area. The Goose Creek rest area will have a larger pollinator habitat area and signage. Eventually this will be used in other rest areas across Minnesota. Additionally, MnDOT will continue to use native grass mixes for snow fences along I-35.

### **Questions and comments about DNR and Habitat Presentation**

When possible, if a state agency provided an answer to a question in this section, the agency name is noted.

**Comment:** Regarding mowing starting on July 15<sup>th</sup>: This is the start of the highest monarch butterfly population in Minnesota. From Mid-July through August is our highest monarch population in the pre-adult stage. If we're talking about mowing on July 15<sup>th</sup>, we may impact our Monarch population.

**DNR answer:** This is certainly the conundrum we're dealing with. In June there are ground nesting birds/pheasants. In July there are monarchs and other pollinators. When we get into where and how it's done, that's important. Perfect time to mow for monarchs would be late September/October –that's probably not realistic if you're harvesting for forage, you'd have zero quality at that point in the season. If we go a little earlier, it allows for regrowth. August 1<sup>st</sup>/15<sup>th</sup> cut allows for minimal regrowth of milkweed/asters. Not a perfect window.

**Question:** Regarding mowing and regrowth - What would a system look like where you'd cut one side an earlier date to get higher re-growth and cut the other side at a later date? Where might the sweet spot be?

**DNR answer:** Brome monoculture could be mowed almost any time, as there's little benefit for pollinators and wildlife there. Right now we don't have a map of what type of monoculture is where on our roadsides. If we did even numbered roads one year, and odd roads another that would be the take half leave half idea. You could also do the in slope and leave the back slope, or south/east side of the roads. However, it could be more complicated to manage that.

**MnDOT answer:** Illinois is experimenting with only allowing mowing on the back third of the right-of-way. They allow a single pass and leave the rest of it. The following year, it is allowed to mow a strip down the middle. Illinois has said that managing and tracking this is a challenge.

**Comment:** Some landowners care about the quality of forage but some just want to mow. Folks who use the hay for forage may be frustrated if their side of the road can't be mowed.

**Comment:** Like the idea of leaving the back slope for cover. Does this serve the purpose of a snow fence as well?

**Answer:** Depends on where the fence is relative to the road. The drift needs to be quite far from the road.

**Question:** With the take half/leave half idea –how close to this are we right now? For the Roadsides for Wildlife Program, what is the current waiting list?

**DNR answer:** We have about 40 people waiting for signs.

**Question:** Are those individuals adjoining property owners? How much roadside is covered by the program?

**DNR answer:** The program is over 30 years old, and some records are missing. As far as how many signs are out there or how many linear miles, it is unknown.

**MnDOT answer:** Individuals can't put roadsides for wildlife signs in without a permit on MnDOT's roads because of utilities. Underground utilities need to be located prior to driving sign posts into the ground.

**Comment:** Counties don't allow private citizens to place signs in the right-of-way based on statute. Each county has ultimate decision over if it gets mowed or not.

**Comment:** There's no right time to mow. You're going to take away the fall forage for honeybees and native pollinators if the date moves earlier. We learned from Krist last time that the forage from the right-of-way is a lower quality – is that going to make or break a farmer's year?

**Answer:** Based on what we've heard at listening sessions – it's still important to farmers who count on it.

## **MnDOT Legal Presentation**

### Authority over Right of Way Vegetation

Angela Forsythe, Associate Legal Counsel from MnDOT's Office of Chief Counsel, presented on MnDOT's statutory authority to regulate trunk highway right-of-way in response to several questions at the previous stakeholder meeting regarding easement language and land ownership.

MNDOT has statutory authority to control vegetation in trunk highway right of way under Minnesota Statutes §§ 160.02 (definitions), 160.22, 160.23, 160.232, 160.2715, 16B.85. Statutory law, as contained in Minnesota Statutes Chapter 16, provides that:

- MnDOT, as the road authority, controls vegetation on the trunk highway system right-of-way, whether the property is held in fee or in easement. This position is based on the following:
  - Minn. Stat. § 160.02 (Definitions) contains relevant definitions:
    - “Commissioner” means “Commissioner of Transportation;
    - “Road Authority” means the Commissioner of Transportation for state trunk highways, the county board for county state aid highways, the town board for town roads, and city governing body when the city governing board(s) or city streets are specifically mentioned.
  - Managing vegetation serves a highway purpose. Vegetation can control erosion, maintain road contours, and improve aesthetics; managing vegetation allows MnDOT to control and maintain sight lines, allows for safer litter and debris removal, and allows MnDOT to control animals' use of the right-of-way.
  - Minn. Stat. § 160.22 gives MnDOT authority to manage trees in the right-of-way.
    - The proper road authority can plant and tend to trees, can use trees to protect highways from drifting snow, and can cut and remove trees and hedges when they interfere with the maintenance or reconstruction of the highway or affect the safety and convenience of public travel. MnDOT does not need to consult or receive permission from an adjacent landowner to exercise this authority. The statute specifically states that no one may remove either trees and shrubs planted to preventing drifting snow or trees and hedges acquired by the road authority without road authority consent.

- Minn. Stat. § 160.22 does not require MnDOT to seek or receive permission from anyone before managing trees in the right of way and gives MnDOT the right to control the actions of others in regard to trees in the right of way. This is a clear manifestation of the legislative intent that MnDOT manage vegetation in the right of way. It logically follows that MnDOT would have authority over grass and smaller vegetation if it has authority over larger vegetation in the right-of-way and the right to control the smaller vegetation is not otherwise allocated.
- Minn. Stat. § 160.23 requires road authorities to take action to destroy or eradicate noxious weeds on their respective highways and streets to prevent the ripening or scattering of the weeds.
  - MnDOT is again given specific authority to control right of way vegetation. Again, this statute clearly indicates the Minnesota legislature's intention that the road authority own right of way vegetation; if the vegetation belonged to an adjacent landowner or another entity, the legislature would either 1: require that adjacent landowner or other entity to engage in noxious weed management, rather than MnDOT, or 2: require MnDOT to seek and receive permission from the adjacent landowner before destroying the noxious weeds. Further, it is contrary to the state's fiscal responsibilities to require that a public agency use public funds to manage and benefit private property.
- Minn. Stat. § 160.232 addresses requirements for the mowing of ditches outside of cities. Minn. Stat. § 160.232, para. (a) states, "To provide enhanced roadside habitat for nesting birds and other small wildlife, road authorities may not mow or till the right-of-way of a highway located outside of a home rule charter or statutory city except as allowed [by Minn. Stat. §§ 160.232 and 160.23]."
- Minn. Stat. § 160.232 sets ditch mowing parameters:
    - The road authority is allowed to mow the first eight (8) feet from any road surface any time there's a safety concern;
    - The entire right-of-way cannot be mowed until after July 31;
    - From August 31 to July 31, the entire right-of-way may only be mowed if necessary for safety reasons and then, it cannot be mowed to a height of less than 12 inches;
    - The road authority can mow at the order of the Commissioner (This has not happened in recent memory);
    - The road authority can mow, burn, or till to establish the right-of-way for permanent vegetation, such as groundcover;
    - The road authority may choose the vegetation that is located in right-of-way;
    - DNR and MnDOT commissioners are required to work together "to provide enhanced roadside habitat for nesting birds and other small wildlife."



- For this particular statute, there's no differentiation between the road authority owning fee and owning an easement.
- There may be a rare situation, because of the wording on the easement or deed and/or specific agreement with the road authority, that the adjacent property owner maintains rights over the right of way vegetation. In those cases, the road authority still does not need to ask for permission to mow the first eight feet of the right-of-way; the need for safety is always a priority.
  - Regardless, MnDOT recognizes there's a concern and interest of adjacent landowners in the right-of-way.
- Minn. Stat. § 160.2715 outlines prohibited right of way uses and the penalty for engaging in a prohibited use.
  - Engaging in a detrimental operation within the right-of-way, such as mowing and removal of ditch hay, may be charged as a misdemeanor.
  - Road authorities, their agents, employees, contractors, and utilities are specifically excepted from the statute's application, meaning they cannot be charged under this statute.
    - By excepting road authorities, et al. from application of this statute, the legislature clarified that the prohibited activities listed in Minn. Stat. § 160.2715 are NOT prohibited for road authorities, et al. (including contractors, which includes those with a valid permit). If the legislature intended for the right of way vegetation to belong to an adjacent land owner or another entity, that land owner or entity would need to be excepted from this statute, as well, or the land owner or entity would need to be made whole for the removal of a property right.
    - Joe Pignato, Assistant Director of MnDOT's Office of Land Management, brought a copy of a 1963 easement to share with the group.

Nancy Daubenberger from MnDOT shared that aside from acquiring temporary easements, MnDOT now pursues fee title when acquiring right of way. This shift from purchasing easement rights to purchasing fee title began in the 1980s/90s and became a MnDOT policy in the early 2000s. In the case of prescriptive easements, MnDOT will research and formalize a title to the property.

### Insurance

MnDOT legal counsel provided statutory authority for requiring insurance from anyone applying for and receiving a permit to mow and hay in the right-of-way. Minn. Stat. § 16B.85, subd. 3 requires the Commissioner of Administration to review the state's exposure to potential risks and advise affected state agencies on reducing risk and prudent fiscal management. The Commissioner of Administration issued a fact sheet (accessible at: [https://mn.gov/admin/assets/Insurance\\_Requirements\\_Fact\\_Sheet\\_tcm36-207315.pdf](https://mn.gov/admin/assets/Insurance_Requirements_Fact_Sheet_tcm36-207315.pdf)) detailing insurance requirements and reasoning and specifically stated that the insurance policy applies to users of state property. The rationale for this requirements is one of risk management; the state could be liable for incidents occurring on its property if the property user is un- or under-insured, thereby causing taxpayers to suffer consequences. The Commissioner of Administration requires insurance in an amount relative to the current state claims liability cap.

If a user of the right-of-way causes a problem while on the right-of-way (on purpose or by negligence or accident) and doesn't have insurance, the state could be liable for that damage. Any damages the state needs to pay out has an effect on the taxpayers and MnDOT does not want to put taxpayers to suffer because one person or entity had an issue on the right-of-way. In order to be on the right-of-way, people must have insurance. The insured amount needs to be at least as large as the state's tort liability.

### Highway Sponsorship

MnDOT legal counsel provided information about the MnDOT highway sponsorship program, Minn. Stat. § 160.801. The highway sponsorship legislation authorizes MnDOT to enter into agreements with private individuals and entities for the improvement and maintenance of real property comprising the trunk highway system. At Minn. Stat. § 160.801, subd. 3 (1), the statute specifically authorizes the Commissioner of Transportation to enter into agreements with private parties working to create, protect, and enhance pollinator habitat along highway rights-of-way.

The Highway Sponsorship Program is brand new for MnDOT. The sponsorship program came out of 2017 State Legislative session and the intention was to address concerns with right-of-way beautification, preservation of the right-of-way for pollinators or other right-of-way management. This program gives MnDOT the authority to enter into agreements with private programs or individuals who are interested in for different ways to manage the right-of-way. If someone wanted to make sure the right-of-way was preserved, they could sponsor a section of it. MnDOT can work with the individual to evaluate concerns and develop a plan and agreement, which lays out obligations. MnDOT cannot lose their federal funding because of this, so the agreements can't include management practices that would cause MnDOT to lose its federal trunk highway funds.

### **Questions and answers on MnDOT Legal Presentation**

When possible, if a state agency provided an answer to a question in this section, the agency name is noted.

**Question:** 1. Does the PowerPoint only pertain to MnDOT? Farmers think they can mow at any time. 2. There's a few publications out there that lead to confusion with hobby farmers, such as a U of MN Extension publication on feeding hay to horses which has incorrect information about permit requirements if MnDOT, including a statement saying that permits are not needed on roadways where only has an easement vs. fee title over the land in highway right of way is owned by MnDOT. ([UMN Extension article](http://www.extension.umn.edu/agriculture/horse/nutrition/harvesting-ditch-hay/) available: <http://www.extension.umn.edu/agriculture/horse/nutrition/harvesting-ditch-hay/>)

**MnDOT answer:** Yes, MnDOT would disagree with that publication from extension; a permit is still needed where MnDOT owns an easement. MnDOT feels there is enough to support its legal position (that the road authority controls vegetation in the right-of-way) in the various pieces of statute, but, as with any legal interpretation, others may disagree. For the question about mowing at any time, if someone mows in an area that's owned by the road authority – if MnDOT owns it in fee, for example- MnDOT can do what it wants to, including getting an enforcement agent involved and requesting misdemeanor charges be brought under 160.2715. If MnDOT holds an easement, MnDOT still controls right-of-way vegetation and someone mowing/haying without a permit could be charged with a misdemeanor under 160.2715. If you obstruct the highway by leaving a hay bale in the right-of-way, it would be a misdemeanor under 160.2715. If you perform any detrimental operation, including mowing and haying without a permit, that is a misdemeanor under

160.2715. Individuals have an obligation to get MnDOT's permission for activities involving vegetation in the right-of-way.

**Question:** For agricultural purposes, noxious weeds are more important than hay. If 160.23 [regarding noxious weed control responsibility] applies to MNDOT, and MnDOT is not doing that, what are the next steps?

**MnDOT answer:** As per Chapter 18, the Department of Agriculture gets involved. The county agriculture inspector is the enforcing authority for noxious weeds. If MnDOT doesn't control their weeds, county agriculture inspector should contact MnDOT and then consider ticketing MnDOT if MnDOT fails to respond. Generally, if the agriculture inspector speaks to the local MnDOT contact, it gets addressed. MnDOT needs to comply with the noxious weed law. We manage noxious weeds to our best ability. If there are areas in which it is observed that we are particularly challenged in our management of noxious weeds, MnDOT need to know about that.

**Question:** 160.232 – road authorities may mow or till – would you permit prior to August 1<sup>st</sup>?

**MnDOT answer:** MnDOT will only issue a permit for mowing and haying as early as permit for August 1<sup>st</sup>. For safety cuts, we'd allow permits to be earlier, but, in that case, they would usually be contracting with MnDOT to do them. For mowing/haying beyond safety cuts, MnDOT also has the August requirement.

**Comment:** The stakeholder group has had comments come up in our past meetings about the landowners paying taxes to the right of way.

**MnDOT comment:** Landowners do not pay taxes on the right-of-way. That acreage is generally discounted from their acreage when being taxed. What was just shared is the most comment scenario. In some cases, there has been payment of taxes on the right-of-way. We can't say 100% of people do not pay taxes on right-of-way.

**Comment:** We need to separate state, county, township roads. There's disagreement in how the statute is interpreted. Townships interpret the statute differently than MnDOT regarding easement/fee.

**MnDOT comment:** Yes, there is disagreement. MnDOT's position is that each "road authority" as defined in 160.02 has statutory authority over right-of-way vegetation.

**Question:** This presentation had to do with the authority?

**MnDOT answer:** Yes, this was focused on statutory authority.

**Question:** Regarding 160.232, paragraph (d)– talking about "rules of the commissioner". Are there rules of the Commissioner that are applicable to what we're talking about here?

**MnDOT answer:** Need to get back to you on this.

**Question:** To build off noxious weeds, if there's wild parsnip and you want that mowed/hayed prior to July 15<sup>th</sup>, that's an exception you could allow for. In the public's interest, we don't want to spread noxious weeds on to private landowners.

**MnDOT answer:** MnDOT will deny permits where there are noxious weeds. Also, MnDOT is statutorily required to take care of noxious weeds before the weeds ripen and spread so we may use our resources to take care of it before August 1<sup>st</sup>.

**Question:** Are there opportunities for what [a previous stakeholder] was describing? If there's a weed patch in an area, could a farmer take action?

**MnDOT answer:** MnDOT could issue a permit if we didn't have the resources to take care of it. MnDOT has a lot of ability for those conversations to happen between district staff and citizens.

**Question:** Is highway sponsorship separate from adopt a highway?

**MnDOT answer:** Yes, although they fall under the same umbrella. The possibility exists that this will become a large program and agreements could range from one block to many miles. The legislation that allows this authority was proposed by MnDOT to address some of these issues.

**Question:** What happens if someone has a sponsorship and then someone comes in and hays it?

**MnDOT answer:** MnDOT is hiring a director for this program to be the point person. Prior to entering an agreement under this program, MnDOT would take a look at what's been the use/management in the area. We'd look to the MnDOT district office and learn about the adjacent land owner's use and consider the implications of allowing the private entity to manage this part of our right-of-way. If someone wanted to grow pollinator habitat in a stretch of roadway but the adjacent landowner has been getting permits to mow/hay that area of the right-of-way, MnDOT would probably point them down the road where it's not mowed/hayed. It would likely be considered an unauthorized and prohibited use- possibly a misdemeanor- if someone mowed/hayed a sponsored area.

**Question:** What if you don't want to sponsor a roadside but you don't want it hayed and want MnDOT to control noxious weeds.

**MnDOT answer:** MnDOT would manage it in the way they see fit. MnDOT has a statutory obligation to control noxious weeds and would mow to meet that obligation and to make sure the roads are safe. If you don't want a section mowed, you could sponsor that highway section, or one could request that MnDOT to perform or refrain from certain work items. Without proposing through the sponsorship program, though, you would not have the rights to determine how the right-of-way should be managed. Roadsides for Wildlife might be another option where MnDOT would continue to maintain the roadside, however the signs do not have legal teeth. Individuals or organizations could talk to the district to share their wishes about the adjacent right-of-way not being mowed, but the only way to formally have an agreement for the right of way to not be mowed/hayed is to do a sponsorship.

**Comment:** For the Roadsides for Wildlife program, you get some signs on your property asking people not to mow. There is no legal authority related to this. It is a purely voluntary program.

### **Reflection on 10/25 "what you want to know/what you want others to know" chart**

Sarah Small asked the group to reflect on the 10/25 chart – is there anything that's glaringly missing? Have we covered everything needed to build a common base of knowledge?

One group member asked if we had thoroughly covered the issue of cleaning equipment when mowing to control noxious weeds. The group discussed that this falls under Chapter 18, and farmers are aware of the law

and requirements. The group also reviewed the discussion related to that section of the permit. No additional specific information was identified for future discussion.

There was a desire to revisit and gain clarity on enforcement, including the concept of voluntary enforcement. In one of the listening sessions, an attendee asked if MnDOT needs statutory authority to help with enforcement, and the group desired to further discuss this. There was also an interest in further clarifying enforcement practices at the state, county, and local levels. Captain Casey Meagher shared that 299D regulates state patrol authority to include traffic enforcement on roadways on MN. State patrol may not have traction as an agency to be out doing the enforcement on the right-of-way. The group may need to explore other ideas for enforcement, including delegating to the local road authority to enforce violations. The guiding question for this conversation will be “what are the enforcement authorities and enforcement options?”

A stakeholder also identified that we could more fully cover item number five in the legislation regarding wildlife distribution and abundance throughout the state. This might include discussion around whether there break lines for dates in different areas of the state? Staff from the DNR expressed they would assist in bringing forward additional research on this topic.

### **Identifying decision points**

Charlie Peterson led the group in identifying some of the major decision points for the group to explore and come to consensus in future meetings:

- Timing
- Geography (and “quantity”) – Take half/leave half concept in lieu of timing possibly (in some parts of the state, the right-of-way is mowed more frequently than others) Where are there corridors for pollinators?
- Those who care for right-of-way like it’s their lawn – what type of permit or notification is required?
- Priority of adjacent landowners (date, what about no work in the right of way adjacent to the land – roadsides for wildlife, highway sponsorship) Commercial mow/hay operations
- Frequency of permit renewal
- Review the statutes to ensure they are current based on today’s technology
- Deposit requirements and simplification of permit overall. Risk management statutes may related to this.

### **Next steps**

The next stakeholder meeting will be on December 13<sup>th</sup> from 12:30 – 4:30. The meeting will be held at 1400 Gervais Avenue, Maplewood, MN 55109.