

## TRANSPORTATION

(a)

### DIVISION OF CAPITAL PROGRAM MANAGEMENT CAPITAL PROGRAM SUPPORT

#### Vegetation Canopy Management

#### Proposed Readoption with Amendments: N.J.A.C. 16:41F

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5 and 6.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2022-103.

Submit written comments by October 14, 2022, to:

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Submit electronically at [njdotRules@dot.state.nj.us](mailto:njdotRules@dot.state.nj.us).

This rule may be viewed or downloaded from the Department of  
Transportation's website at [http://www.state.nj.us/transportation/about/  
rules/proposals.shtml](http://www.state.nj.us/transportation/about/rules/proposals.shtml).

The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, the rules at N.J.A.C. 16:41F were scheduled to expire on August 3, 2022. As the Department of Transportation (Department) filed this notice of readoption prior to that date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date was extended 180 days to January 30, 2023. N.J.A.C. 16:41F outlines the standards and procedures applicable to vegetation canopy management on State highway right-of-way under the jurisdiction or control of the New Jersey Department of Transportation.

These rules proposed for readoption with amendments establish procedures to enhance the visibility of outdoor advertising signs, while protecting vegetation on State highway right-of-way. Vegetation Canopy Management (VCM) on State highways under the jurisdiction or control of the Department of Transportation applies only to signs for which a valid outdoor advertising permit has been issued, pursuant to N.J.A.C. 16:41C. A Vegetation Canopy Management Plan is classified as either minor or major for an area designated by size within which trees may be removed, pruned, or both.

The Department reviewed the rules proposed for readoption with amendments and determined that they are necessary, reasonable, and proper for the purposes for which they were originally promulgated. Proposed amendments are necessary in order to update contact information and clarify language. The Department is proposing to readopt the rules with amendments, as set forth below.

The chapter is summarized as follows:

Subchapter 1 provides the purpose and scope; provides procedures to enhance visibility of outdoor advertising while protecting vegetation on State highway right-of-way under the jurisdiction and control of the New Jersey Department of Transportation; standards for Vegetation Canopy Management.

Subchapter 2 provides the definitions found in this chapter.

Subchapter 3 provides the contact information for the Bureau of Landscape Architecture and Environmental Solutions (BLAES) and the Operations Permit Office found in this chapter.

Subchapter 4 provides the general provisions found in this chapter, which are general restrictions and general conditions, for the Vegetation Canopy Management Plan.

Subchapter 5 provides pre-application guidance for the Vegetation Canopy Management Plan; pre-application meeting; site screening;

preliminary site screening package review; appeal of a determination of a Vegetation Canopy Management Plan; and site investigation.

Subchapter 6 provides the Vegetation Canopy Management Plan requirements; submittal; review and approval and plan conditions.

Subchapter 7 provides procedures for Department-directed maintenance work.

Subchapter 8 provides the appeal procedures of a denied Vegetation Canopy Management Plan application.

Subchapter 9 establishes penalties for unauthorized vegetation management activities.

Appendix 1 is reserved.

Appendix 2, Table 1 identifies Vegetation Canopy Management trees and sizes subject to Department of Transportation approval for selective removal.

Appendix 3, Figure 1 identifies the Vegetation Canopy Management zones of influence for a double-faced sign; Figure 2 identifies the Vegetation Canopy Management zone of influence for a single-faced sign; Table 2 identifies Vegetation Canopy Management zones of visual influence for horizontal distance; Figure 3 identifies vegetation canopy management zone of visual influence for Vegetation Canopy Management height.

The proposed amendments are as follows:

N.J.A.C. 16:41F-1.1 is proposed for amendment to include the acronym "VCM." N.J.A.C. 16:41F-1.2(a) is proposed for amendment to ensure consistency with the chapter's purpose. N.J.A.C. 16:41F-1.2(d)2 is proposed for amendment to simplify language related to the area in which trees may be removed, pruned, or both. N.J.A.C. 16:41F-1.2(f) is proposed for amendment for a technical change. N.J.A.C. 16:41F-1.2(f)1 is proposed for amendment for a technical change, for clarity regarding the VCM distances of Point B and Point C, and to add language relating to vegetation removal between Point A and Point B. N.J.A.C. 16:41F-1.2(j) is proposed for amendment for a grammatical change.

At N.J.A.C. 16:41F-2.1, the definition of "VCM distance" is proposed for amendment to be consistent with the horizontal distance shown at Appendix 3, Table 2, specifically, changing 3.5 to 4.5 seconds to 3.9 to 5.4 seconds.

N.J.A.C. 16:41F-3.1(a) and (b) are proposed for amendment to update contact information.

N.J.A.C. 16:41F-4.1(a)1 is relocated as N.J.A.C. 16:41F-4.1(b)3, regarding a median. N.J.A.C. 16:41F-4.2(c), is proposed for amendment to delete unnecessary language. N.J.A.C. 16:41F-4.2(c)1 is proposed for amendment for a technical change. N.J.A.C. 16:41F-4.2(c)3 is proposed for amendment for consistency with N.J.A.C. 7:13-1, changing "riparian zone" to "flood hazard riparian zone." N.J.A.C. 16:41F-4.2(c)4 is proposed for amendment for consistency with N.J.A.C. 7:13-1 and to delete redundant language. N.J.A.C. 16:41F-4.2(d) and (e) are proposed for amendment to include pruning of trees. N.J.A.C. 16:41F-4.2(g) is proposed for amendment to include reference to Table 1 of Appendix 2. The title was inadvertently omitted in prior changes to the section.

N.J.A.C. 16:41F-5.2(b) is proposed for amendment to update the name of the Department office that receives VCM plan submissions. N.J.A.C. 16:41F-5.2(c)1 is proposed for amendment to change the scale of the map. N.J.A.C. 16:41F-5.2(c)1iii is proposed for amendment to include the acronym "NJDEP." N.J.A.C. 16:41F-5.2(c)1iii(5) is proposed for a technical amendment. N.J.A.C. 16:41F-5.2(c)2 is proposed for amendment for clarity and to include other applicable information. N.J.A.C. 16:41F-5.2(c)3 is proposed for amendment to include an acronym for the Department of Environmental Protection. N.J.A.C. 16:41F-5.2(d) is proposed for amendment to include further certification, if necessary.

N.J.A.C. 16:41F-6.1(b) is proposed for amendment to update the listed editions, which were already incorporated by reference. N.J.A.C. 16:41F-6.1(b)1 is proposed for amendment to clarify the requirements for submissions of photographs or renderings, as required by the Department. N.J.A.C. 16:41F-6.1(b)2 is proposed for amendment to specify the number of required copies of aerial base maps. N.J.A.C. 16:41F-6.1(b)5 is proposed for amendment to require that all trees that are part of the VCM plan be identified by location and condition, in addition to the existing requirements. Shrub masses that will be affected must also be

identified. N.J.A.C. 16:41F-6.1(b)10 and 11 are proposed for amendment for clarity.

N.J.A.C. 16:41F-8.1(a)3, 4, and 5 are proposed for amendment to update the name of the Department office that reviews denied VCM plan appeals.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The rules proposed for readoption with amendments apply to holders of permits for off-premises outdoor advertising signs. The proposed amendments should have a positive social impact, as they provide a controlled means of improving the visibility of off-premises outdoor advertising signs, while ensuring that sensitive environmental areas are protected and motorists and adjoining residential property owners continue to enjoy the State's landscaped State highways.

#### **Economic Impact**

The rules proposed for readoption with amendments will have an economic impact on persons applying for approval of a Vegetation Canopy Management (VCM) Plan and the associated highway occupancy permit required pursuant to N.J.A.C. 16:41. The proposed amendments are largely technical, meaning that any positive or negative economic impacts that are felt from the current framework will remain the same.

Applicants are required to submit application and permit fees, and if applicable, fees for permit extension, pursuant to N.J.A.C. 16:41, which are intended to cover the Department's costs of administering the permits covered at N.J.A.C. 16:41. These costs include processing the applications, issuing the permits and, in some instances, inspections to ensure that the project meets the standards set by the Department.

Applicants may incur costs associated with preparing permit applications, such as fees for the preparation of required planning and surveying documents, including the fees of engineers, attorneys, and other licensed professionals. Permit holders may incur costs associated with inspection fees incurred by the Department to monitor work activity to ensure that the conduct of activity on State highway right-of-way (ROW) and property under the jurisdiction of the Department is performed safely and in a manner that does not unduly interfere with traffic flow. Permit holders may also incur costs associated with restoring the property to the condition specified in the permit. The costs of such traffic direction, compliance, and restoration will vary, depending on the nature of the activity, and the size and complexity of the project.

The proposed amendments should have a positive economic impact on the holders of off-premises outdoor advertising sign permits that can meet the requirements of this chapter and can implement an approved VCM Plan as it should increase the visibility of their signs, which may increase the economic value of those signs. In addition, an approved VCM Plan governed by permits, issued pursuant to N.J.A.C. 16:41, will have a beneficial economic impact on the motoring public and State residents, as applicants and permit holders are required to consider traffic flow interference in any work accomplished on State highway ROW, which may prevent costly and hazardous situations. Requiring permit holders to restore State property to appropriate conditions, upon the completion of permitted activities, will preserve and maintain public assets.

The Department will incur costs associated with the review and approval of a VCM Plan.

#### **Federal Standards Analysis**

A Federal standards analysis, pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65, is not required because the rules proposed for readoption with amendments are within the authority of State statute only and are not subject to Federal requirements or standards.

#### **Jobs Impact**

The rules proposed for readoption with amendments will have no effect on jobs in New Jersey, as the Department does not expect that the rules proposed for readoption with amendments will result in the generation or loss of jobs.

#### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey. The rules proposed for readoption with amendments are not intended to regulate farming, crop, or animal production.

#### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments establish standards for the management of vegetation, while enhancing visibility of off-premises outdoor advertising signs on State highway ROW under the jurisdiction or control of the Department. Some of the applicants for approval of a VCM Plan may be small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All work associated with an approved VCM Plan shall be governed by a highway occupancy permit issued pursuant to N.J.A.C. 16:41.

The economic impact on small businesses, including the retention of professional services needed to comply with the rules proposed for readoption with amendments and the requirements at N.J.A.C. 16:41, is discussed in the Economic Impact above.

The Department has determined that the rules proposed for readoption with amendments are the minimum necessary to accomplish the goals outlined in this rulemaking, and, therefore, has made no provision for lesser or differing standards for small businesses. The rules proposed for readoption with amendments require businesses to submit a VCM Plan and conduct a site investigation. The requirements for a VCM Plan include: photographs of the sign, an aerial base map, dimensions of the area, a description of existing and proposed conditions, identification of all trees meeting a set size, a graphic depiction of the proposed work, a list of supplemental plant materials to be installed, relevant construction notes, dates of activity, square footage of soil disturbance, and copies of all permits/approvals by any regulatory agencies required to execute the plan. Further, because the rules proposed for readoption with amendments do not impose any reporting or recordkeeping requirements on businesses of any size, the Department has made no provision for lesser or differing standards for small businesses.

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey. These rules proposed for readoption with amendments outline the standards and procedures applicable to Vegetation Canopy Management on State highway right-of-way, under the jurisdiction or control of the New Jersey Department of Transportation. The Department believes that it is extremely unlikely that the rules proposed for readoption with amendments would bring about a change in the average costs associated with housing.

#### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments will have no impact on smart growth. The Department believes that it is extremely unlikely that the rules proposed for readoption with amendments would bring about a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules proposed for readoption with amendments outline the standards and procedures applicable to Vegetation Canopy Management on State highway right-of-way, under the jurisdiction or control of the New Jersey Department of Transportation.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The rules proposed for readoption with amendments outline the standards and procedures applicable to Vegetation Canopy Management on State highway right-of-way under the jurisdiction or control of the New Jersey Department of Transportation. The existing rules had no impact on racial and ethnic community criminal justice and public safety in New Jersey and the Department believes that it is extremely unlikely that the proposed readoption with amendments will have any impact on pretrial detention, sentencing, probation, or parole policies concerning adults or juveniles in the State. Therefore, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:41F.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. PURPOSE AND SCOPE

##### 16:41F-1.1 Purpose

The purpose of this chapter is to enhance visibility of outdoor advertising signs while protecting vegetation on State highway right-of-way under the jurisdiction or control of the New Jersey Department of Transportation, by establishing standards for Vegetation Canopy Management (VCM).

##### 16:41F-1.2 Scope

(a) VCM will be allowed on highways under the jurisdiction [and] or control of the Department.

(b)-(c) (No change.)

(d) A VCM Plan meeting the following requirements shall be classified as minor:

1. (No change.)

2. The VCM Plan is proposed for an area [less than half an acre in size] within which **less than half an acre of trees** may be removed, pruned, or both; and

3. (No change.)

(e) (No change.)

(f) The maximum area for inclusion in a VCM Plan shall [be comprised of] **comprise**:

1. A horizontal zone of visual influence of 200 to 400 feet approaching the face of an outdoor advertising sign, as shown [in] at N.J.A.C. 16:41F Appendix 3, Figures 1 and 2 and Table 2. The zone of visual influence begins at a point (Point B) that is 0.25 times the VCM Distance [(Point B)] that corresponds to the [roadways] roadway's posted speed, shown [in] at N.J.A.C. 16:41F Appendix 3, Table 2, measured from a point perpendicular to the nearest point of the sign to the roadway edge (Point A). The zone of visual influence ends at the VCM Distance (Point C) that corresponds to the [roadways] roadway's posted speed, shown [in] at N.J.A.C. 16:41F Appendix 3, Table 2. The zone of visual influence is intended to provide approximately 3.9 to 5.4 seconds of view time of the outdoor advertising sign between the VCM distance (Point C) and Point B to an approaching motorist. **Vegetation between Point A and Point B can be selectively removed only when approved by the Department; and**

2. (No change.)

(g)-(i) (No change.)

(j) Any removal, thinning, or partial removal of vegetation within State highway ROW[, which] that is intended to enhance the visibility of an outdoor advertising sign shall be allowed only as approved by the Department pursuant to this chapter and the provisions [of] at N.J.A.C. 16:41.

(k) (No change.)

#### SUBCHAPTER 2. DEFINITIONS

##### 16:41F-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

... "VCM distance" means a horizontal dimension of vegetation based on the official highway speed, designed to create a viewing time of approximately [3.5 to 4.5] **3.9 to 5.4** seconds for approaching motorists.

...

#### SUBCHAPTER 3. CONTACT INFORMATION

##### 16:41F-3.1 Contact information

(a) [The address and telephone number of] **Contact information for the Bureau of Landscape Architecture and Environmental Solutions (BLAES) is as follows:**

New Jersey Department of Transportation  
Bureau of Landscape Architecture and Environmental Solutions

1035 Parkway Avenue  
PO Box 600  
Trenton, NJ 08625-0600  
[(609) 530-5670 or (609) 530-5673] **(609) 963-1149**

(b) [The address and telephone number of] **Contact information for the Operations Permit Office is as follows:**

New Jersey Department of Transportation  
Operations Permit Office  
1035 Parkway Avenue  
PO Box 600  
Trenton, NJ 08625-0600  
[(732) 625-4330] **(609) 963-1487**  
[(609) 588-6212 (Emergency only)]

#### SUBCHAPTER 4. GENERAL PROVISIONS

##### 16:41F-4.1 General restrictions

(a) A VCM Plan shall not be authorized:

[1. Within a median;]

Recodify existing 2.-4. as 1.-3. (No change in text.)

(b) Depending on the scope of the VCM Plan, it may not be authorized:

1. (No change.)

2. Within a traffic island[.]; or

**3. Within a median.**

##### 16:41F-4.2 General conditions

(a)-(b) (No change.)

(c) A VCM Plan shall be authorized for the following regulated areas only if the applicant has obtained any required permits, approvals, or notices[, including, but not limited to]:

1. Within [Wetlands or Wetland Transition Areas] **wetlands or wetland transition areas;**

2. (No change.)

3. Within a **flood hazard riparian zone**; and

4. Within **an area designated as critical habitat** for a Federal or State threatened or endangered species [habitat].

(d) Where tree removal or pruning results in an area of vegetation canopy removal that exceeds one-half acre, as measured pursuant to the No Net Loss Reforestation Act, compensation shall be provided in compliance with the act, as determined by the Department.

(e) Where the tree or shrub removal or pruning results in an area of vegetation canopy removal that is less than one-half acre, compensation regarding the replacement tree or shrub size, species, and location, shall be as determined by the Department.

(f) (No change.)

(g) Trees of the size and type listed [in] at N.J.A.C. 16:41F Appendix 2, **Table 1** can be selectively removed only when approved by the Department, and compensation is provided by supplemental plantings on site, or at a location determined by the Department.

(h)-(m) (No change.)

#### SUBCHAPTER 5. PRE-APPLICATION

##### 16:41F-5.2 Site screening by applicant

(a) (No change.)

(b) The preliminary site screening package for both minor and major VCM Plans shall be submitted to the [Bureau of Landscape Architecture and Environmental Solutions] **Operations Permit Office** at the address [in] at N.J.A.C. 16:41F-3.1.

(c) The preliminary site screening package for both minor and major VCM Plans shall include the following information:

1. Three copies of an aerial photograph base map of the site, at a scale no [larger] **smaller** than one inch equals 600 feet, which shall show the following:

i-ii. (No change.)

iii. The following, as delineated, mapped, or identified by the New Jersey Department of Environmental Protection (NJDEP):

(1)-(4) (No change.)

(5) Threatened or endangered species habitat; and

2. A certification by a landscape architect or professional engineer licensed to practice in the State of New Jersey that the **landscape**

architect or professional engineer has reviewed the preliminary site screening package and determined that the proposed VCM Plan is not prohibited by any of the provisions of this chapter; and [for minor VCM Plans], if applicable, based on available information from NJDEP or other agencies, that the work is not proposed in regulated areas, as described at N.J.A.C. 16:41F-4.2(c); and

3. A response from the NJDEP Natural Heritage Program regarding any threatened or endangered species in the area of the proposed VCM Plan.

(d) The preliminary site screening package for a major VCM Plan shall also include mapping delineating all applicable regulated areas, as described at N.J.A.C. 16:41F-4.2(c) or a certification by a landscape architect or professional engineer as to their absence.

SUBCHAPTER 6. VCM PLANS

16:41F-6.1 Plan requirements

(a) (No change.)

(b) Both minor and major VCM Plans shall be prepared by a landscape architect licensed to practice in the State of New Jersey and in accordance with the Department's [2007] 2019 edition of Standard Specifications for Road and Bridge Construction, Section 800 - Landscaping, incorporated herein by reference, as amended and supplemented, and the Department's [2007] 2016 edition of Sample Plans, incorporated herein by reference, as amended and supplemented, and shall include the following:

1. Photographs of the existing sign or renderings of the proposed sign from the outer limits of the proposed [VCM Plan area] zone of visual influence for each face of the sign;

2. [An] Three copies of an aerial base map showing the VCM area;

3.-4. (No change.)

5. [Identification] The location of all trees greater than six inches in diameter, measured 4.5 feet from the ground, identified by size, condition, and species, and all shrub masses that will be affected;

6.-9. (No change.)

10. The area, in square feet, of soil disturbance and for VCM Plans with an area of soil disturbance of 5,000 square feet or more, a copy of the

approval of a soil erosion and sediment control plan issued by the appropriate Soil Conservation District; and

11. A copy of all required municipal approvals for [the] any proposed sign that is the subject of the VCM Plan.

(c) (No change.)

SUBCHAPTER 8. APPEALS

16:41F-8.1 Appeal of a denied VCM plan application

(a) The appeal process for a VCM Plan application that has been denied is as follows:

1.-2. (No change.)

3. The Operations Permit Office shall render a decision, in writing, within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Operations Permit Office, the appellant may submit a further appeal to the Director of [Permits, Electrical and Claims Unit] Operations Administrative Support within 15 days.

4. The Director of [Permits, Electrical and Claims Unit] Operations Administrative Support shall schedule an informal hearing within 10 days of receipt of the appeal. The Director of [Permits, Electrical and Claims Unit] Operations Administrative Support shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Director of [Permits, Electrical and Claims Unit] Operations Administrative Support shall consider all of the information previously provided, and the additional information presented at the hearing, as well as the provisions of this chapter, and the public's right and interest in a safe and efficient highway system. The Director of [Permits, Electrical and Claims Unit] Operations Administrative Support shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall notify the appellant in writing.