January 11, 2021

Submitted Electronically via Forest Service's *CARA Ecosystem Management Portal* to Docket No: FS-2020-0013

Gregory C. Smith
Director, Lands and Realty Management
USDA Forest Service
1400 Independence Avenue SW
Washington, DC 20250-1124

Re: Request for Comments on the USDA Forest Service Proposed Directive on Operating Plans and Agreements for Powerline Facilities; 85 *Fed. Reg.* 79,462 (December 10, 2020)

To Mr. Smith:

The American Public Power Association and the National Rural Electric Cooperative Association are pleased to submit the enclosed comments in response to the Forest Service's proposed directive, *Operating Plans and Agreements for Powerline Facilities* (85 *Fed. Reg.* 79,462; December 10, 2020). The Associations fully support the agency's efforts to streamline the approval process for accessing transmission and distribution powerline rights-of-way, including National Forest System lands adjacent to either side of the rights-of-way. If finalized, this proposed directive will take another positive 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.

Should you have any questions regarding these comments, please contact Janelle Lemen at NRECA (Janelle.Lemen@nreca.coop) or Corry Marshall at APPA (cmarshall@publicpower.org).

Respectfully,

The American Public Power Association

The National Rural Electric Cooperative Association

Comments of the
American Public Power Association and the National Rural Electric Cooperative Association
On the U.S. Department of Agriculture Forest Service's Proposed Directive,
"Forest Service Handbook 2709.11, Chapter 80; Special Uses;
Operating Plans and Agreements for Powerline Facilities"
Docket No. FS-2020-013
85 *Fed. Reg.* 79,462 (December 10, 2020)

I. Introduction and Background.

On December 10, 2020, the U.S. Department of Agriculture (USDA), Forest Service (agency), issued a proposed directive that provides guidance for the development, review, and approval of operating plans and agreements for powerline facilities located on National Forest System (NFS) lands.[1] The proposed directive implements section 512 under Title V of the Federal Land Policy and Management Act (FLPMA), as enacted by Congress in the Consolidated Appropriations Act, 2018. It will add Chapter 80 to the Forest Service Handbook (FSH) regarding special uses. The provisions are intended to improve coordination between the agency and electric utilities to expedite review and approval of activities that will help ensure the safe, reliable delivery of electricity and reduce wildfire threats.

The American Public Power Association (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 members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. 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. Collectively, cooperatives own and maintain 2.6 million miles or 42 percent of the nation's electric distribution lines. 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 a common goal of responsibly providing safe, reliable, and affordable electric service to their local communities. APPA and NRECA's (collectively, 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 powerlines, substations, access roads, and other related facilities are located on NFS lands. Thus, the Associations' members must acquire special use authorizations to access their powerline facility rights-of-way (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

[1] 85 *Fed. Reg.* 79462 (December 10, 2020).

key part of ensuring the safe, reliable delivery of electric services and mitigating against wildfires. In addition to working diligently to keep their ROW maintained and cleared of hazards, the Associations' members are also proactively addressing increased wildfire risk through system hardening and implementing other voluntary wildfire mitigation strategies.

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 and to ensure the safe operation of infrastructure. This includes instances where requests to remove hazard trees that present a risk of damaging infrastructure, causing outages or other reliability concerns, or sparking fires can be 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 are essential for the Associations' members to address operational and vegetation management issues – including removing or pruning hazard trees – 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. The need for expedited approvals is amplified by the increase in catastrophic wildfires impacting and threating the Associations' members infrastructure, the health and safety of their local communities, and NFS lands across the nation. During the 2020 wildfire season, for example, the Associations had members from the Rockies to the entire Pacific Coast that experienced damaged systems. Some members suffered major damage and loss to critical electric systems. The risk of wildfires is expected to worsen as experts project that wildfires will continue to annually escalate in frequency and intensity for a myriad of reasons. NFS lands are often mountainous, heavily forested, and difficult to access, adding to the complexity of preventing, suppressing, and responding to wildfires. Therefore, the proposed directive is important to the Associations' members to streamline approvals and implementation procedures and to eliminate delays and inconsistencies.

II. General Support for Proposed Directive Goals.

The Associations applaud the agency's ongoing efforts to implement the requirements of the Consolidated Appropriations Act, 2018, including issuing this highly awaited proposed guidance. We support the overall objectives and goals of the proposed directive to provide a clear, consistent process for operating plans and agreements to provide for long-term, cost-effective, efficient, and timely inspection, O&M, and vegetation management of powerline facilities on NFS lands. This proposed directive plays a vital role in enhancing the reliability of the electric grid and reducing the threat and cause of wildfire by vegetation-related conditions within, electric facility ROW and adjacent NFS lands. Therefore, it is important to the Associations that the proposed directive is quickly finalized and implemented, as intended by Congress, to improve decision-making efficiency. The Associations provide the following recommendations to further enhance coordination, development, review, approval, and implementation of operating plans and agreements for powerline facilities on NFS lands.

A. Develop in Consultation with Electric Utilities.

The proposed directive appropriately instructs Forest Service personnel to collaborate with electric utilities to develop comprehensive operating plans and agreements that cover all system reliability and wildfire mitigation activities, while ensuring minimum impacts to natural resources. The Associations have a long history of working collaboratively with the Forest Service on vegetation management and O&M activities within and adjacent to powerline facility ROWs located on NFS lands. This includes advocating and fully supporting the congressional efforts to help improve the approval process for accessing powerline facilities crossing federal lands. The Associations and our members remain committed to engaging with the agency on developing and implementing these provisions, consistent with the intent of law, to enhance electric system reliability and prevent wildfires.

B. Train Agency Personnel on Electric System Requirements.

Congress 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.[2] The proposed directive appropriately states the Washington Office Director of Lands and Realty Management is responsible for providing training and training materials with input from the electric utility industry that include instruction on reliability standards established by North American Electric Reliability Corporation (NERC) and new technologies for operating, maintaining, and inspecting powerline facilities. Further, authorized officers will be responsible for ensuring to the maximum extent practicable that their employees who work with powerline facility owners and operators, including on the development, review, and approval of proposed operating plans agreements, are trained on this directive.

Training will 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 continues to be an on-going loss of institutional knowledge and expertise regarding these issues that has been driven by retirements, high staff turnover, temporary promotional details, and hiring caps or freezes. 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 forests and grasslands.

The Associations remain committed to building 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 operating plans and agreements going forward. The Associations look forward to continuing to work with the agency on developing and implementing an effective training program to meet Congress' expectations.

[2] FLPMA Section 512(i).

III. Clarify Key Definitions.

Section 80.5 of the proposed directive contains definitions of common terms used in the development, approval, and implementation of operating plans and agreements. The Associations recommend the following revisions to provide additional clarity and promote consistency.

A. Bulk-Power System.

The Associations suggest the following revisions to the proposed definition of bulk-power system to improve clarity and consistency with the NERC definition:

> Bulk-Power System. A system consisting of powerline facilities and control systems necessary for operating an interconnected electric energy transmission network or any part of it, ~~other than facilities used in the local distribution of electric energy,~~ and electric energy from generation facilities needed to maintain transmission **system** reliability. **The term does not include facilities used in the local distribution of electric energy.**

B. Conductor.

The Associations suggest the following revisions to the proposed definition of conductor to eliminate confusion between transmission and distribution lines and associated facilities (*e.g.*, poles, insulators):

> Conductor. Cable or wire**(s)** that transmits electricity ~~and is often referred to as a "transmission line."~~

C. Electric Reliability Organization.

The Associations suggest the following revisions to the proposed definition of Electric Reliability Organization to improve consistency with section 215 of the Federal Power Act, as added to the Energy Policy Act of 2005. Further, we recommend removing "on all users, owners, and operators of the nation's electric transmission system" as the referenced reliability standards only apply to powerline facilities operated at 200 kilovolts (kV) or higher, with a few exceptions as identified by NERC.

> Electric Reliability Organization. An independent, self-regulating entity created by the Energy Policy Act of 2005 that has been certified by Federal Energy Regulatory Commission (FERC) to **establish and** enforce reliability standards **for the bulk-power system, subject to FERC approval.** ~~on all users, owners, and operators of the nation's electric transmission system.~~

D. Hazard Tree.

As raised in our comments on the implementation rulemaking, the Associations remain concerned about how the definition of hazard tree will be interpreted and implemented. Specifically, requiring 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. At a minimum, the agency should add clarification within the guidance that a certified or licensed arborist under the supervision of the agency may be present whenever feasible, but the ultimate decision on whether a hazard tree or other hazardous vegetation is removed or pruned should be made by the owner or operator or qualified person designated by the owner or operator, not the agency's certified or licensed arborist. Also, the Association recommends the agency revise the proposed hazard tree definition 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 to be…

E. Minimum Vegetation Clearance Distance.

The proposed directive and associated implementing regulation include a definition for minimum vegetation clearance distance (MVCD). The Forest Service is defining MVCD as "a calculated minimum distance stated in feet or meters measured from a powerline facility conductor (wire) at maximum operating sag to vegetation on NFS lands within the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the right-of-way to remove or prune hazard trees, which the owner or operator uses to determine whether vegetation poses a system reliability hazard to the powerline facility." The Associations are concerned that the definition seems to confuse and misinterpret NERC concepts included in FAC-003-4. We recommend that the agency defer to the definitions and requirements NERC reliability standard, as applicable, to minimize confusion and interpretation. Further, the NERC standards have mandatory requirements that are finable compliance violations. Any inconsistencies between the NERC and Forest Service interpretation could bring into question which federal mandate takes precedence.

F. Powerline Facility Maintenance.

The Associations suggest the adding vandalism to the proposed definition of routine maintenance, as this is a common source of routine powerline facility maintenance needs for our members:

> Routine Maintenance. Repair or replacement of any component of a powerline facility due to ordinary wear and tear **or vandalism**, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (e.g., insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections,

correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

G. Reliability Standard.

The Associations suggest the following revisions to the proposed reliability standard definition:

> Reliability Standard. A requirement **or group of requirements approved by FERC that have been** developed **through a stakeholder process** and enforced by NERC to provide for reliable planning and operation of the bulk-power system in North America, including operation of existing bulk-power system facilities and the design of planned additions or modifications to those facilities to the extent necessary to provide for reliable operation of the bulk-power system, but not including any requirement to enlarge bulk-power facilities or to construct new transmission or generation capacity.

H. Vegetation Management.

Within the proposed definitions of emergency and routine vegetation management, as well as throughout the proposed directive, the focus seems solely on addressing individual hazard trees. While the Associations cannot underscore enough the critical importance of our members' ability to remove and prune hazard trees within and adjacent to powerline ROW, that is but one component of vegetation management necessary to improve system reliability and mitigate wildfire risk. Our members also assess and manage other vegetation conditions to prevent overgrowth, encroachment, flash-over, and fuel-loading that will cause operational issues. The Associations recommend the agency revise the proposed directive to recognize that utilities must also have the timely ability to manage these other potentially hazardous vegetation conditions. It also needs to be clear how these activities will be addressed within the operating plan and agreement procedures.

IV. Use of Operating Plans and Agreements.

A. Congress Intended Development and Submission of a Plan or Agreement to be Optional.

The proposed directive *requires* an operating plan or agreement for all new and existing powerline facilities on NFS lands (emphasis added). Section 81 states that this requirement is consistent with section 512 of FLPMA, as amended by Congress in the Consolidated Appropriations Act, 2018. However, the Associations respectfully disagree. The law states, "the Secretary concerned shall provide owners and operators of electric transmission or distribution facilities located on public lands and National Forest Service System lands, as applicable, with the *option* to develop and submit an operating plan" (emphasis added).[3] Further, section 512 states that certain owners and operators "*may* enter into an agreement with the Secretary concerned in lieu of a plan under subsection (c)" (emphasis added).[4] We ask the agency to explain and justify this new requirement, particularly given the significant costs associated with developing an operating plan or agreement, which will ultimately be passed to our members' end-of-the-line consumers.

[3] FLPMA Section 512(c)(1).
[4] FLPMA Section 512(d)(1).

B. Revise Threshold for When Operating Plans and Agreements Must Be Utilized.

Sections 81.1 and 81.2 of the proposed directive outline the criteria that must be utilized when determining whether an operating plan or agreement is appropriate for the covered powerline facilities. The proposed directive states that an operating plan must be used for powerline facilities that: 1) are subject to NERC reliability standards; *and* 2) sold more than 1 million megawatt hours of electricity for purposes other than resale during the legislatively determined three-year timeframe (emphasis added). The proposed directive goes on to state that generally, powerline facilities that carry 69 kV or more of electricity meet *both of these criteria* and *must* have an operating plan, rather than an operating agreement (emphasis added). For consistency with the Consolidated Appropriations Act, 2018, and to minimize confusion, the agency should amend the criteria for developing an operating plan as an 'or' statement, to reflect that a powerline facility can meet either one or both criteria to qualify. Further, the reference to the 69 kV threshold is inaccurate. Generally, the NERC reliability standards apply to powerline facilities operated at 200 kV or higher, with a few limited exceptions. Therefore, the Associations recommend the agency revise the references to 69 kV in sections 81.1 and 81.2, by replacing it with 200 kV.

V. Clarify Requirements for Submitting Proposed Operating Plans and Agreements

A. Existing Operating Plans.

The proposed directive states that "If the authorized officer determines that the existing operating plan is inconsistent with this directive…the owner or operator may continue to operate its authorized powerline facility pending approval of a modified operating plan." It is unclear whether the utility will be permitted to or prohibited from conducting necessary routine and non-routine or emergency vegetation management, facility inspection, and O&M activities. The Associations recommend the agency add a statement at sections 83.1.b. and 83.2 to clarify that the owner or operator is authorized to continue all activities, including routine and emergency vegetation management, facility inspection, O&M, and access road/trail construction and maintenance, within and adjacent to the powerline facility ROW while a modified operating plan is pending submission, review, and approval. This revision will help protect the reliability of electric systems and prevent wildfires.

B. Expiration of an Approved Operating Plan or Agreement.

The proposed directive requires the owner or operator to prepare a new proposed operating plan or agreement upon expiration of a powerline facility permit or easement. The Associations request the proposed directive be modified to clarify that a new operating plan or agreement is not required, if it remains consistent with the current regulations and guidance at the time of expiration. In this scenario, the agency should allow the existing operating plan or agreement to be administratively continued with reauthorization of the special use permit for the powerline facility.

VI. Revise Minimum Content Requirements of Operating Plans and Agreements

A. Distinguish Requirements for Certain Owners and Operators.

Within the proposed directive, only the two following criteria set operating plans and agreements apart. Operating agreements 1) may be utilized by "small" utilities (proposed directive section 81.2) and 2) have a *strict liability* cap (proposed directive section 89.3, $500,000 per occurrence cap until March 23, 2028). Notwithstanding these two provisions, the agency is treating operating plans and agreements indistinguishably. Throughout the proposed directive, operating plans and agreements are subject to the same requirements regarding scope, development, minimum content, submission, review, and modification.

However, it is the Associations understanding that Congress intended to recognize – in the development and passing of the Consolidated Appropriations Act, 2018 – that certain, smaller owners and operators have limited financial and staff resources, as compared to other larger owners and operators of electric powerline facilities. Therefore, section 1772(d) of the legislation, *Certain Owners and Operators*, created a consideration for these limited resources of small utilities by providing an option to enter into an operating agreement with the agency. In that section, Congress defined small utilities (subsection (d)(1)) and mandated that (subsection (d)(2)):

> "The Secretary concerned shall ensure that the minimum requirements for an agreement under paragraph (1) –
>
> (A) reflect the relative financial resource of the applicable owner or operator compared to other owners or operators of an electric transmission or distribution facility;
> (B) include schedules as described in subsection (c)(4)(B); and
> (C) comply with applicable law."

Many of the Associations' members with powerline facilities on NFS lands will qualify for the use of operating agreements. The Associations request that the agency revise the proposed directive to consider the relative financial resources of smaller utilities and distinguish the development of operating agreements in a manner that provides a less time-consuming and financially costly process. The sample operating plan provided in Exhibit 84.01 is helpful for those developing a plan. A sample specific to operating agreements would also be useful, and we suggest that agency add one to the proposed directive. In addition, we ask that the agency recognize that the engagement and communication between the utility and the agency will be unique to each operating plan or agreement based on the needs of the local electric company, community, and NFS unit. Thus, a degree of flexibility will be required. Critically, the agency should ensure that there is no delay in the approval timeline as a result of the inability to adhere to the examples provided in the proposed directive or the associated sample operating plan or agreement.

B. Inventory of Access Roads and Trails.

Section 84.14 requires operating plans and agreements to include an inventory of access road and trails and NFS roads and trails that maybe used in conducting activities under the operating plan or agreement, including any restrictions on use, requirements of a road use permit, and construction, reconstruction, and maintenance requirements. It is the Associations understanding that this type of access road and trail

inventory may already be included in some or all special use authorization permits thereby, making this a duplicative requirement. Or, could require an owner or operator to amend its special use permit to include this inventory. Regardless, we are concerned that this is a time-consuming and costly administrative burden that is inconsistent with the goals of expediting approvals to promote system reliability and mitigate wildfires. The Associations recommend the agency remove this a minimum content requirement for proposed operating plans and agreements.

VII. Revisit Requirements, Standards and Other Considerations for Developing, Reviewing, and Approving Proposed Operating Plans and Agreements

A. Cost Recovery.

The proposed directive requires utilities to enter a category 5 master or category 6 major cost recovery agreement with the agency for the review and approval of a proposed operating plan or agreement. This means the agency expects the time and cost to complete the scope of work and any required environmental analyses to have major impacts. There is no projected cap on the estimated work hours and associated costs.

Over ninety percent of public power utilities meet the Small Business Regulatorily Enforcement Fairness Act (SBREFA) definition of small entities or small governmental jurisdiction. In practical terms this means, APPA's members serve communities with less than 50,000 electric meters. The median number of meters serviced is 1,977. Public power utilities are not-for-profit, community-owned, and locally controlled entities that typically have small staffs and limited resources to implement many of the significant federal environmental rules. As such, they are classified as "small business entities," as defined by SBREFA regulations.

Electric cooperatives also are not-for-profit, consumer-owned private entities incorporated in states in which they reside. Sixty-three rural electric generation and transmission cooperatives (G&Ts) generate and transmit power to 668 of the 834 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. By design, the G&Ts have very high debt to equity ratios and no equity shareholders aside from the electric consumers they serve. Thus, under the electric cooperative business model, consumers pay all generation and operating costs. The distribution cooperatives not served by a G&T receive power directly from other generation sources within the electric utility sector. All but three of America's electric cooperatives are "small business entities" as defined by SBREFA regulations.

In addition, rural electric cooperatives serve parts of the country that are often primarily residential and sparsely populated. Those characteristics make it comparatively more expensive per electric consumer and provide less revenue per consumer for rural electric cooperative electricity providers as compared to those in other utility sectors, which usually serve more compact, industrialized, and densely populated areas. Additionally, many consumers in rural communities are less affluent than those in other parts of the country. The median household income for electric cooperative consumers is 11 percent below the national average. That figure is unsurprising, given that electric cooperatives serve 92 percent of counties in persistent poverty (364 of 395) in the United States.

These characteristics of the Associations' members emphasize the importance of including regulatory options that will minimize the potential significant economic impacts on our members, whose implementation costs

are ultimately born by the end-of-the-line consumer. The Associations recommend the agency provide an alternative, lower fee category or alternative, lower estimated costs for affected small business entities. This should be applicable for those owners or operators that qualify for an operating agreement.

B. Environmental Analysis.

The proposed directive states that the requisite environmental analyses and consultations must be completed *before* the authorized officer will review and approve a proposed operating plan or agreement (emphasis added). Further, the authorized officer is directed to consider whether it would be feasible and appropriate to perform a programmatic environmental analysis to expedite review and approval of proposed operating plans and agreements. It is the Associations understanding that most Forest Service regions and units do not currently have programmatic environmental processes or agreements in place with applicable federal agencies such as the U.S. Fish and Wildlife Service and Advisory Council on Historic Preservation. We encourage the agency to continue evaluating ways to streamline and bring consistency to the Endangered Species Act, National Environmental Policy Act, and National Historic Preservation Act reviews that are required as part of the operating plan and agreement approval process. We recognize this process can take years to negotiate and complete. In addition, it is important to recognize that a one-size-fits-all approach may not be appropriate because each utility and their service territory are unique.

In the meantime, the Associations remain concerned that any delays in the environmental review process will threaten the safe, reliable operation of electric systems and ability of owners and operators to mitigate wildfire hazards. The Associations do not believe, however, that Congress intended the agency to mandate that *all* environmental analyses, including surveys, be completed *prior* to an owner or operator even being able to submit a proposed operating plan or agreement to the agency for review and approval (emphasis added). This upfront requirement will add significant costs to our members, as well as be extremely time consuming for both the utilities and agency staff. The Associations recommend the agency revise the proposed directive to allow for regulatory flexibility or other alternative compliance arrangements that are less cumbersome and costly, particularly for small utilities. The agency should consider, for example, an option for owners or operators to complete environmental work after the proposed plan is submitted, or on an individual project basis. Further, it seems that the details of the activities proposed to be covered in an operating plan or agreement would first be necessary in order to conduct the requisite environmental analyses.

C. Additional Reliability and Safety Standards.

The Associations appreciate that the agency included references to additional reliability and safety standards in proposed directive section 85.4, such as the NERC Reliability Standard FAC-003-4, National Electric Safety Code and the Institute of Electrical and Electronic Engineers Standards, and American National Standards Institute A300. We recommend reiterating that these standards may or may not be mandatory depending on the individual electric system. In addition, the agency should recognize that utilities may have internal vegetation management strategies to maintain reliability and safety that they may incorporate into an operating plan or agreement. Therefore, the agency should ensure owners and operators can voluntarily incorporate these various requirements and practices into their operating plans and agreements, as applicable.

D. Integrated Vegetation Management.

The proposed directive states that the authorized officer must "ensure that the proposed operating plan or agreement provides for integrated vegetation management (IVM) that specifically addresses efforts to increase or sustain pollinator habitats" (section 85.6).

Our members typically perform a variety of techniques to effectively manage vegetation within and adjacent to powerline facility ROW to meet reliability standards, mitigate risks of vegetation-related outages and other operational issues, and reduce wildfire risk. This may include traditional, IVM or similar vegetation management practices. The proposed directive appropriately recognizes that these methods can include a combination of chemical, biological, cultural, mechanical, and manual treatments. We ask that the agency further recognize that herbicides are a widely accepted, effective vegetation management strategy to treat and control vegetation incompatible with the safe and reliable operation of electric infrastructure. Having the flexibility to use approved, registered herbicides as a treatment option in the vegetation management "toolbox" allows the Associations' members the ability to better eradicate problematic vegetation including invasive species, reduce fuel loads, and promote more compatible plant communities. Generally, selective herbicides are applied in a manner that targets undesired vegetation, while minimizing impacts to desired plants, by certified applicators on foot using low-volume backpack sprayers. Additionally, scientific studies demonstrate how the use of herbicides to control large, maturing wordy plant species typically promotes pollinator habitat such as broad-leaf, flowering forbs and grasses.[5] For these reasons, it is important to the Associations that the proposed directive does not impose limitations on the utility's vegetation management "toolbox" and instead, provides utilities with the flexibility to implement a variety of strategies, including but not limited to traditional vegetation management practices and herbicide application.

Also, 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. For example, some of our members may choose to voluntarily participate in the National Monarch Butterfly Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement (Monarch CCAA/CCA).[6] 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 utilities 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

[5] See, e.g., Bramble, W. & W. Byrnes. 1983. Thirty years of research on development of plant cover on an electric transmission right-of-way; Moisset, B., and S. Buchmann. 2011. Bee basics: An introduction to our native bees. U.S. Department of Agriculture Forest Service, FS-960, Washington, D.C.; Wagner, D.L., J.S. Ascher, and N.K. Bricker. 2014. A Transmission Right-of-Way as Habitat for Wild Bees (Hymenoptera: Apoidea: Anthophila) in Connecticut. Annals of the Entomological Society of America 107: 1110-1120 (underscoring the importance of transmission line corridors as managed early successional habitat for wild bees, including rare species, in largely forested landscapes); Wojcik, V.A., and S. Buchman. 2012. Pollinator conservation and management on electric transmission and roadside rights-of-way: A review. Journal of Pollination Ecology 7: 16-26; EPRI. 2004. Ecological and wildlife risk assessment of chemical use in vegetation management on electric utility rights-of-way. Palo Alto, CA: 1009445 (providing a summary of the behavior of each chemical in the environment as it relates to environmental and wildlife risk); EPRI. 2013. Use of Transmission Line Easements for the Benefit of Native Bees. Palo Alto, CA: 3002001125 (concluding that transmission line easements can provide quality habitat for native pollinators, particularly when these areas are managed in a way that promotes the growth of native shrubs and flowering perennials).

[6] *84 Fed. Reg.* 15229 (April 15, 2019).

similar initiatives. In addition, Congress directed the agency to encourage and assist willing owners and operators of powerline 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 (emphasis added).[7] We recognize the agency's efforts to support pollinator initiatives; however, this section appears prescriptive. Therefore, the Associations recommend that the agency revise the proposed directive to clarify and emphasize its support for *voluntary* IVM and pollinator or other similar initiatives, as intended by Congress.

E. Use of Unmanned and Other Emerging Technologies.

The Associations appreciate the agency's incorporation and support for the use of unmanned aerial systems and other emerging technologies within operating plans and agreements. Our members are increasingly taking advantage of the benefits of new and emerging technologies to help quickly, safely, and cost effectively ensure system reliability and resilience, as well as mitigate safety and wildfire hazards. This can include routinely inspecting and repairing substations, transformers, conductors, towers, poles, pole attachments, and other equipment. Incorporating the use of these technologies gives our members the ability to conduct inspections without putting personnel in dangerous proximity to electric infrastructure. 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. 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 recommend that the consideration of best management practices for powerline facility safety, including the use of these new technologies, be performed in coordination with the utility.

VIII. Clarify Procedures and Timelines for Developing, Reviewing, and Approving Proposed Operating Plans and Agreements

Section 86 of the proposed directive outlines a process and timeline for the development, review, and approval of proposed operating plans and agreements, which is also iterated in exhibit 86.01.

A. Development of Proposed Operating Plans and Agreements.

Throughout the directive, the agency adopts the 120-day timeframe mandated by Congress for the prompt review and approval of proposed operating plans and agreements. The proposed process states that "the authorized officer has 30-days to submit comments on the proposed operating plan or agreement to the owner or operator" (section 86.3.b). In our interpretation of Exhibit 86.01, it appears that this 30--day timeframe runs concurrently with the 120-days allotted for the agency's review and approval of the proposed operating plan or agreement, since that is when the authorized officer will "review the proposed operating plan or agreement for sufficiency" and "report any missing information to the owner or operator." However, the necessary and critical steps of providing a timeframe for the owner or operator to respond to comments, as well as a timeframe for the agency to incorporate said responses, is missing from the process. The Associations recommend that the agency confirm that the 30--day period for the authorized officer's submission of agency comments on a proposed operating plan or agreement, and the utility's subsequent

[7] FLPMA Section 512(i)(3).

response and/or resubmission of an operating plan or agreement, is within the required 120--day timeframe, consistent with the objectives of expediting and streamlining the approval process.

In addition to the 120-days allotted for the review and approval of proposed operating plans and agreements, the agency is proposing another 420-days for planning and analyses. This changes the schedule for the development, review, and approval process to 540-days. The Associations respectfully suggest that 540 days is not efficient or timely, as intended by Congress, and is simply too long of a process. We suggest the agency explain and clarify how the 540--day timeframe is consistent with the 120--day goal of the law and associated implementing regulation. The threat of wildfires continues to increase exponentially. Our members cannot wait almost two years for operating plans and agreements to be developed and approved in order to have the ability to address vegetation and operational issues in a timely manner.

As provided for in the proposed directive, the limits on strict liability are tied to the submission and approval of operating plans and agreements. Timely access to powerline facility ROW is necessary to mitigate wildfire risk and the limits on strict liability, as provided by the Consolidated Appropriations Act, 2018, are critical to the electric system reliability, the safety of the local communities served, and the financial stability of our members. For these reasons, the Associations requests that the Forest Service revise its proposed directive to provide a shorter process for the development, review, and approval of proposed operating plans and agreements. Consistent with the request above, the agency should also provide a separate, less cumbersome and more efficient process for smaller utilities in the development and approval of operating agreements.

B. Modification of Approved Operating plans and Agreements by the Authorized Officer.

The proposed procedure for when the authorized officer provides written notice to the owner or operator that a changed condition warrants a modification to an approved operating plan or agreement, the owner or operator will have 30-days to submit a modified plan or agreement to address the changed conditions. Then, the authorized officer will have 120-days or more, depending, to respond to the proposed modification.

Given much of the effort to address the changed condition(s) falls on the owner or operator, the Associations recommend that the utility have 120-days to submit the proposed modification. Or, at minimum, allow for flexibility on the owner or operator's response time as some situations may require more than 30-days to respond with a proposed modification. Further, the Associations recommend that the authorized officer respond to the proposed modification within 30-days from the date of receipt from the owner or operator. Since these are modifications to an already approved operating plan or agreement, we see the standard 120-days for review and approval for a new plan or agreement as not necessary. A more expedited review and approval timeframe should be obtainable by agency staff.

Further, throughout the proposed directive the term "changed condition" is used as a trigger to modify an approved operating plan, agreement, or schedule. This term is undefined and is used broadly to capture "any" changed condition. The Associations recommend that the agency define this term to provide transparency and reduce surprises on owners and operators.

IX. Revise Classes of Activities Under Operating Plans and Agreements

A. Class I Activities.

The proposed directive describes Class I activities as routine activities that are deemed by the authorized officer to involve minimal or no ground disturbance or impacts on vegetation inside and outside the linear ROW for the powerline facilities and that do not require additional environmental analysis or consultation for threatened and endangered species and cultural resource impacts. Examples include but are not limited to inspections, ground and aerial patrols, and mapping. The proposed directive states that Class I activities must have prior notice or acknowledge from the authorized officer by via a telephone call or email.

The agency appropriately recognized that Class I activities involve minimal or no ground disturbance or impacts to NFS lands. Therefore, the Associations believe there is no commensurate benefit to the agency or the public to require any additional notification or acknowledgment prior to an owner or operator undertaking Class I activities. This requirement, as proposed, is an unnecessary step that could result in delays to a utility's ability to proceed with these *already approved* activities as specified in the approved operating plan or agreement. Therefore, the Associations recommend the agency remove the need to provide prior notice or acknowledge. If the Forest Service chooses not to do so, the agency should at a minimum clarify what constitutes "acknowledgment" with particular attention to what response is required from the authorized officer. An exception should also be provided that allows the owner or operator to proceed with the Class I activities if the authorized officer fails to respond by telephone or email to the prior notice in accordance with the specified timeframe in the approved operating plan or agreement.

B. Class II Activities.

The proposed directive describes Class II activities as routine activities that are deemed by the authorized officer to involve minimal ground disturbance and impacts on vegetation inside and outside the linear ROW for the powerline facilities and that do not require additional environmental analysis or consultation for threatened and endangered species and cultural resource impacts. Examples include but are not limited to routine vegetation management, routine powerline facility maintenance, routine maintenance of access roads and trails and NFS roads and NFS trails, and routine repair or replacement of fiber optic cable. The proposed directive states that Class II activities must have prior notice and prior written approval, as described in section 87.2.2 and 87.2.3.

Similar to Class I activities, the agency has appropriately recognized that Class II activities involve minimal or no ground disturbance or impacts to NFS lands. The Associations are concerned – like our comments above regarding Class I activities – that the proposed notice and acknowledgement requirements for Class II activities could result in delays that impact electric system reliability and increase wildfire risk. Given Class II activities are included in the annual schedule of work provided to the authorized officer and are in accordance with an approved operating plan or agreement, the Associations recommend the agency remove the need to provide prior notice or acknowledge. If the agency retains these requirements, the Forest Service should at a minimum add acknowledgement by telephone as an option. In addition, the agency should clarify that the owner or operator can proceed with Class II activities if the authorized officer has failed to respond by telephone or email to the prior notice in accordance with the specified timeframe in the approved operating plan or agreement.

C. Class IV Activities.

The proposed directive describes Class IV activities as emergency vegetation management and emergency powerline facility maintenance. Section 87.4.1 goes on to state that Class IV activities do not require additional environmental analysis and consultation for threatened and endangered species and cultural resource impacts. Examples include but are not limited to unplanned pruning or removal of hazard trees to prevent imminent contact with a powerline facility and immediate repair or replacement of powerline facility components that is necessary to restore electrical service. The agency should reaffirm that Class IV are exempt from any additional environmental analysis and consultation for listed species and cultural resource impacts. The sample operating plan/agreement in Exhibit 84.01 appears to contradict this exemption, as it seemingly requires compliance by the owner or operator with all environmental laws and regulations that apply during emergency vegetation management in the permitted area.

X. Clarify the Administration of Activities Under Approved Operating Plans and Agreements

A. Annual Reporting of Routine Vegetation Management Activities.

The proposed directive instructs the authorized officers to annually document requests for approval of routine vegetation management and responses or lack of responses to those requests under approved operating plans and agreements for powerline facilities on NFS lands. This documentation must be submitted to the Washington Office Director of Lands and Realty Management by March 1 of the following calendar year. Then the Washington Office will post the documentation on its public-facing website by April 1 annually. The Associations are concerned that the authorized officer may require the utility to gather this documentation on its behalf, as some of our members have experienced in similar situations. If the onus is put on the utility, particularly small utilities, this could result in significant time and financial commitments. The Associations ask that the agency clarify that the documentation collection and reporting is solely the responsibility of the authorized officer.

XI. Conclusion.

The Associations appreciate the opportunity to provide comments on the guidance for developing comprehensive operating plans and agreements. The expedited review and approval of activities related to facility inspection, vegetation management, and O&M will help ensure the safe, reliable delivery of electricity and reduce the threat of wildfire. We look forward to continuing collaboration that ensure consistent implementation in a manner that meets Congressional intent. The Associations encourage the agency to promptly consider our recommendations and issue the final directive.