



Powering Strong Communities



November 25, 2019

Submitted via *Federal eRulemaking Portal* to Docket No: FS-2019-0019

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Re: Request for Comments on the USDA Forest Service Proposed Rule on Procedures for Operating Plans and Agreements for Vegetation Management Within and Along Powerline Rights-of-Way; 84 *Fed. Reg.* 50698 (August 25, 2019)

To Mr. Woodruff:

The American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA) (collectively, the Associations) appreciate this opportunity to comment on the U.S. Department of Agriculture's (USDA) Forest Service (agency) proposal to revise its existing special use regulations for issuing or reissuing authorizations for powerline rights-of-way (ROW).<sup>1</sup> The focus of the agency's revisions is to incorporate and implement section 512 under Title V of the Federal Land Policy and Management Act (FLPMA), as enacted by Congress in the Consolidated Appropriations Act, 2018. Congress amended the law to establish requirements for the development and approval of operating plans and agreements for vegetation and facility management on National Forest System (NFS) lands within ROW for electric transmission and distribution facilities and on their abutting lands. The Associations fully supported these congressional efforts to help improve the approval process for accessing transmission and distribution infrastructure crossing federal lands. If finalized, this proposed rule and related directives will take the next step towards the long-term, cost-effective, and efficient management of electric facilities and vegetation, including hazard trees, necessary to enhance electric system reliability, promote public safety, protect natural resources, and avoid wildfire hazards.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. The association advocates and advises on electricity policy, technology, trends, training, and operations. APPA

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<sup>1</sup> 36 *Fed. Reg.* 251, Subpart B (June 6, 1980).

members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

NRECA is the national trade association representing nearly 900 local electric cooperatives. America's electric cooperatives belong to the communities that they serve and comprise a unique sector of the electric industry. From growing suburbs to remote farming communities, electric cooperatives power one in eight Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. NRECA serves its members as an advocate for legislative and regulatory policies that are scientifically sound, cost-effective, and balance consumer interests and environmental protection.

America's not-for-profit, consumer-owned electric utilities share an obligation to provide safe, reliable, and affordable electric service. The Associations' members also play a vital role in transforming the electric sector. This includes working to improve the resiliency and efficiency of their systems. Some of this infrastructure, including distribution and transmission lines, substations, access roads, and other related facilities are located on NFS lands. Thus, the Associations' members must acquire special use authorizations to access electric utility ROW, as well as complete necessary facility inspection, vegetation management, and operation and maintenance (O&M) activities. These routine and non-routine or emergency activities are a key part of ensuring the safe and reliable delivery of electric services. The electric sector is undergoing a transformation, which is changing the way electricity is generated, transmitted, and used. Therefore, we expect to continue to need federal agency permits and approvals.

Often, the Associations' members have experienced unreasonable delays in receiving agency authorizations to perform vegetation management and O&M work necessary to keep the lights on. This includes instances where requests to remove hazard trees that present risk of damaging infrastructure, causing outages or other reliability concerns, or sparking fires are delayed or denied. Even when the Associations' members receive approvals, they also often face inconsistent terms and conditions that can cause challenges with efficiently managing ROWs and electric infrastructure. When fires occur, the Associations' members are routinely held liable for fire suppression costs, injury, and damages. These are costs that the end-of-the-line consumer must ultimately bear.

Timely and consistent approvals – especially with the increase in catastrophic wildfires – are essential for the Associations' members ability to address operational and vegetation management issues within and adjacent to their ROW. Such prompt action is necessary to meet mandatory reliability standards, ensure a properly functioning electric grid, and reduce the potential risk of wildfire hazards. Therefore, it is important to the Associations that revisions to the USDA Forest Service special use regulations are quickly finalized and implemented as intended by Congress to improve decision-making efficiency. We support the agency's efforts to promulgate this rulemaking and provide the following additional recommendations to provide clarifications and further improve the rule's implementation. The Associations also support comments submitted by the Edison Electric Institute (EEI) and Northwest Public Power Association (NWPPA).

### **Ensure Consistent Implementation with the BLM.**

Per FLPMA section 512(c)(4)(A), the agency shall jointly develop with the Department of the Interior's (DOI) Bureau of Land Management (BLM) a consolidated and coordinated process for the review and approval of proposed operating plans and agreements. This process should include timelines and benchmarks for (1) the submission of agency comments on the proposed plans or agreements and schedules for final decision; (2) the timely review of modification of the plans or agreements in cases in which

modifications are necessary; (3) a process for modifying plans or agreements in a prompt manner if changed conditions necessitate such a modification; and (4) a process that ensures, to the maximum extent practicable, prompt agency review and approval of plans or agreements within 120 days from the date the plan or agreement is submitted.

Given the linear nature of electric transmission and distribution infrastructure, facilities traverse a myriad of landscapes, which can include both NFS and BLM-managed lands. It is imperative that the Forest Service and BLM work together to develop and implement this joint process, as envisioned by Congress, for consistent inter- and intra-agency implementation. The Associations urge the agency to have this process in place concurrent with the publication of the final rule to ensure timely, efficient, and consistent reviews and approvals. Any delay in developing and implementing this joint process will result in delays in approving proposed plans and agreements, thereby threatening the safe, reliable operation of electric systems and ability to mitigate wildfire hazards. Further, the Associations encourage the agency to be transparent with the process so that their members and other stakeholders understand agency expectations upfront. Such transparency will also aid in holding the agency accountable in meeting the review and approval timelines set by Congress.

#### **Train Agency Personnel on Electric System Requirements.**

Congress has encouraged the agency to work in consultation with the electric utility industry to develop a program to train field personnel involved in vegetation management decisions relating to electric transmission and distribution facilities.<sup>2</sup> The training should help agency personnel understand electric utility obligations to maintain a safe and reliable electric system, including compliance with relevant reliability standards and wildfire safety requirements. Within the agency, there exist an on-going loss of institutional knowledge and expertise regarding these issues driven by retirements, high staff turnover, and temporary promotional details. By linking the skills of utility experts and agency field staff, the goals of both parties can be better met – ensuring the safe, reliable, and affordable delivery of electricity, while sustaining the health, diversity, and productivity of our public lands.

The Associations are committed to continuing to build collaborative partnerships with the agency, including assisting with developing utility-specific training programs and materials for field staff. The Associations' members have also offered to meet with their respective local agency staff to share information regarding a general overview of the electric system, typical vegetation management and O&M practices, and compliance requirements. These trainings can be tailored to best suit the needs of the local utility, community, and Forest Service unit. We believe working hand-in-hand with open communication and an understanding of each parties' mission will allow for more efficient and consistent approvals of plans and agreements with more continuity going forward. The Associations look forward to working with the agency to meet Congress' expectations.

#### **Minimize the Need for Case-by-Case Approvals and Specify Timeframes.**

The Associations support the agency's efforts to minimize the need for case-by-case approvals for vegetation management, facility inspection, and O&M of electric transmission and distribution facilities.<sup>3</sup> Further, the ability for the Associations' members to address emergency vegetation management without prior consent, including the removal or pruning of hazard trees, is essential to avoid the disruption of electric service and mitigate immediate wildfire and safety threats. A key provision of the Consolidated Appropriations Act,

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<sup>2</sup> FLPMA Section 512(i).

<sup>3</sup> 36 CFR § 251.56(h)(10)(v).

2018 authorizes owners and operators to conduct emergency vegetation management, including the removal or pruning of hazard trees, without prior approval. The only requirement is that the authorized agency officer be notified within 24 hours after the emergency action occurs. This ability is essential for the Associations' members to quickly address dangers of vegetation or hazard trees contacting powerlines from within or adjacent to the ROW to avoid disruption of electric service and mitigate immediate wildfire and safety hazards.

The agency has proposed including this emergency vegetation management notification provision at section 251.56(h)(5)(viii)(B). However, that section is specific to those activities that require approval from the agency (e.g., owner or operator performance of routine vegetation management). By also including the emergency vegetation management notification requirements in this section, the Associations are concerned this could lead to confusion and inconsistent application of the underlying statute. Therefore, the Associations recommend the agency move proposed section 251.56(h)(5)(viii)(B) regarding emergency vegetation management as a standalone section or include it as a subsection under section 251.56(h)(5)(vii), which outlines other instances where the owner or operator must notify the agency.

It is our understanding that Congress intended to provide the authorization to address hazard trees in emergency conditions regardless of whether an owner or operator has an approved plan or agreement. Therefore, the agency should remove the words, "as specified in the operating plan or agreement," within the emergency vegetation management description. The Consolidated Appropriations Act, 2018 does not use the term "imminent" to describe emergency vegetation hazards, but the proposal does, and it is unclear how the term would be defined. To ensure consistency with the law and avoid inconsistent interpretations, the Associations recommend the agency remove the word "imminent" from the emergency vegetation management description.<sup>4</sup> We recommend the description be revised as follows:

*Emergency vegetation management. If vegetation or hazard trees have contacted or, ~~as specified in the operating plan or agreement,~~ present an imminent danger of contacting the covered line from within or adjacent to the rights-of-way and on abutting National Forest System lands for the covered line, the owner or operator may, without prior written approval from the authorized officer, prune or remove the vegetation or hazard trees to avoid the disruption of electric service and mitigate immediate fire and safety hazards. The owner or operator shall notify the authorized officer in writing of the location and quantity of the pruning or removal within 24 hours of the pruning or removal.*

The Associations support the agency's clarification that the electric utility owner or operator shall notify the authorized agency officer in writing within 24 hours of the hazard tree removal or pruning. Providing written notification helps mitigate the potential for perceived non-compliance with the regulation should agency personnel be unavailable to respond to the notice.

In addition to emergency vegetation management, emergency maintenance is another type of activity that would be performed under an approved operating plan or agreement. However, the proposal does not distinguish requirements regarding the timeframes for notification, request for approval, or response of the authorized officer for work that must be done to address emergency maintenance and repair of electric transmission and distribution facilities. Like emergency vegetation management, the ability to quickly

address equipment failures to avoid disruption of electric service and mitigate immediate wildfire and safety hazards is critical. Owners and operators should only have to notify the authorized agency officer within 24 hours after the emergency action occurs to avoid delays. The Associations recommend the agency add the following description as a new section to address emergency maintenance and provide clarification regarding notification requirements:

*Emergency maintenance. If any component of a covered facility presents a danger to the delivery of electric service due to equipment failure, the owner or operator may, without prior written approval from the authorized officer, inspect, repair, or replace the equipment to avoid the disruption of electric service and mitigate immediate wildfire and safety hazards. The owner and operator shall notify the authorized officer in writing of the location and description of the work within 24 hours of its completion.*

The Associations encourage the agency to continue seeking ways to streamline and lessen the need for case-by-case approvals.

### **Clarify Who Can Designate Hazard Trees.**

The Associations are concerned about how the definition of hazard tree, as proposed, will be interpreted and implemented.<sup>5</sup> Specifically, the proposal to require a certified or licensed arborist under the supervision of the Forest Service or the owner or operator is counterintuitive to the goal of streamlining approvals for necessary and critical vegetation management activities, and may hinder the ability of an owner or operator to address threats to electric infrastructure in a timely manner. The designation of hazard trees or other hazardous vegetation should be determined by the owner or operator, or someone the utility has designated or deemed qualified to make those decisions. These are the individuals best equipped to understand when a tree or other vegetation poses a threat to electric reliability and public health and safety. Whereas, an agency certified, or licensed arborist or forester may not necessarily be qualified to assess vegetation hazards as it relates to transmission and distribution facilities. Further, if an owner or operator or their designated contractor must wait for agency staff to come to the field to verify the hazard determination, then the ability to address reliability, safety, and wildfire concerns is unnecessarily impeded. This proposed requirement is also inconsistent with many current authorizations, which allow the removal of hazard trees and other hazardous vegetation whenever encountered. As proposed, the agency would need to accept full liability for vegetation-caused wildfires or outages resulting from delayed review by a certified forester or arborist. The Association recommends the agency revise the proposed hazard tree definition at section 251.51 as follows:

*Hazard tree – for purposes of vegetation management for an electric transmission or distribution line, any tree or part thereof (whether located in or outside a right-of-way) that has been designated prior to tree failure, by a certified or licensed arborist or forester **or other qualified person designated by the owner or operator** ~~under the supervision of the Forest Service~~ or the owner or operator (a) to be dead, likely to die within the routine vegetation management cycle, or likely to fail within the routine vegetation management cycle; and (b) if the tree or part of the tree failed, likely to cause substantial damage or disruption of a transmission or distribution facility or come within 10 feet of an electric power line.*

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<sup>5</sup> 36 CFR § 251.51.

**Limit Strict Liability.**

Consistent with FLPMA section 512(g)(1), Congress stated that strict liability shall not be imposed in tort on an owner or operator for injury or damages resulting from the agency's unreasonably withholding or delaying approval of an operating plan or agreement or unreasonably failing to adhere to an applicable schedule in an approved operating plan or agreement. Further, Congress set reasonable strict liability limits in section 512(g)(2) for injury or damages resulting from activities conducted by an owner or operator under an approved agreement. As discussed above, the costs of maintaining electric infrastructure, performing vegetation management and O&M activities, and any incurred liability and wildfire suppression costs are passed to consumers. Capping strict liability for those members of the Associations subject to an agreement allows limited financial resources to be focused on conducting necessary facility inspections, line O&M activities, and ROW vegetation management – including hazard tree removal – to enhance reliability and mitigate safety and wildfire threats. The Associations recommend the agency implement these strict liability provisions as intended by the Consolidated Appropriations Act, 2018.

**Support the Development of Agreements.**

Electric transmission and distribution facility owners or operators that are not subject to the mandatory reliability standards established by the Electric Reliability Organization or that sold less than or equal to one million megawatt hours of electric energy for purposes other than resale during each of the three calendar years immediately preceding the enactment of the Consolidated Appropriations Act, 2018 may enter into an agreement with the agency in lieu of an operating plan.<sup>6</sup> Many of the Associations' members with electric infrastructure on NFS lands will qualify for the use of agreements. We encourage the agency to support the near-term development of such agreements by creating a culture within the agency that prioritizes the review and approval of agreements; and that fosters improved coordination and collaboration between the owner or operator and Forest Service.

**Clarify the Minimum Requirements for Agreements.**

The Consolidated Appropriations Act, 2018 directs the agency to set forth specific minimum requirements for agreements used by certain owners and operators, in lieu of operating plans.<sup>7</sup> The Associations value plans and agreements as tools to improve communications between owners or operators and the agency. However, we recommend clarifying the minimum requirements for agreements to ensure consistency and alignment with the underlying law. The Associations recommend the agency clarify that proposed section 251.56(h)(5)(i) through (vi) are minimum content requirements for operating plans only and do not apply to agreements. More specifically, the Associations recommend the following revision be made at section 251.56(h)(5), with the ~~strike through~~ indicating where we suggest the agency make a deletion:

*Content of operating plans ~~and agreements~~.* At a minimum, operating plans ~~and agreements~~ shall:

Henceforth, the Associations recommend the agency then add clarification that in addition to applying to plans, section 251.56(h)(5)(vii) through (ix) also include minimum content requirement for agreements. This clarifying statement could be added after the conclusion of (vi) and prior to the start of (vii), with subsequent subsections renumbered as necessary.

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<sup>6</sup> FLPMA Section 512(d)(1).

<sup>7</sup> FLPMA Section 512(d)(2).

**Clarify Scope of Covered Facilities within Operating Plans and Agreements.**

The proposed rule directs electric utility owners and operators to identify the electric transmission or distribution facility covered by the operating plan or agreement (i.e., “covered line”).<sup>8</sup> Our members may have multiple transmission and/or distribution lines, as well as other associated facilities, that cross NFS lands. In some cases, these facilities can cross two or more NFS ranger districts. The Associations recommend the agency clarify that the determination of what constitutes covered facilities be left to the discretion of the utility owner or operator. Further, the agency should clarify within the proposed definition at section 251.51, *operating plan or agreement for an electric transmission or distribution facility*, that a plan or agreement can cover one or more electric transmission and distribution ROW. If adopted, these changes would also align with the intent of the Consolidated Appropriations Act, 2018.<sup>9</sup>

**Ensure the Use of Consistent and Clear Terminology.**

There are several terms used throughout the proposed rule that if left undefined could lead to confusion and inconsistent approvals and implementation of operating plans and agreements. Therefore, the Associations recommend the agency add the following definitions at section 251.51, in alphabetical order, to provide additional clarity and promote consistency.

*Emergency maintenance – repair and/or replacement of any component of the covered facility to prevent the loss of electric service due to equipment failure in accordance with applicable reliability and safety standards as identified in an approved plan or agreement under 36 CFR 251.56(h).*

*Facility – one or more electric distribution and/or transmission powerlines and all appurtenances or auxiliary equipment located within the rights-of-way and on abutting National Forest System lands.*

*Non-routine maintenance – rebuilding or replacement of an entire electric transmission or distribution line or any segment thereof, including reconductoring, in accordance with applicable reliability and safety standards as identified in an approved operating plan or agreement under 36 CFR 251.56(h).*

*Routine maintenance – repair and/or replacement of any component of the covered facility to operate in accordance with applicable reliability and safety standards as identified in an approved operating plan or agreement under 36 CFR 251.56(h).*

The proposed rule also frequently uses the term “non-emergency vegetation management.” To minimize confusion, the Associations suggest the agency remove the use of this term throughout the proposal as it could be better interpreted as “routine” vegetation management. Further, we recommend the agency adopt the following definitions, at section 251.51, to distinguish vegetation management activities that would be included in an approved operating or agreement.

*Emergency vegetation management – unplanned and reactive management of plant communities within the rights-of-way and on abutting National Forest System lands to address all vegetation hazards, including hazard tree and necessary wildfire mitigation to prevent the loss of electric service in accordance with applicable reliability and safety standards as identified in an approved operating plan or agreement under 36 CFR 251.56(h).*

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<sup>8</sup> 36 CFR § 251.56(h)(5)(i).

<sup>9</sup> FLPMA Section 512(a)(3)(A).

*Routine vegetation management – Periodically scheduled management of plant communities within the rights-of-way and on abutting National Forest System lands to identify compatible and incompatible vegetation, consider action thresholds, and evaluate, select, and implement the most appropriate control method or methods in accordance with applicable reliability and safety standards as identified in an approved operating plan or agreement under 36 CFR 251.56(h).*

For consistency with the proposed definition of “operating plan or agreement,” the Associations recommend the agency clarify the terms and conditions found at section 251.56(h) for operating plans and agreements by adding the following text (in **bold**):

*Operating plans and agreements for electric transmission and distribution facilities (hereinafter, and for the purposes of this paragraph only, “operating plans and “agreements”). An operating plan or agreement consistent with 36 CFR 251.56 is required for new and reauthorized electric transmission and distribution facilities ~~on~~ **within the rights-of-way and on abutting** National Forest System lands. Operating plans and agreements must have prior written approval from the authorized officer.*

#### **Clarify Terms for Existing Plans.**

The agency should clarify what circumstances subject existing special use authorizations and operating plans to be reviewed, modified, and/or re-approved prior to their expiration. If a utility is conducting vegetation management and O&M activities under an existing authorization and approved plan, then the agency should recognize and grandfather in such approvals. If changes are necessary to be consistent with section 251.56, then an owner or operator should have at least 16 months to make permit and/or plan modifications.

#### **Recognize Additional Reliability and Safety Standards.**

The Associations recommend the agency reference the North American Electric Reliability Corporation (NERC) Reliability Standard FAC-003-4 as an example of an Electric Reliability Organization vegetation management standard owners and operators can include as part of their operating plan or agreement. However, this standard only covers certain powerlines and does not address utilities internal vegetation management strategies to maintain reliability and safety. In addition, utilities may be subject to other standards such as state-specific requirements to maintain the safe, reliable operation of powerlines. Therefore, the agency should ensure owners and operators can incorporate these various requirements and practices into their plans and agreements, as applicable.

#### **Encourage and Assist Those Utilities Voluntarily Enhancing Habitat.**

Congress directed the agency to encourage and assist willing owners and operators of electric transmission and distribution facilities to incorporate on a voluntary basis vegetation management practices to enhance habitats that benefit pollinators and other wildlife, if the practices are compatible with the vegetation management practices necessary for system reliability and safety.<sup>10</sup> As discussed above, routine electric utility vegetation management practices along powerline ROW and abutting lands are essential for meeting mandatory reliability standards, mitigating risks of vegetation-related outages and other operational issues, and reducing wildfire risks. By integrating various vegetation management techniques, the Associations’ members can provide secondary ecological benefits, while promoting plant communities that do not interfere with overhead power lines, pose wildfire hazards, or hamper facility access.

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<sup>10</sup> FLPMA Section 512(i)(3).



The Associations' members take pride in being good environmental stewards of the land. For decades, our members have implemented voluntary projects and adjusted vegetation management practices to benefit wildlife and their habitat, along with other environmental initiatives. Whenever possible, voluntary conservation is preferable from the Associations' perspective as it can potentially preclude the need to list species as either threatened or endangered under the Endangered Species Act (ESA). Species listings and resulting prohibitions onto activities can impose costs to our members that make it difficult to implement without passing them directly to their consumers. In addition, we recognize that it is often collaborative voluntary efforts that have resulted in the greatest species conservation success stories (e.g., delisting of the bald eagle under the ESA).

For example, the monarch butterfly – whose range spans the continental United States – has experienced significant population declines over the past 30 years. Given this broad range, nearly all of the Associations' members could be affected if the monarch is listed under the ESA. An ESA listing would likely result in project delays and increased costs and liability to our members vegetation management programs. To assure regulatory certainty and operational flexibility in the event the monarch gains ESA protections, NRECA has worked on behalf of its members to contribute to the development of an unprecedented cross-sector collaboration to benefit the monarch butterfly. If finalized, nearly all energy companies will be eligible to participate in the voluntary National Monarch Butterfly Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement (Monarch CCAA/CCA).<sup>11</sup> The integration of the CCA with the CCAA helps ensure a streamlined, consistent approach for conservation efforts implemented on both private and federal lands.

The Monarch CCAA/CCA provides an opportunity for the agency to support energy companies enrolled in the agreement in their efforts to benefit the monarch butterfly. The Associations encourage the agency to support, and not hinder, our members that voluntarily undertake this and other similar initiatives. Regardless of whether the monarch is listed under the ESA, the Associations' members are already implementing projects to benefit the species, as well as other pollinators and wildlife. The Associations recommend the agency express its support and willingness to assist owners and operatives in voluntary habitat enhancement initiatives within the preamble of the proposed rule.

#### **Allow for the Use of Unmanned and Other Emerging Technologies.**

The Associations' members take numerous steps to ensure system reliability and resilience, as well as mitigate safety and wildfire hazards. Our members also take advantage of the benefits of new and emerging technologies to help complete these efforts quickly, safely, and cost effectively. This can include routinely inspecting and repairing substations, transformers, conductors, towers, poles, pole attachments, and other equipment. The ability to quickly inspect and identify areas of damage and degradation is even more critical following an outage, storm, wildfire, or other natural disaster where a rapid response is necessary to minimize threats to life, economics, and national security.

Working on, and around, electric infrastructure is hazardous, costly, and time consuming.<sup>12</sup> The hazards that exist during routine inspections are significantly compounded when the equipment has been damaged or the surrounding terrain has been made more dangerous by natural disasters like storms and wildfires. Efforts to conduct facility inspections and maintain ROW vegetation clearances are typically some of the largest ongoing operational costs for our members. Historically, the Associations' members primarily conducted

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<sup>11</sup> 84 Fed. Reg. 15229 (April 15, 2019).

<sup>12</sup> US Dept. of Labor, Occupational Safety & Health Administration, "Safety and Health Topics: Electrical" (November 14, 2019).

inspections and damage assessments visually using personnel, either working from the ground, a bucket truck, or in a manned aircraft. Incorporating the use of unmanned aerial systems (UAS) gives our members the ability to conduct these same inspections without putting personnel in dangerous proximity to electric infrastructure. Additionally, the technology has the potential to provide our members with better information than visual inspection on a faster timeline and at a lower cost.

The Associations' members deploy UAS and other technologies for diverse purposes, which may require using specialized and differing equipment. For example, our members may deploy UAS equipped with LiDAR<sup>13</sup> to assist with vegetation management to detect issues such as encroachments and hazard trees. Our members can then leverage these data to ensure proper tree trimming and clearance levels around transmission and distribution lines to prevent reliability concerns and mitigate wildfire risks. Infrared cameras, as another example, may be used to identify equipment failure in early stages and therefore, prevent unscheduled and costly outages. These technologies continue to evolve and improve.

The Consolidated Appropriations Act, 2018 recognizes the value of unnamed and other emerging technologies in more efficiently identifying vegetation management needs; reducing the risk of wildfires; and lowering energy costs for consumers.<sup>14</sup> The Associations recommend the agency incorporate provisions in the proposed rule and associated preamble to promote agency understanding and support of these technologies.

#### **Enhance the Use of Categorical Exclusions.**

The Associations support the agency's efforts to modernize its NEPA procedures to increase the efficiency of environmental analyses and produce higher quality, science-based decisions consistent with NEPA's requirements.<sup>15</sup> More specifically, the Associations support the agency's proposed series of new and revised Categorical Exclusions (CE),<sup>16</sup> which if finalized will improve our members' ability to operate and maintain infrastructure located on NFS land. We encourage the agency to clarify how the existing and proposed CEs will be applied to the approval of an operating plan or agreement.

The Associations also recommend the agency continues to enhance the use of CEs, including establishing CEs to cover routine and emergency O&M and vegetation management activities, facility inspections, access road improvements, and erosion controls. The agency should provide direction to staff to clarify that the CE to cover vegetation management activities includes the ability of owners and operators to use selective low-volume herbicides as an effective means for vegetation control. These activities are unlikely, either individually or cumulatively, to have significant environmental impacts and should therefore fall into the agency's discretion to categorize these actions as excluded from requiring environmental analysis. Therefore, the Associations recommend the agency adopt the following CE to exclude the approval and implementation of activities in an approved operating plan or agreement:

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<sup>13</sup> LiDAR refers to "light detection and ranging," which is a surveying method that uses pulsed lasers to measure distances.

<sup>14</sup> FLPMA Section 512(i)(4).

<sup>15</sup> See: NRECA comment letter submitted August 26, 2019, on the Forest Service NEPA compliance proposed rule, 84 *Fed. Reg.* 27544 (June 13, 2019); NRECA comment letter submitted February 2, 2018, on the agency's advance notice of proposed rulemaking to revise its NEPA procedures, 83 *Fed. Reg.* 302 (January 3, 2018).

<sup>16</sup> 84 *Fed. Reg.* 27544 (June 13, 2019).

*Approval of operating plans or agreements, and activities conducted in accordance with an approved operating plan or agreement, under a special use authorization for an electric transmission and distribution facility right-of-way.*<sup>17</sup>

The Associations believe the abovementioned CE enhancements will enable the continued protection of the nation's forests and grasslands, while effectuating the purposes of the Consolidated Appropriations Act, 2018 by driving efficiency and consistency. It is important that the agency finalize and implement these CEs to prevent delays in approving proposed plans and agreements. Such delays will otherwise threaten the safe, reliable operation of electric systems and ability of owners and operators to mitigate wildfire hazards.

These efforts to modernize and streamline are critically needed as environmental reviews and associated documentation requirements under the National Environmental Policy Act (NEPA) often add significant delays, costs, and liability for the Associations' members awaiting agency decisions on new special use authorizations and renewals or amendments to existing authorizations. The agency currently has a backlog of more than 5,000 applications in need of environmental analysis and decision, on top of the approximately 3,000 new special use permit applications that are submitted annually for approval. Congress directed the agency to identify categories of actions, including those actions carried out under plans and agreements, for which neither an Environmental Impact Statement (EIS) nor Environmental Assessment (EA) under NEPA will be required.<sup>18</sup>

### **Streamline Section 106 Compliance.**

In addition to NEPA, compliance with section 106 of the National Historic Preservation Act (NHPA) often adds significant delays for the Associations' members awaiting agency approvals. The Associations are concerned that these delays, especially when layered with the time needed to develop, review, and approve plans and agreements, will lead to the agency missing the 120-day window to issue approvals. The Associations encourage the agency to evaluate ways to streamline and bring consistency to the section 106 consultation process (e.g., develop programmatic agreements, improve data sharing amongst stakeholders).

### **Strategically Leverage ROW to Limit Wildfires.**

In August 2018, the agency announced that it is rethinking its approach for land management given concerns over longer wildfire seasons and the rising size and severity of wildfires, along with the expanding risk to communities, natural resources, and public safety. The Forest Service currently implements various tools to reduce fuel loads and improve forest conditions. Yet, catastrophic wildfires and corresponding losses to life and property have continued to grow, partly because treatments have been uncoordinated and not at the right scale. In its accompanying high-level report,<sup>19</sup> the agency contemplates ways to increase collaboration, shared stewardship, and co-manage wildfire risk.

Given millions of miles of ROW span the landscape across diverse ecosystems, including wildfire-prone areas, there may be opportunities to further leverage some of these ROW and abutting areas. The spread of invasive plants such as cheatgrass, as well as the build up of other flammable native vegetation, can increase fuel loads. This can create or increase wildfire hazards that threaten electric infrastructure. Properly

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<sup>17</sup> H.R.2-Agriculture Improvement Act of 2018, Title VIII, Subtitle C, Sec. 8320(b)(7) Categorical Exclusion for Special Use Authorizations (December 20, 2018).

<sup>18</sup> FLPMA Section 512(c)(5).

<sup>19</sup> See: Forest Service "Toward Shared Stewardship Across Landscapes: An Outcome-Based Investment Strategy," FS-118 (August 2018).

maintaining vegetation in ROW can prevent the spread of invasive species, provide wildlife habitat, and act as effective fuel breaks to limit and fight wildfires. The Associations are interested in collaborating with the agency to explore ways to build upon the Consolidated Appropriations Act, 2018 (e.g., pilot projects) to further address these issues on federal land. For long-term success, these potential opportunities should seek to be well coordinated in advance of implementing any land treatments, protect infrastructure and the environment, and enhance electric system reliability. In addition, the Associations believe the agency should not hold their members strictly liable for participating in such collaborative efforts to reduce wildfire risk and improve forest health.

**Provide Additional Guidance and Directives.**

This rulemaking plays an important role in enhancing the reliability of the electric grid and reducing the threat of wildfire to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution ROW and abutting federal land. Ensuring consistent implementation with Congress' intent will be the key to its success. Therefore, the Associations encourage the agency to issue and periodically update guidance to ensure provisions are appropriately developed and implemented for utility ROW vegetation management, facility inspection, and O&M activities. Agency efforts to issue guidance are also supported by the Consolidated Appropriations Act, 2018.<sup>20</sup>

**Conclusion**

The Associations appreciate the opportunity to provide comments on ways the Forest Service can improve the efficiency of approving powerline special use authorizations and associated plans and agreements related to facility inspection, vegetation management, and O&M activities. The Associations believe the abovementioned provisions will enable the continued protection of the nation's forests and grasslands, while enhancing reliability and mitigating safety and wildfire hazards. We welcome a chance to discuss our comments further with your team and look forward to continuing to work with the agency to coordinate the implementation of this program.

If you have any questions regarding these comments, please contact Janelle Lemen at [Janelle.Lemen@nreca.coop](mailto:Janelle.Lemen@nreca.coop) or Corry Marshall at [cmarshall@publicpower.org](mailto:cmarshall@publicpower.org).

Respectfully,



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<sup>20</sup> FLPMA Section 512(b)(1).