



Highway Maintenance Manual

Bureau of Highway Maintenance

Chapter 07 Roadside Management

August 2017

Section 10 Woody Vegetation

Subject 30 Unauthorized Vegetation Damage or Destruction

1.0 Authority

[s. 84.07\(1\), Wis. Stats.](#), Maintenance of State Trunk Highways. This identifies the care and protection of trees and other roadside vegetation.

[s. 66.1037\(1\), Wis. Stats.](#), Beautification and Protection. Identifies that it is “unlawful for any person to injure any tree or shrub, or cut or trim any vegetation other than grass, without the consent of the highway authority and under its direction”.

Unauthorized removal of timber from Wisconsin Department of Transportation (WisDOT) property is illegal and punishable. Treble damages may be recovered if violators are apprehended and prosecuted. The following is a partial listing of state statutes governing illegal vegetation removal. This list is not intended to be all-inclusive; other local, state and federal laws and regulations may apply.

- [s. 26.05 Wis. Stats.](#), Timber Theft
- [s. 30.40 Wis. Stats.](#), Lower Wisconsin State Riverway
- [s. 86.02 Wis. Stats.](#), Injury to highway
- [s. 86.03 Wis. Stats.](#), Trees on and adjacent to highway
- [s. 943.01 Wis. Stats.](#), Damage to property
- [s. 943.20 Wis. Stats.](#), Theft
- [National Scenic Byways Legislation](#)

2.0 Background

Although the department has the authority to maintain vegetation along state trunk highways, it is illegal for the public to cut vegetation, remove plants or plant parts, or injure trees along the right of way under s. 66.1037(1) and s. 86.03(4) through (7), Wis. Stats. Except where landowners have granted the department an easement for public travel, the department has acquired the right of way in fee. This means the state holds the land in trust for the people of Wisconsin and no individual has the right to use the land for other than its intended transportation purpose. Where easements have been granted, grantors have some rights to use the right of way, for example, the right to post trespass notices or to prohibit snowmobiles from operating on their land. The general public does not have these rights.

Anyone wishing to perform vegetation management work on the right of way must possess a valid [Application/Permit to Work on the Right of Way, Form DT1812](#) from the department. Anyone removing or in any way damaging vegetation on the right of way without a permit is engaging in unauthorized activity.

Highways with special designations, such as Scenic Byways, Rustic Roads, and Lower Wisconsin Riverway may have specific management plans dictating the way vegetation may be managed on those rights of way. Coordination with the oversight authorities for these highways may be required prior to any cutting or removal of vegetation.

See the department's [Scenic Byways website](#) for what Wisconsin's designated scenic byways are and more information about the program. This includes the Lower Wisconsin Riverway, which contains specific restrictions and coordination requirements for vegetation management and removal within its boundaries.

The department also designates qualifying roads as [Rustic Roads](#); see the department's website for more information.

3.0 Procedure for Handling Unauthorized Damage or Destruction to Roadside Vegetation

Use this procedure when vegetation on state trunk highway right of way has been sprayed, cut or otherwise damaged or destroyed without departmental approval. In many cases, these activities are associated with increasing a motorist's view to an advertising sign or a business located along the highway.

1. Report the incident to the local unit of law enforcement with trespassing authority. This includes the town or county sheriff and city or village police. The activity must be documented in an incident report for the department to pursue damages, so acquire an incident report whether the activity is in progress or has been completed.
 - Request an official report of the incident from that law enforcement agency.
 - This report helps the department determine what future course of action to pursue.
 - When appropriate, request an official investigation. Interviews are likely to be conducted during an investigation to gather facts and to identify the responsible party. Potential interviewees include the sign or business owner and the adjacent landowner.
 - Be prepared to provide information to the enforcement officer.
 - If the activity is in progress or a crew is still on-site, request immediate assistance when you report the incident to the law enforcement agency.
2. Document your actions and create your own record of the event so you will be prepared to assist the law enforcement officer and to report to others in the department.
 - Obtain:
 - the name and contact information for all persons and businesses likely to be involved
 - photographs of the people, the equipment and the site, including but not limited to:
 - the damaged or destroyed vegetation and any other destruction such as rutting of the highway right of way
 - the sign or business in relation to the damage or destruction
 - the remaining stumps, dead plants and/or debris
3. Report the incident to the Bureau of Highway Maintenance (BHM) landscape architect. If the removal involves the an outdoor advertising sign or on premise sign also report the incident to the regional sign coordinator and include the following information:
 - your record of the incident, including photographs (see 4 above)
 - the precise location of the site including a photolog frame number
 - whether the vegetation was volunteer or was planted. If planted, when?
 - the name of all parties potentially benefiting from the vegetation removal such as the sign owner, the advertiser, the property owner or the adjacent business
 - the history, if any, of similar incidents involving the same sign owner or business
 - the category of the sign, if applicable (for example: directional, off-property or nonconforming)
 - the OASIS number, if the incident involves an advertising sign (this number can be obtained from the regional sign coordinator or the statewide Outdoor Advertising Program manager)
 - a copy of the investigation report from law enforcement or an explanation of why a report was not obtained
 - a copy of any permit in effect at the site (for example, an outdoor advertising permit or a work on highway right of way permit)
 - a site sketch if it will convey a better understanding of the site features
4. A BHM landscape architect will determine the value of trees/shrubs removed or destroyed, when this information is needed.
5. The BHM will work with the region and may work with others such as the Office of General Counsel to determine which of the following actions may be taken:

- filing criminal charges
- requiring payment for the:
 - value of the damaged or destroyed vegetation
 - cost of site clean-up
 - cost of planting replacement vegetation
 - at the same or different location
 - of the same or different species
- withholding permit approvals for a specified period of time when applicable
- revoking an outdoor advertising license when applicable
- removing the sign when applicable
- requiring proof that the responsible party has informed their employees that damage to and destruction of vegetation on the right of way is illegal
- Issuing a press release to inform others of the department's policy and to educate the public about the consequences of damaging or destroying vegetation on state trunk highway lands.

4.0 Reimbursement for Damage Claims

Reimbursement payments recovered from damage claims due to unauthorized damage or destruction to roadside vegetation should be sent to the BHM landscape architects. Such payments will be deposited in the Integrated Vegetation Management – Statewide fund, Project ID 39501063506 for future landscaping use. Note: this account name and ID number on the letter of transmittal.