
General Guidance for Landscaping Activities in the Highway Rights-of-Way (Non-Limited Access)

The following "guidance" should be used when responding to permit application requests to perform landscaping activities in the State's highway rights-of-way. As with drives, the Districts should process residential landscaping requests, and the Utilities & Permits Unit will process commercial requests.

Overview. It is common, and also historical practice, for landowners whose properties abut State-owned highways to conduct landscaping/yard work activities within the strip of land lying between the edge of the highway shoulder and the abutting land owner's front property line (hence forth, referred to as the "highway rights-of-way"). This is especially true in urban settings where abutting property owners typically maintain their lawns to the back of sidewalks/curbs or to the edge of pavement. This practice benefits both the property owner and the State in the following ways: Enhances roadside aesthetics, improves sight distance, provides traffic calming, and reduces highway maintenance costs. Businesses, in particular, rely on roadside landscaping to attract highway users. Examples include: Hotels, shopping malls, auto dealers, restaurants, and even landfills. This narrow strip of State property where landscaping has traditionally been allowed is also the space reserved for other diverse and competing uses. It is used as a utility corridor for water, sewer, gas, power, telephone, cable television, etc. Also, it is used for sidewalks, bike paths, parking, driveways, signage, noise barriers, street lighting, as well as highway maintenance and highway expansion. Needless to say, the importance of the highway rights-of-way cannot be understated, thus making land use oversight of the many competing uses an important, continuous function of the Vermont Agency of Transportation. Landscaping represents one of the more passive uses of the highway rights-of-way. Never-the-less, these application requests require close scrutiny to ensure that the public interests and driving safety are preserved. The following guidance should be considered when reviewing landscape permit application requests.

Uses Not Requiring a Permit. General yard maintenance and property enhancement by abutting property owners such as lawn mowing, brush cutting, and seasonal planting of low growing annuals. Plant height should be limited to a 24" mature height above pavement elevation, and be located at least 10 feet from the highway's white painted edge line. Activities associated with Adopt-A-Highway and other state/community sponsored non-construction highway beautification projects will not generally require permitting. These non-permitted activities cannot compromise the safety of the highway users or interfere with highway infrastructure or utility plant maintenance.

Residential/Commercial/Municipal Landscaping Requiring Permits. Any landscaping activities located in the highway rights-of-way, which involve the placement of boulders, planters, fences, berms, landscaping timbers, hedges, shrubs, trees, perennials, etc., or use of construction equipment or work vehicles within the rights-of-way will require a permit. In most cases, this type of landscaping development must be located outside the limits of the established highway safety clear zone. Exceptions may be allowed behind guardrail and in urban settings where reduced speed limits, curbing, sidewalks, and established tree lines exist. Landscaping activities which obstruct corner sight distances, present safety hazards, or have the potential to interfere with the operation and maintenance of the adjacent highway and existing public utility facilities will not be allowed. In particular, only tree species which grow to a maximum of 12 to 15 feet high will be allowed under aerial utility lines. Trees should not be planted over buried utilities or highway storm drain pipes, in ditches, or any other location where they will interfere with routine highway/utility maintenance activities. Landscaping permits must be conditioned to inform Permit Holders that landscaping on State property is by suffrage only, and the State may, when necessary, exercise its right to have it removed for the public good. In all cases, the operation and maintenance of the highway and utilities serving the public will have precedence over landscaping proposals.

Compliance. Whenever non-complying, non-permitted landscaping activities are observed taking place within the State highway rights-of-way, the owner should be immediately notified to stop operations. Only after a permit has been issued should the Permit Holder be allowed to proceed in accordance with the permitted landscaping plan and permit Special Conditions. Failure on the part of the property owner to acquire a permit will result in the property owner being ordered to remove the landscaping and rehabilitate any damages.

Site circumstances and common sense should always be factors when reviewing permit applications for landscaping. The width of the State highway rights-of-way, nature and extent of the landscaping project, speed limit, rural/urban location, etc., should be considered. In all cases, permits should be conditioned with the provision that the landscaping will be allowed until such time that the State requires the rights-of-way for highway purposes, including routine maintenance operations. Should landscaping need to be removed, it must be done so at the owner's expense within thirty (30) days of being notified by the State. Failure to comply may result in the State back charging the Owner for removal and any rehabilitation costs.