



# Public Utility District No. 1 of Klickitat County

80 Years of Service \* 1938-2018

## GENERAL MANAGER'S REPORT TO THE BOARD For the August 10, 2021 Meeting

### AGENDA ITEMS:

- A. Resolution 1808: To Rescind Credit Card Authority for Mark Pritchard – with Mark Pritchard's retirement, we need to rescind his business credit card authority.

### NON-AGENDA ITEMS:

1. BPA BP-22 Rate Record Of Decision - The BP-22 rate case ended with an average 2.5% power rate reduction and 6% transmission rate increase. The actual impacts on each utility will vary. Mike will address what we are seeing so far for impacts on the District with the Bonneville Power Administration (BPA) rate modeling. Attached is the BP Administrator's Preface to the Record of Decision for a summary.
2. Public Power Council (PPC) - I wanted to engage in a discussion with you regarding the positions PPC and probably more fairly, the region and public power, are taking with respect to BPA's borrowing authority, debt and rates. I am looking for your perspectives. If you can read these two documents, that would be helpful.

The first is a letter to Congresswoman Cantwell regarding the proposed increase in BPA's borrowing authority from an organization called the Resource Accountability Project. The letter itself is attached and PPC positions are inserted in **bold**. The second is a press release from PPC regarding the recent BPA BP-22 rate announcement.

3. Public Power Council Long Range Planning - Executive Director Scott Simms is leading a review of PPC's focus areas. I am a part of the Long Range Planning Committee and for the most part, I am in agreement with the priority areas and will be discussing these with you at the meeting.
4. Klickitat PUD Strategic Planning Review - 16 managers, supervisors, superintendents and support staff participated in our review last week. The goal was to review and discuss the plan, improve staff's understanding of the board's direction and why we are doing what we are doing. This was to set the stage for building departmental goals that align

with the strategic plan.

I am very pleased with the engagement and am looking forward to our 2022 budgeting and goal setting process. The red-lined plan we developed is attached for our review.

5. Lyle Fire - Department of Natural Resources (DNR) will be here August 11<sup>th</sup> to look at the failed underground cable, the conduit that was removed and other materials from the site. They will also review our site photos as part of their investigation. Dan Short will be here as well.
6. DNR Rights-of-Way Master Agreement - Attached is the draft of the model agreement being negotiated with DNR in the DNR / Electric Utilities Task Force. The key goal here was to create an agreement that allows utilities to complete our vegetation management in a more efficient manner on DNR lands. The major change agreed to by DNR is that utilities can remove trees without prior approval for the majority of the rights-of-ways. We are to inform them of our activities, but when we find hazard trees, we remove them as we would in normal vegetation management processes, and we provide information on removed trees after the fact. This allows us to ensure that we are not leaving known hazard trees to a bureaucratic process. There are still areas that are termed “sensitive” due to permit requirements that DNR must adhere to. DNR will provide utilities GIS land models that identify sensitive areas where these issues exist. Utilities can use these maps to determine where we need to consult with DNR prior to sending our crews, and we have a much smaller subset to deal with.

The key issue remaining is that we may need to mitigate for tree removals when it could affect permit requirements. The utility perspective is that a hazard tree will likely fail, so why are utilities taking on liabilities? From DNR’s perspective, if trees die and fall there is not a permit violation, while actively removing a tree can be. This draft is being routed to WPUDA for input and ideas on how to address this issue.

The group is transitioning to the ongoing Advisory Committee created by Senator Brad Hawkin’s bill that passed last session to ensure ongoing interactions with DNR and electric utilities.

7. Pumped Storage Water Supply and Infrastructure Agreements - Drafts of these agreements are getting much closer to completion. Brian and I will run this next draft by Commissioner Knowles for his input.

## **ADMINISTRATOR'S PREFACE**

Maintaining agility is critical to enable the Bonneville Power Administration (BPA) to be competitive in the evolving marketplace and is central to our mission, to our strategy, and to the Northwest's clean energy future. Today I am adopting rates based on a settlement agreement that supports BPA's competitiveness and meets its statutory obligations, while acknowledging the need for sustainable capital funding and debt-management approaches.

This settlement would not have been possible without the collaborative approach of rate case parties who presented proposals and worked with BPA staff to develop widely accepted settlement terms on controversial issues. Most significantly, the settlement agreement will provide revenue financing to strengthen BPA's financial health while limiting the amount to \$40 million per year for power rates and \$40 million per year for transmission rates.

The effect of the settlement on power rates is remarkable in that it is one of the only times in BPA's history when the average power rate will decrease compared to current levels. The average power rate decrease is 2.5 percent. Notably, this means our annual 10-year rate trajectory is less than 2 percent, which is in line with historical inflation rates. This demonstrates the effectiveness of our cost discipline and continued efforts to bend the cost curve.

For transmission rates, the settlement results in a weighted average transmission rate increase of 6.1 percent relative to current rates, which is roughly half the weighted average increase cited in the BP-22 Initial Proposal.

Revenue financing is a tool BPA included in the BP-22 Initial Proposal as a way to fund capital work and reduce outstanding debt. The settlement reduces the amount of revenue financing, relative to the Initial Proposal, in recognition of the near-term financial impacts of the pandemic on communities served by BPA's utility customers. The settlement also commits us to holding a public process on BPA's long-term financial health, including access-to-capital issues, sustainable capital funding approaches and debt management.

Another important topic in this rate case – one that also impacts BPA's competitiveness – is the Western Energy Imbalance Market (Western EIM). The final rate proposal includes rate allocations and rate schedule provisions that position BPA to be able to participate in the Western EIM during the BP-22 rate period. These rate proposals are an essential step toward preparing BPA and its customers for potential Western EIM participation. I will make a final decision about joining the Western EIM later this summer after we complete our fifth and final phase of the Western EIM decision process. No matter my decision on the Western EIM, the strides we have made through this rate case to enable BPA's EIM participation reflect our ongoing commitment to modernizing systems and processes to maximize the value of the region's federal power and transmission assets.

I greatly appreciate the time and effort that all parties devoted to the BP-22 proceeding and settlement discussions. I also want to thank our Federal partners, Energy Northwest, and other regional partners for their continued support of BPA's cost-management goals, as

well as the BPA workforce, for their collaborative spirit, stewardship, and commitment to our agency's mission.

I look forward to working together with our customers and strategic partners to help strengthen the region's economic prosperity and environmental sustainability through this next rate period and beyond.

# NWRAP northwest resource accountability project

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Hon. Senator Maria Cantwell  
915 Second Avenue, Suite 3206  
Seattle, WA 98174

Northwest Resource Accountability Project  
1001 SE Water Ave #450, Portland, OR 97214

July 30th, 2021

Dear Senator Cantwell:

An amendment you proposed earlier this month to increase the borrowing authority of the Bonneville Power Administration by \$10 billion dollars would do a grave disservice to rate payers in the Pacific Northwest, and ultimately tax payers in the U.S.

NWRAP, a group of concerned citizens with decades of experience in law, science and natural resource management, believes you should reconsider this amendment.

All facts and statistics cited are culled from BPA documents, unless otherwise noted.

The BPA is \$15 billion in debt. Ratepayers cover the cost of this deficit. Requisite interest costs already account for one-third of BPA's annual expenditures.

- ***Debt is just a financing mechanism that is neither good or bad in its own right. The other side is the value of assets. In BPA's case, the FCRPS provides reliable, flexible, carbon free power at incredibly low costs compared to available alternatives. The FCRPS is the core of the Northwest grid and what allows our region to have the lowest carbon emissions in the nation.***
- ***BPA rates are set each year such that revenues exceed expenses (both O&M and debt repayment) on a planning basis.***

Without effective leadership, the BPA's financial mismanagement will certainly continue. It has proven time and again to be tone deaf to both long and short-term shifts in electricity market trends, as well as undaunted by its penchant for serious financial blunders.

BPA played a central role in the WPPS bond default debacle of the late 1970's and early 1980's, saddling ratepayers with its \$2.25 billion share of the costs of the default.

- ***Obviously WPSS was a disaster but the default was nearly 40 years ago at this point. Since that time BPA has made 37 consecutive annual payments to the U.S. Treasury on time and full. The 2020 payment was for \$736 million, bringing BPA's cumulative repayment to over \$31 billion.***

During the Enron-manufactured power crisis of 2000, the BPA didn't have enough power to supply all of its customers. It made some ill-advised buy-backs of large industrial contracts, including a \$225 million dollar loan to a criminal enterprise that had leveraged the purchase of the former Alcoa Aluminum plant in Longview. The plant never re-opened, and the loan was never repaid.

- ***This was also a financial disaster obviously, but BPA and customers learned from it. BPA now strictly limits the long-term sale of power to the firm capability (i.e. critical drought conditions) of the hydro system. Also BPA did not miss a Treasury payment despite the financial strain of the crisis.***

The BPA has been unable to adequately respond to the effects of California's renewable energy policy. Due in large part to California's build-out of renewables, mid-day prices for electricity in California electricity markets, where the BPA once sold power for \$60 a megawatt hour (and sometimes much more) now average \$12-18 a megawatt hour, according to the California Independent System Operator. The BPA's preference customers are currently paying per megawatt hour.

- ***Prices are variable of course, but averages have been much, much higher than this over the past year. CA prices have averaged \$35-\$39 over the last year and current summer prices in the Northwest and CA have frequently been in the \$100s per MWh.***
- ***Moreover, this statement leaves a false impression that BPA could set the price for surplus sales into California, when in fact those prices are market-determined.***

According to a series of 2019 articles in E & E News, some of these customers have indicated they are considering taking some portion of their demand off BPA's system when their contracts expire, which would leave fewer customers to cover rising costs.

- ***These articles were littered with inaccuracies and false statements. Demand for affordable, flexible, carbon free power is only increasing. Even if some public power customers diversify post-2028 there is no reason to think that BPA will have difficulty fully subscribing the system.***

Former BPA Administrator Elliot Mainzer termed this market shift "a bloodbath" and noted with alarm that his agency depleted more than \$900 million of cash reserves from 2009-2018.

- ***BPA will lose cash when market prices are lower than expected and gain cash when they are higher. While BPA's cash reserves did decline during this period, they have increased since and are well within the parameters established by BPA's financial policies. Indeed, cash reserves were robust enough at the end of FY 2020 to allow for repayment of \$79 million dollars of additional debt.***

Signals that BPA's finances, as well as its market position, are eroding should not be ignored. Bond rating agencies, notably Fitch's and Moody's, whose assessments affect the BPA's ability to acquire private sector capital, have expressed concerns over the BPA's debt.

- ***In late spring, all three of these rating agencies affirmed BPA's high investment grade credit rating for an issuance of over \$700 million in bonds to the market. BPA's credit rating is substantially higher than regional investor-owned utilities.***

According to BPA's own reports, its debt to asset ratio on its power business line is 98%; the transmission business line ratio is 79%. The utility industry average is 55%.

- ***These numbers are out of date. As of the end of FY 2020, Power's leverage ratio was 87% and Transmission's was 76%. BPA has been and continues to be on a long-term deleveraging path. BPA has a specific Leverage Policy that ensures that leverage does not increase in any rate period as the agency moves gradually down towards the industry average.***

As the Pacific Northwest Power and Conservation Council has noted, there are signs that the BPA's traditional business plan will need to be revamped to meet the realities of 21st century energy markets. NPCC's models currently indicate that selling "surplus" power, historically profitable for the BPA, will not reliably remain so.

Cheaper renewables, and a glut of generating assets translate to lower prices for electricity, which the BPA, in part because of its debt burden, cannot match.

- ***These NWPCC results being referenced are draft and controversial. More importantly this statement misinterprets the findings. Nothing in the NWPCC work supports the idea that the FCRPS is not a valuable and central component of regional power supply going forward, even if wholesale market dynamics change.***

NWRAP is not opposed to federal help in financing the BPA's operations. However, this should be done with an eye toward the health of the region across a broad range of economic and ecological values. The future we all want—honoring tribal treaties, clean energy, economic opportunity, restored salmon runs—is nothing less than an existential crisis for the BPA, which has been narrowly focused for too long on trying to protect its competitive position in the marketplace. This is a horribly misplaced mission for a federal agency, and one at which the BPA is failing.

As currently configured, the BPA has proven for 40 years it cannot operate year over year without incurring more debt. If this remains the case, the consequences for the region will be potentially devastating. Saddling future generations of ratepayers with up to \$25 billion in debt will ultimately be a drag on the regional economy, and a hindrance to the kind of infrastructure investments needed to modernize the region's energy grid. It also discourages an honest assessment of what an effective salmon recovery program might look like.

- ***Again, debt is a financing decision. It's the quality of the assets receiving the investment that is important. It is also unfair to make current rate payers fund investments that will have benefits for decades to come (inter-generational equity). The appropriate balance of financing sources is an important consideration and the legislation ensures that BPA undertakes a financial plan update this fall to work with customers and the region on finding the correct balance.***

The BPA's largest expense beyond its debt is its failed salmon recovery program, which since its inception has spent \$17 billion, produced 5 illegal recovery plans, not recovered any ESA-listed stocks of salmon, and left large sectors of the regional economy vulnerable to decisions by a federal court.

- ***There is no doubt that intervention by federal courts in operations of the FCRPS creates economic vulnerability. However, fish mitigation plans have been developed cooperatively by all relevant federal agencies, not just BPA, operating within both Democratic and Republican Administrations. While not of the species have been delisted (a rate occurrence anywhere in the country), there is strong scientific evidence that factors outside BPA's control – including ocean conditions and climate change – are significant factors.***

We urge you to reconsider this amendment. Increasing the BPA's federal borrowing limit should be tied to modernizing its structure.

At the very least, an independent audit of the BPA's financial practices ought to be a condition of any extension of the BPA's borrowing authority. At best, re-imagining the region's relationship to its largest river system would direct a much needed effort to re-invent the BPA.

- ***As noted above, three independent credit agencies have rated BPA finances above those of regional private utilities.***
- ***BPA's role and relationship does not need to be "reimagined," Its ability to have financial tools essential to meeting all of its statutory obligations – including mitigation and enhancement of anadromous fish – is needed.***

FOR IMMEDIATE RELEASE  
July 28, 2021

Contact: Scott Simms  
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Email: [ssimms@ppcpdx.org](mailto:ssimms@ppcpdx.org)

**NW public power collaborates with BPA to deliver first power rate decrease in a decade**  
*Impacts to rates of individual consumer-owned utilities in the region will vary*

PORTLAND, Ore. – Today the Bonneville Power Administration (BPA) issued its final decision on the power and transmission rates it will charge over the next two years to the Pacific Northwest’s consumer-owned utilities it serves in the states of Washington, Oregon, Idaho, Montana and a portion of Nevada. BPA’s Final Record of Decision (ROD) in the [BP-22 rate proceeding](#) largely advances the proposed approach from members of the Public Power Council – delivering an average power rate *decrease* for the first time in over a decade.

“The Northwest public power community came together with a unified voice to focus on a core set of high-impact issues with BPA on its upcoming power and transmission rates,” said Scott Simms, PPC’s Executive Director. “To come to agreement in the BPA rate case, we knew we needed a strategy that delivered meaningful savings to public power and was reasonable for BPA to run its operations.”

PPC worked closely together with Northwest public power interests starting in the Fall of 2019 to structure a proposal that would counter the federal agency’s initial concept that proposed an increase to power and transmission rates. One of the key issues was how much of the agency’s power revenues would be used over the next two years to pay toward BPA’s debt obligations. BPA had initially proposed adding \$95 million a year of its annual projected power revenues to pay off additional debt. Northwest public power customers proposed cutting that figure to a cap of \$40 million annually, which BPA ultimately accepted – a savings of \$55 million per year in the next rate period.

“This balancing effort allows BPA to retire debt while returning noticeable near-term savings back to the region at a time when many Northwest communities are really hurting,” Simms said. “We appreciate our PPC members and public power trade allies who were willing to lean in with a concerted voice, and we appreciate BPA taking notice and investing effort to turn our proposal into a reality.”

BPA’s decision to accept public power’s settlement proposal means that BPA’s base or “Tier 1” power rates are expected to decrease on October 1, 2021 by an average of 2.5 percent compared to the last rate case, known as BP-20. Although individual rate impacts vary, every public power utility received a substantial benefit through the settlement relative to BPA’s initial proposal.

Consistent with the proposed settlement, BPA’s ROD also adopts a reduced level of transmission revenue financing (down to \$40 million from \$45 million from BPA’s first proposal). Average transmission rate impacts moved from 11.6 percent in BPA’s initial proposal to an average of 6.1 percent in the final ROD. Just as with the power rate figures, individual transmission rate impacts to the region’s consumer-owned utilities will vary due to factors unique to each utility.

“There is a long list of variables that go into each utility’s rates that the end-use consumer sees on their bill – and many utilities are needing to replenish emergency reserves or are addressing deferred maintenance and other budget concessions they have taken in response to the financial strain of the pandemic,” Simms explained. “Downward pressure on BPA rates is always helpful in the broadest sense, considering the many other cost pressures of running an electric utility.”

At the same time, there are outstanding rate issues that BPA must work through with public power. Key among them is whether BPA will quantify the benefits of its potential participation in California’s Energy Imbalance Market (EIM) and include those benefits in power rates, as well as establishing expectations for the metrics, transparency, and accountability associated with EIM participation.

“Given that BPA passes all of its costs to customers, it’s a matter of equity,” Simms said. “Excluding EIM benefits from rates ensures customers will see no net rate benefits of potential EIM participation without limiting potential risk exposure of financial losses associated with BPA’s EIM participation.”

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### **About the Public Power Council**

The Public Power Council, established in 1966, is an association that represents over 100 consumer-owned electric utilities in the Pacific Northwest. PPC’s mission is to preserve and protect the benefits of the Federal Columbia River Power System for consumer-owned utilities. PPC is a key forum to identify, discuss and build consensus around energy and utility issues. For more information, please visit us on the web at [www.ppcpdx.org](http://www.ppcpdx.org).

**Klickitat PUD 2020 Strategic Plan**  
July 28<sup>th</sup> Planning Session Suggested Modifications

**LONG-TERM GOALS AND STRATEGIES**

Perspective	Long-Term Goal	Strategies
<b>Financial</b>	<b>Evaluate alternatives for the least-cost long-term water wastewater sustainable system</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Consistent and accurate treatment of all assets, definitions coding, and depreciation. Does not change (WWW)</li> <li><input type="checkbox"/> Audits of equipment <a href="#">and service</a> status in WWW systems, not just SCADA and control systems to ensure sustainable</li> <li><input type="checkbox"/> Mainstream the WWW functions throughout the organization</li> <li><input type="checkbox"/> Assess long-term water wastewater structures that align with the KPUD mission</li> </ul>
	<b>Fall 2023: Full Assessment of Post 2020 Power Supply Options</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Develop models and other tools to evaluate other power supply options</li> <li><input type="checkbox"/> <a href="#">Be informed about regulatory issues to understand requirements and how future supply options would need to comply</a></li> <li><input type="checkbox"/> <a href="#">Assess power supply needs based on customer options – type of customer demand, customer-owned resources, rate options</a></li> <li><input type="checkbox"/> Invest and partner, if required, to evaluate various technologies to know what other supply options may exist</li> </ul>
	<b>2024: AA Bond Rating</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Maintain and improve revenue collection</li> </ul>
	<b>2028: Total customer-funded debt is between \$40 - \$60 million</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Pursue/assess <i>new income producing opportunities</i> that have a near-term payback <i>in excess of</i> the perceived commercial and legislative risk and that are within field of influence/expertise.</li> <li><input type="checkbox"/> Respond to/participate in <i>new economic development opportunities</i> that have a near-term payback <i>equal to</i> the perceived commercial and legislative risk and that are within field of influence/expertise</li> <li><input type="checkbox"/> Manage to liquidity and debt service to metrics needed to achieve</li> </ul>

		<p>AA rating</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Maximize the value of existing physical assets, reinvest as required.</li> <li><input type="checkbox"/> Maximize and utilize all cost saving opportunities balanced with other utility goals and strategies</li> </ul>
<b>Customer</b>	<b>2027: Sustainable rate level is #15 or lower in the state utility electric rate list</b>	<input type="checkbox"/> Monitor financial position and modify financial strategies as required to meet this goal.
	<b>Maintain stable water/wastewater rates that recover costs</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Acquire more water and waste and water customers</li> <li><input type="checkbox"/> Add KPUD staff to manage program</li> </ul>
	<b>Ongoing: Rate design that makes the utility agnostic to customer choices.</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Collect data on customer usage that allows a rate design that allocates cost correctly (consistent with cost causation)</li> <li><input type="checkbox"/> Pursue cost of service and benchmarking studies</li> </ul>
	<b>Ongoing: Maintain reliability that customers expect while meeting other utility goals</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evaluate and utilize new technologies, systems and processes to align with customer expectations</li> <li><input type="checkbox"/> <u>Continue to evolve existing program and service to retain reliability</u></li> <li><input type="checkbox"/> <u>Evaluate the trade-offs between reliability, liability and cost</u></li> </ul>
	<b>Ongoing: KPUD develops and promotes the tools and programs that customers want and need</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evaluate expansion and development of AMI</li> <li><input type="checkbox"/> Expand services provided through Smart Hub and Messenger</li> <li><input type="checkbox"/> Assess regulatory risk and mitigate impact of mandated programs</li> <li><input type="checkbox"/> <u>Develop a unified communication strategy</u></li> <li><input type="checkbox"/> <u>Communicate and develop internal customer tools and strategies</u></li> <li><input type="checkbox"/> Expand communication platforms</li> </ul>
	<b>Ongoing: Customer issues handled with first contact</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> <u>Every KPUD staff understands their role as customer service</u></li> <li><input type="checkbox"/> <u>Develop methods to ensure resources and systems are dispatched to address customer issues</u></li> </ul>

<b>Internal Processes</b>	<p><b>Ongoing: Modernize enterprise processes and tools to support improved customer experience and services</b></p> <p><b>Ongoing: Improve business tools to provide efficiency and reduce costs</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> NISC <ul style="list-style-type: none"> <li>○ implementing work flow from customer service, meter readers to field service personnel</li> <li>○ Optimization audit</li> <li>○ Use the automated processes for financials</li> <li>○ Investigate and evaluate all the tools available and implement as appropriate</li> </ul> </li> <li><input type="checkbox"/> Move towards mobile computing platforms</li> <li><input type="checkbox"/> Benchmarking with others</li> <li><input type="checkbox"/> Find tools <a href="#">that work with NISC</a> to improve efficiencies <a href="#">and information, including those that work with NISC</a></li> <li><input type="checkbox"/> Provide the right data, coding and information for accounting to support desired reporting</li> <li><input type="checkbox"/> Develop and utilize system tools to minimize and avoid duplication of manual data entry, where possible</li> <li><input type="checkbox"/> Consider and engage IT when completing 5-year forecasts</li> </ul>
	<p><b>Ongoing: Utility processes are developed and viewed with an internal customer service mindset</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Develop workflows to build understanding of system and process connections within the utility</li> <li><input type="checkbox"/> <a href="#">Willingness of departments to know, implement and adapt the processes for</a> <del>and understand</del> how their department impacts other departments' work</li> </ul>
	<p><b>Use KPUD safety relative to industry average L&amp;I experience factor as a guide for a safety culture that is open and striving for continuous improvement</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Maintain a robust Safety <a href="#">Committee Program</a> <ul style="list-style-type: none"> <li>○ <a href="#">Well function Safety Committee with support for department focused meetings</a></li> <li>○ Focus on continuous improvement safety culture</li> <li>○ Develop measures, expectations, and reporting</li> <li>○ <a href="#">Evaluate processes and procedures that could impact</a></li> </ul> </li> </ul>

		<p>employee safety and equipment damage</p> <ul style="list-style-type: none"> <li>○ <a href="#">Communication of interpretation and procedures to all parts of the utility</a></li> </ul> <ul style="list-style-type: none"> <li><input type="checkbox"/> Use KPUD safety experiences to identify needs: resources, tools, processes, training, etc</li> <li><input type="checkbox"/> Reward those who share near misses and build the culture of sharing <ul style="list-style-type: none"> <li>○ Report near-accidents and near misses</li> </ul> </li> </ul>
	<b>Ongoing: Identify and manage enterprise risks</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Enterprise Risk Management Committee active and developing a risk management program</li> <li><input type="checkbox"/> Enterprise risk management program ensures: <ul style="list-style-type: none"> <li>○ Risks are Identified <a href="#">by department</a>, prioritized and management plans developed,</li> <li>○ Process implemented for review and reporting, and</li> <li>○ Routine evaluation of the risk management process</li> </ul> </li> </ul>
<b>Organizational Capacity</b>	<b>Business continuity is ensured through organizational cross training and back-up planning</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Organization sufficiently cross-trained to provide business continuity</li> <li><input type="checkbox"/> Plans exist <a href="#">and are tested for</a> to provide <a href="#">short-term back-up</a> for all roles Identify key roles that require back-up <ul style="list-style-type: none"> <li>○ Cross training</li> <li>○ Ensure redundancy, where needed</li> <li>○ Have a back-up strategy for all roles</li> </ul> </li> <li><input type="checkbox"/> Openness <a href="#">and ensuring access</a> to share information, <a href="#">data and procedures</a></li> </ul>
	<b>Succession plans for management and lead technical positions</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Management team and lead technical positions have succession planning as part of their roles/responsibilities</li> <li><input type="checkbox"/> Continuous management team analysis of all positions to ensure</li> </ul>

		<p>sustainability</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Develop a formal leadership program</li> </ul>
	<b>Employee Understanding of Strategic Plan</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> <del>Roll-out</del> <u>Connect the Plan to utility work with employees</u> <ul style="list-style-type: none"> <li><input type="checkbox"/> Managers own it and share with employees           <ul style="list-style-type: none"> <li><input type="checkbox"/> <u>Break it down by elements and share continually</u></li> <li><input type="checkbox"/> <u>Connect employee work to the plan</u></li> </ul> </li> <li><input type="checkbox"/> All employee meeting with Board</li> <li><input type="checkbox"/> GM All Employee and ongoing discussion</li> </ul> </li> </ul>
	<b>Maintain culture of creativity and innovation</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Creativity in the use of tools that advance efficiency and customer service focus</li> <li><input type="checkbox"/> Include KPUD's unique organizational structure and diversity of facilities as part of the employee attraction efforts</li> </ul>
	<b>Focus on internal customer service</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Can and will do culture</li> </ul>
	<b>Fanatical support of utility values</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Foster culture of service and support</li> <li><input type="checkbox"/> <u>Open and honest discussions are encouraged and supported</u></li> <li><input type="checkbox"/> GM leads on this, he should lead the leaders, teach the teachers</li> <li><input type="checkbox"/> Train on our specific facilities and training on accountability, decision making.....</li> </ul>

MODEL DANGER TREE AGREEMENT

between

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES

and

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for

REDUCING RISK OF WILDFIRE AND MANAGING IMPACTS TO STATE TRUST  
LANDS FROM UTILITY DISTRIBUTION AND TRANSMISSION LINES

DRAFT

June 2021

DRAFT

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7.1 - General

7.2 - Removal of DNR Timber

7.3 - Habitat Conservation Plan

7.4 - Mitigation

7.5 - Fire Prevention

7.6 - Compliance with Laws

8.0 - Best Management Practices

8.1 - Impacts to DNR Land Management Objectives

8.2 - Safety

8.3 - Training

8.4 - Cooperative Planning

8.5 - Communication

9.0 - General Provisions:

9.1 - Effective Date

9.2 - Headings

9.3 - Amendments

9.4 - Waiver

9.5 - References

9.6 - Severability

9.7 - No Third Party Rights of Liabilities

9.8 - All Writings Contained Herein

This memorandum of agreement (Agreement) is between \_\_\_\_\_, herein called "Utility" and the STATE of WASHINGTON "State", acting by and through the Department of Natural Resources, herein called "DNR", dated as of \_\_\_\_\_, 20\_\_.

### RECITALS

- A. The Agreement memorializes a mutual commitment between Utility and DNR (individually referred to as "Party" and collectively the "Parties") to find compatible solutions to conflicts and challenges caused by the different missions and authorities of the Parties regarding the presence of Utility transmission and distribution lines on and adjacent to lands managed by DNR.
- B. This agreement is intended to achieve the following goals:
  - a. Effectively reduce the risk of fire to avoid losses and costs to the state and forest landowners, and reduce liability of utilities;
  - b. Establish protocols for communication between utilities and ~~the landowner~~DNR along with processes and timetables for dispute resolution when mitigating hazards.
  - c. Foster consistency with current policy related to DNR State Uplands' easement and rights of way granting.

### AGREEMENT

1.0 **Scope of Agreement.** Except as otherwise provided, this Agreement applies to all Utility transmission and distribution lines that encumber or are adjacent to DNR managed lands. DNR managed lands are defined as "State lands" and "State forestlands" under RCW 79.02.010. This agreement does not address Natural Area Preserves, Natural Resource Conservation Areas, or State-owned Aquatic lands. This agreement also does not apply to lands not managed by DNR that are adjacent to a Utility easement located on DNR managed lands, and no rights are given under this agreement to remove hazard trees on non-DNR-managed lands. To the extent an easement held by Utility is inconsistent or in conflict with the Agreement, the easement controls. The Parties may negotiate a mutually agreeable resolution to reconcile a conflict between the easement and the Agreement, when appropriate. To the extent an easement is silent on, or is not otherwise inconsistent with or in conflict with the Agreement, the Agreement controls. Unless otherwise noted, any obligation or requirement in this Agreement applies to contractors, licensees and other authorized easement users.

2.0 **Term.** This agreement replaces any existing agreement and will remain in effect for thirty (30) years after its execution unless amended, replaced by another agreement, terminated by

**Commented [KM(1):** Add in consideration language – right to cut trees off ROW in exchange for conditions of this agreement and payment for merchantable timber.

mutual written consent of the Parties, or terminated by either party with (90) days of written prior notice.

### 3.0 Definitions.

- 3.1 Dead tree: A tree that is still standing, but no longer alive.
- 3.2 Disposal: The transportation of trees, processed logs, or tree residue away from the area of origin and off site.
- 3.3 Distribution line: Utility facilities less than 34.6kV line to line.
- 3.4 Emergency vegetation management: Unplanned pruning or removal of vegetation on DNR managed lands that have contacted, present an imminent danger of contacting, or present an imminent threat to breaking minimum separations of the power line facility, and to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
- 3.5 Grow in trees: Trees that grow into or whose limbs grow into the acquired easement area
- 3.6 Incidental ~~take-removal~~ tree(s): Tree(s) with a high probability of being damaged, or that have been damaged or removed during the tree removal process; and trees that are considered a severe risk to worker safety during removal of previously identified hazard trees. Reasonable care should be taken to minimize the number of incidental take-removal trees.
- 3.7 Merchantable timber: Merchantable timber includes any tree that can produce a log that is a minimum of 16 feet long with a 5 inch diameter (inside the bark) top, so long as it is at least 30 percent sound wood. Merchantable timber does not include dead trees as defined herein.
- 3.8 Non-emergency (routine) vegetation management: Planned actions as described in an operating plan or agreement periodically taken to remove vegetation, in whole or in part, on DNR managed lands to ensure normal power line facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
- 3.9 Off right-of-way tree(s): Tree(s) outside the Utility's right-of-way.
- 3.10 Habitat Conservation Plan (HCP): An ecosystem-based forest management plan that helps DNR develop and protect habitat for at-risk species while carrying

**Commented [JS2]:** Removed trees will not be taken from the site

**Commented [JS3]:** This should include hazard trees, as by definition, they are likely to fail resulting in zero value to DNR.

out forest management and other activities on the state trust lands it manages for revenue to build public schools, universities, and other state institutions. This long-term plan outlines how DNR will provide habitat for species such as the northern spotted owl, marbled murrelet, and riparian-dependent species, such as salmon and bull trout, which are listed as threatened or endangered under the federal Endangered Species Act. The HCP was adopted in connection with Incidental Take Permit No. TE812521-1 as supplemented by Permit No. 1168 (collectively "ITP").

- 3.11 Conservation Areas: ~~(See Section 6 for additional details)~~ Conservation Areas include habitat areas identified in the HCP, as well as other habitat and conservation or resource areas that DNR manages to comply with Forest Practices rules, policies, laws and other regulations. Conservation Areas contain two categories, High Priority Conservation Areas, and Moderate Priority Conservation Areas:

**High Priority Conservation Areas** will be indicated by red in the GIS ~~Data Set~~. Types of High Priority Conservation Areas ~~and restrictions on DNR management of these areas~~ are listed on Appendix I.

**Moderate Priority Conservation Areas** will be indicated by yellow in the GIS ~~Data Set~~. Types of Moderate Priority Conservation Areas ~~and restrictions on DNR management of these areas~~ are listed ~~and~~ on Appendix II.

The location of Conservation Areas described above are shown on the GIS dataset described in Section 6 of this agreement. DNR shall provide Utility updates to Appendix I and Appendix II upon any change arising out of modification to the HCP or any change in applicable law or regulation. Updates to the Appendices shall be incorporated as a part of this agreement and shall be binding upon the Parties. Upon receipt of said updates by Utility the parties agree to amend this agreement to include the updated Appendix I and Appendix II.

- 3.12 Removal: The cutting or felling of trees. The term "removal" does not include the right to take cut or felled trees from DNR managed lands. Trees felled or cut under this Agreement must be left on site unless authorized by DNR under this Agreement.
- 3.13 Special Lands: Areas of sensitive habitat or conservation areas, such as Natural Area Preserves (NAP) and Natural Resource Conservation Areas (NRCA), which will not be included within this agreement. These Special Lands will be

indicated by black in the GIS dataset. Utility may contact DNR's Natural Areas Program to negotiate a site-specific management plan for Utility Facilities on or adjacent to NAP or NRCA lands.

3.14 Transmission Line: Any Utility Facility 34.6kV or greater.

Figure 15: Transmission Voltage Classes

Power Line Classification	Voltage Range [kV]	Purpose
Ultra High Voltage (UHV)	> 765	High Voltage Transmission > 765 kV
Extra High Voltage (EHV)	345, 500, 765	
High Voltage (HV)	115, 138, 161, 230	High Voltage Transmission
Medium Voltage (MV)	34, 46, 69	Subtransmission
Low Voltage (LV)	< 34	Distribution for residential or small commercial customers, and utilities

Source: U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability

3.15 Utility Facilities: Any privately, publicly, or cooperatively owned line, structure, or system for producing, transmitting, or distributing power, electric, or light which directly or indirectly serves the public.

3.16 Utility right-of-way (ROW): A corridor of land over or through which Utility facilities are located or actively operated within. The ROW may consist of lands which the Utility owns in fee, and lands subject to Utility-owned easements, or utility rights acquired by franchise, prescription, or license, for construction and maintenance of utility facilities. This definition is intended solely for use under the Agreement, including but not limited to use in vegetation management planning, hazard tree removal, and determination of any compensation owed under the Agreement. This definition is not intended to modify or contradict the NERC definition of Utility right-of-way.

3.17 Vegetation: any tree, brush, shrub, other plant, or part thereof.

#### 4.0 Vegetation Management

4.1 Routine Vegetation Management. Utility may remove or prune any vegetation within the ROW. Grow-in trees may be mitigated or resolved by ~~directional pruning, side pruning, ground to sky pruning, or by other means~~:

- Directional pruning: Pruning of tree branches that are growing toward the power line or target, while leaving those branches growing away. Pruning will include all cut limbs to be within 1 inch of the branch collar, when more than 50% of the live branch is removed; pruning outside the trees branch bark ridge, or branch collar, and to avoid scaring or damaging the cambium layer of the remaining tree. Directional pruning should not remove more than 33% of the trees live crown.

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- Side pruning: Pruning of tree branches that are growing toward the power line or target, removing all branches on one side of the tree, within the area of the power line or target, removing branches back to the main trunk. Pruning will include all cut limbs to be within 1 inch of the branch collar, when more than 50% of the live branch is removed; pruning outside the trees branch bark ridge, or branch collar, and to avoid scaring or damaging the cambium layer of the remaining tree. Some branches may remain after achieving clearance. Side pruning should not remove more than 33% of the trees live crown.
- Ground to sky pruning: Pruning of tree branches that are growing toward the power line or target, removing all branches on the side of the tree facing the power line or target, removing branches back to the main trunk. Ground to sky pruning is often used on conifer trees, and some foliage should be left to shade the trunk to avoid sun-scald. .
- or by other means, including tree growth regulators.

~~4.1~~ Utility may trim grow-in trees at no cost, as long as sufficient crown is left, and branches are pruned back to lateral points large enough to grow successfully.

4.2 Emergency Vegetation Management. Utility may remove any off-right of way vegetation that is deemed to require emergency vegetation management, provided that Utility pays DNR the fair market value of any merchantable timber from off right-of-way trees removed, and subject to the following restrictions in Conservation Areas:

4.2.1. Tree Removal in High Priority Conservation Areas. Utility shall consult with DNR prior to removal of any off right-of-way trees in High Priority Conservation Areas. Approval to remove off right-of-way trees in High Priority Conservation Areas may require concurrence by the U.S. Fish and Wildlife Service, the Department of Archaeology and Historic Preservation, or other governmental entities. In the event there are off-right-of-way trees that, in the estimation of Utility, pose an immediate hazard to safe operation of the Utility Facilities, the Utility may remove those trees, subject to any mitigation required as per Section 7.4 of this agreement. Utility shall be responsible for any mitigation for removals and cumulative impacts of removals should Utility exceed the operational restrictions or thresholds in Appendix I, as required per Section 7.4 of this agreement.

4.2.2. Tree Removal in Moderate Priority Conservation Areas. Utility may remove any off right-of-way trees in Moderate Priority Conservation Areas deemed hazardous to operation of the Utility Facilities provided that all removals and the cumulative impacts of removals do not exceed the operational restrictions or thresholds in

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Appendix II. Utility shall be responsible for any mitigation for removals and cumulative impacts of removals should Utility exceed the operational restrictions or thresholds in Appendix II, as required per Section 5.4 of this agreement.

Commented [JS5]: How are these to be defined?

The locations of Conservation Areas are shown on the GIS dataset defined in Section 6.1 as described in Section 3.11.

All trees should be felled away from roads, trails and other improvements. If this is not possible and felled trees will interfere with use of roads, trails, or improvements, trees shall be bucked and the pieces scattered to prevent safety hazards and reduce fire load. Utility shall notify DNR if significant damage has occurred.

Commented [JS6]: Removed trees shall be left off right of way?

#### 5.0 Tree Removal Notification Process.

5.1 Tree Removal Packet. Utility shall send via email to DNR a Tree Removal Packet within ~~40-30~~ calendar days of removing any off right-of-way trees on DNR manages lands under Section 4.2 of this agreement that includes the following information:

- (1) Ortho-photo map or GIS shapefile showing the location of removed off right-of-way trees, including any incidental ~~take-removal~~ trees;
- (2) Easement documents (if applicable);
- (3) List of trees, including species, heights, DBH, and percentage of defect;
- (4) Timber appraisal or proposed value, if specified by this agreement; and
- (5) Purchase request.

Commented [JS7]: What is a purchase request?

5.2 Review Process. Within thirty (30) calendar days of receipt of the Tree Removal Packet, DNR will (1) inspect the off right-of-way tree removals to ensure the list is complete and accurate (2) verify the appraisal, (3) identify any removals that may require mitigation, and (4) inform Utility of any proposed modifications or need for mitigation. Any operational considerations or mitigation should be consistent with requirements under DNR's HCP and Habitat/Conservation Areas, laws and policies.

5.3 Payment. DNR shall invoice Utility for the appraised value of all merchantable timber determined after the review process in Section 5.2. Utility shall pay DNR within forty five (45) days of invoice creation.

5.4 Dispute Resolution. If DNR and Utility are unable to agree on the merchantability of timber or the value of trees the parties agree to submit to a qualified third-party timber appraiser. The determination of the third party appraiser shall be binding.

## 6.0 GIS Data

6.1 GIS Dataset. DNR shall prepare a GIS dataset showing DNR managed lands that contains information on Conservation Areas. This dataset will include a field for Utilities to use which will include the following:

Green/No Color, Areas where Utilities can conduct ~~Non-Emergency (routine) Vegetation Management/tree removal~~ without consultation.

Yellow: Areas of limited impact to DNR land management activities. Utility work of a minor nature (less than five trees or less than ¼ acres do not require consultation).

Red: High priority conservation, within HCP where mitigation will be required, work being done under the authority of the Utilities's Incidental Take Permit, and consultation is required. Contact information for Utility to consult with DNR shall be included.

Black: Natural Resource Conservation Areas, Natural Area Preserves and other areas of sensitivity or other preservation status. Areas in black to be OUTSIDE the scope of this agreement.

6.2 GIS Dataset Sharing. DNR shall provide or make available in its online data portal for Utility with the dataset described in Section 6.1, subject to Utility signing DNR's sensitive data sharing agreement which is substantially in the form of Appendix III. DNR shall provide Utility updates to the dataset upon any change arising out of modification to the HCP, any change in applicable law or regulation, or change in management status of the lands. At minimum DNR shall make an up to date dataset available annually on **(enter date)**, although more frequent updates or availability of frequently updated datasets from an online portal may be used upon agreement of the parties.

**Commented [JS8]:** I assume the packets in 5.1 will address any removals that fall into this category and the Yellow category.

**Commented [KM(9)]:** Placeholder name.

## 7.0 Rights and Obligations.

7.1 General. DNR has no obligation to identify or remove off right-of-way trees that could be hazardous to the operation of Utility Facilities. All off right-of-way trees and incidental take-removal trees felled without compensation to DNR are the property of DNR, unless stated otherwise in the easement or other document.

7.2 Removal of DNR Timber. Utilities shall not sell, gift or allow Disposal of such trees to any person or entity without DNR's prior written approval. Utilities-Utility choosing to sell timber removed from State Trust Lands must abide by the following:

**Export Restrictions on DNR Timber:** Any export restricted timber originating from state land shall not be exported until processed. Utility shall comply with all applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). All export restricted timber from state lands shall be painted and branded in compliance with WAC 240-15-030(2). Utility shall comply with the Export Administration Act of 1979 (50 U.S.C. App. Subsection 2406(i)) which prohibits the export of unprocessed western cedar logs harvested from state lands.

7.3 Habitat Conservation Plan. Some DNR managed lands are within an area that is subject to the State's Habitat Conservation Plan (HCP) adopted in connection with Incidental Take Permit No. TE812521-1 as supplemented by Permit No. 1168 (collectively "ITP").

In order to assist DNR's compliance with the HCP, Utility agrees to immediately notify DNR if it locates any live, dead, injured, or sick specimens of any federally listed threatened or endangered species, or their nests, on HCP lands. In all circumstances, notification must occur as soon as possible after discovery. Utility agrees to assist DNR with safeguarding the well-being of any live, injured or sick specimens of any federally listed threatened or endangered species discovered, until DNR can determine the proper disposition of such specimens.

7.4 Mitigation. When Utility's activities within HCP protected lands require mitigation, Utilities may utilize their own Incidental Take Permit (ITP), if available. In situations where this option is not available, the Utility may be responsible for all costs of mitigation, where the United State Fish and Wildlife Service identifies and requires mitigation.

The Parties agree to work cooperatively with the relevant federal agencies to identify and implement any required mitigation measures relating to the compliance with the HCP and Endangered Species Act that will meet the Parties' mutual responsibilities.

[Appendix I & II?](#)

Commented [JS10]: Can we identify what this might look like?

7.5 Fire Prevention. Utility shall take all reasonable measures to prevent and minimize the start and spread of fire on or adjacent to Utility Facilities located in the State of Washington. Measures shall include ensuring all vehicles carry a fire extinguisher of at least a 5 B/C rating and a serviceable shovel, following Utility safety operating procedures which include compliance with the substantive requirements of the current Washington Administrative Code (WAC) 332-24-301 (Industrial restrictions) and WAC 332-24-405 (Spark emitting requirements), and any other requirements as specified in this Agreement. If Utility modifies its safety operating procedures as it relates to compliance with the WAC referenced, Utility shall coordinate with DNR.

**Commented [JS11]:** Can a utility operations person comment if these are the normal WACs we follow?

7.6 Compliance with Laws. In addition to the requirements of this agreement Utility shall comply with all state and federal laws, including those related to protected habitat and species, including but not limited to the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, etc.

## 8.0 Best Management Practices

8.1 Impacts to DNR Land Management Objectives. When Utility's Removal of off right-of-way trees significantly, continually, and adversely impacts DNR timber management activities, including timber production, crop production and habitat protection or enhancement, beyond the scope of the Utility's easement, the Utility shall initiate a request to expand the easement area, or initiate other agreed upon solutions. Compensation for any additional easement area expansion shall be determined by an appraisal of market value.

8.2 Safety. DNR and Utility conduct work around power line infrastructure that requires safe operations and situational awareness for employees, contractors, other authorized users, and the public. The Parties conduct operations subject to applicable federal and state safety laws (including OSHA minimum approach distances and Title 64-49.17 RCW (Title 296 WAC), along with internal agency safety procedures for providing a safe work environment. The Parties shall ensure all applicable safety standards are met or exceeded. Additionally, the Parties agree as follows:

**Commented [JS12]:** Can a utility operations person comment if these are the normal rules we follow?

1. DNR shall review annual timber harvest plans for timber sales that are adjacent to transmission or distribution line corridors and will consult with Utility's Foresters or staff, when proposed operations or required retention tree plans are near a transmission or distribution line corridor. DNR and the Utility's Forester will coordinate to determine whether retention trees are potential Hazard trees.

2. DNR shall include safe operating procedures in the DNR timber sale contracts that have operations that may impact a-Utilities's transmission or distribution line corridor. Before starting active felling operations near a Utility's transmission or distribution Line, DNR timber harvest contractors shall contact the Utility to ensure safe operations when harvest activities are located near transmission or distribution line corridors on State Lands. ~~DNR timber sale contractors should contact Utility when removal operations are occurring within minimum separation distance of the tree and the transmission or distribution power line. Contractors should also consult with the Utility when the tree removal poses a risk to the transmission or distribution Line.~~

Commented [JS13]: Does this need definition?

3. Utility shall contact DNR when access is needed in or around active land management activities, which include but are not limited to timber sales, rock pit operations, agricultural harvesting, road construction, and wind farms.

4. When off right-of-way trees pose a safety risk on an active timber harvest or other DNR land management activity, DNR shall contact the Utility and the Utility will work with DNR to identify and assist with the felling of the trees.

5. Utility employees, crews, and contractors shall observe a speed limit of twenty-five (25) miles per hour on all State Lands roads, unless posted otherwise.

6. DNR shall not enter any transmission or distribution line related structure, facility, or active Utility construction site: (1) unless escorted by a qualified Utility employee or contractor; and, (2) only after receiving an appropriate safety briefing.

8.3 Training. DNR and Utility shall cooperate to identify mutually beneficial training opportunities to increase safety and reduce hazards. For example, DNR and Utility mutually benefit from harvest plans that locate DNR leave trees away from Overhead Electric Utility Lines. To the extent practicable, DNR can include training to DNR foresters involved in timber sales planning on leave tree locations to minimize potential impacts on Utility facilities.

DNR will produce a presentation to be provided to the Utilities at no charge, to help train utility staff on the different ~~levels of HCPT~~ types of Conservation Area lands, which will include identification of NAP and NRCA lands.

- 8.4 Cooperative Planning. DNR foresters also should be encouraged to reach out to Utility when planning timber sales adjacent to Utility facilities, and encourage a Utility representative to conduct a site visit to provide input on timber sale planning. The goal is for DNR timber sales (when feasible) to harvest off right of way trees which may pose grow in potential, or future possible hazard tree risk.
- 8.5 Communication. DNR will establish a sole point of contact via email communication, which is consistent, and not tied to any individuals in the agency. All communication, including but not limited to hazard tree notifications and notice of future plans, shall be emailed to the address established by DNR. DNR Division Right of Way Program staff will actively monitor the email address and respond to requests from the Utility within 5 business days.

#### 9.0 General Provisions.

- 9.1 Effective Date. The Effective Date of this Agreement shall be the date on which the last Party executes this Agreement.
- 9.2 Headings. The headings in this Agreement are for convenience only, and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any of its provisions.
- 9.3 Amendments. This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties. When there is a substantial change in statutes or regulations that interfere with the Parties' ability to comply with this Agreement, the Parties will negotiate in good faith an amendment to this Agreement.
- 9.4 Waiver. A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the Parties.
- 9.5 References. All references in this Agreement to statutes, rules, regulations, guidelines, manuals, standards, HCP, best practices, etc. (individually referred to as "Reference" and collectively referred to as "References") are intended to apply to the References as written or hereafter amended. If a Reference no longer exists or is substantially modified, the Parties will mutually agree upon a substitute Reference or terms as necessary to implement this Agreement. Until the Parties adopt a substitute Reference or

terms, the Reference that existed upon the Effective Date of this Agreement will govern, unless there is a change in law or regulation.

9.6 Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

9.7 No Third Party Rights or Liabilities. This Agreement does not create any third party rights or liabilities.

9.8 All Writings Contained Herein. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

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## Appendix I

### High Priority Conservation Areas

Marbled Murrelet Occupied Sites  
Marbled Murrelet Occupied Site Buffers  
Northern Spotted Owl Nest Patches (core & buffer)  
Northern Spotted Owl Nest Sites (eastside of state)  
Canada Lynx Den Sites (eastside of state)  
Globally Critically Imperiled or Globally Imperiled Natural Heritage Sites  
Cultural Resource sites  
Old Growth  
Talus Slopes  
Northern Goshawk nest patches  
Trees or snags with active or inactive myotis bat communal roosts or maternal colonies  
Trees or snags with active or inactive Vaux's swift nests and night roosts

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## Appendix II

### Moderate Priority Conservation Areas

Northern Spotted Owl Habitat that is within NSO management areas  
Marbled Murrelet Habitat within SHAs or other LTFC  
Canada Lynx Forage or Denning Habitat  
Riparian Management Zones  
Wetland Management Zones  
Talus Buffers  
Cave Buffers  
Oak Woodlands  
Cliffs

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Appendix III

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