



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

January 19, 2021

In reply refer to: FOIA #BPA-2021-00278-F

Jerome Berryhill

(b) (6)

Dear Mr. Berryhill,

The Bonneville Power Administration (BPA) has received your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). BPA received your records request on January 11, 2021, and assigned your request the tracking number BPA-2021-00278-F. Please use that tracking number in any correspondence with the agency regarding your FOIA request.

Request

“In April of 2001, Ben Tilley, BPA Natural Resource Specialist, sent a letter to me, Jerome Berryhill, and my wife, Leslie Graymer, at our residence, (b) (6). Enclosed with the letter were two copies of a ‘Tree and Brush Control Agreement,’ signed by Mr. Tilley. The letter asked us to sign and return one of the copies. As we had not requested this document, it is my surmise that it was produced as part of a BPA program or initiative, intended to induce multiple property owners to sign such agreements. My request is for any documents relating to such a program or initiative, including statements of policy, draft or sample ‘Agreements,’ and reports on the progress of the program or initiative, whether in 2001 or before or after.”

Acknowledgement

BPA reviewed your request and determined that it fulfills all of the criteria of a proper request under the FOIA and the Department of Energy’s (DOE) FOIA regulations at Title 10, Code of Federal Regulations, Part 1004.

Response

The agency collected 13 pages of responsive records from knowledgeable agency personnel in the Vegetation Management & Forestry office, including three samples/templates and a policy. Those 13 pages accompany this communication, with minor redactions under 5 U.S.C. § 552(b)(6) (Exemption 6) to protect Personally Identifiable Information (PII). A more detailed explanation of the applied exemption follows.

Explanation of Exemptions

The FOIA generally requires the release of all agency records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)). Section (b) of the FOIA, which contains the FOIA's nine statutory exemptions, also directs agencies to release to FOIA requesters any reasonably segregable, non-exempt information that is contained in those records.

Exemption 6

Exemption 6 serves to protect PII contained in agency records when no overriding public interest in the information exists. BPA does not find an overriding public interest in a release of the information redacted under Exemption 6—specifically, signatures and names of landowners. This information sheds no light on the executive functions of the agency and we find no overriding public interest in its release. BPA cannot waive these redactions, as the protections afforded by Exemption 6 belong to individuals and not to the agency.

As required by law (5 U.S.C. § 552(a)(8)(A)), information has been withheld only in instances where (1) disclosure is prohibited by law or (2) BPA foresees that disclosure would harm an interest protected by the exemption cited in the record. When full disclosure of a record is not possible, the law further requires that BPA take reasonable steps to segregate and release nonexempt information. We have determined that in certain instances partial disclosure is possible, and have accordingly segregated the records into exempt and non-exempt portions.

Fees

There are no fees associated with the processing of your FOIA request.

Certification

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the records search and information release described above. Your FOIA request BPA-2021-00278-F is now closed with the responsive agency information provided.

Appeal

The adequacy of the search may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

Questions about this communication may be directed to BPA FOIA Public Liaison Jason E. Taylor at 503-230-3537 or jetaylor@bpa.gov. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Thank you for your interest in the Bonneville Power Administration.

Sincerely,



Candice D. Palen
Freedom of Information/Privacy Act Officer

[Responsive agency information accompanies this communication.](#)



Landowner Tree and Brush Agreement
TLM-STD-7-2-8 – Right of Way

(Old VII.B.8)

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NOTE: Highlighted Sections followed by the symbol (S) contain Standards that **shall** be adhered to.

1. INTENT

This Standard provides the Policy & Process Procedures for a Landowner Tree and Brush Agreement.

2. BACKGROUND

The Bonneville Power Administration (BPA) manages the vegetation on BPA Transmission Line Right-of-Way (ROW) easements in order to maintain the safety and reliability of transmission line facilities. The goal of the BPA vegetation management program is to establish and maintain low-growing plant communities in areas where tall growing vegetation may pose a hazard to transmission lines and other electric facilities.

BPA recognizes that “The Right Tree in The Right Place” does not pose an electrical hazard, is beneficial to BPA and the landowner, and should not interfere with respective rights.

This policy does not affect pre-existing tree and brush agreements, existing agriculture rights or Christmas Tree Agreements.

3. PROCEDURE

3.1 **Policy (S)**

The Landowner Tree and Brush Agreement shall require:

- A 30 foot fixed clearance distance to be maintained at all times between the transmission line conductor at Max Sag and the vegetation on the ROW. (Max Sag can be determined from the Line Plan and Profile or by contacting the conductor engineering group.)
- Existing vegetation to have a mature height that will maintain the 30-foot clearance.
- Planted vegetation to have a mature height that will maintain the 30-foot clearance.
- Encourage Low-growing vegetation (shrubs, herbs, and grasses) with a mature height of less than 10 feet tall where Tall Growing Vegetation does not comply with clearance criteria. Low growing vegetation would compete with undesirable vegetation (e.g., blackberry, noxious weeds), provide ground cover against soil erosion, and provide wildlife habitat.
- A onetime out-of-compliance notification to the landowner before vegetation is removed and the Landowner Tree and Brush Agreement cancelled.

3.2 **Agreement Procedure**

Coordination between Realty, Transmission Line Maintenance (TLM), and the Natural Resource Specialist (NRS) is essential for this policy to be effective.

The following outline describes the procedure for initiating, reviewing, monitoring and correcting landowner requests for a tree and brush agreement:

- 1) All requests are sent to Realty where a field specialist is assigned and a case file opened.
- 2) Requests are sent to TLM and NRS for concurrence that the request meets the Landowner Tree and Brush Agreement Policy (Policy).
 - If the request meets the Policy and is beneficial to BPA, a tree & brush agreement is issued.
 - If the request does not meet policy or is not concurred upon by TLM and NRS, the case file is closed and no agreement is issued.
- 3) When an agreement is issued, the information goes into TLM application and Land Information System (LIS) and is monitored by field units during working and aerial patrols.
 - If vegetation is not out of compliance, monitoring continues.
 - If vegetation is out of compliance, an encroachment report is sent to Realty.

- 4) Realty will check records for valid agreement.
 - If a valid agreement is not in place, NRS is contacted to remove vegetation.
 - If a valid agreement is in place, the landowner is notified.
- 5) Realty sends out a non-compliance letter to landowner within five working days of receiving encroachment report.
 - If letter is returned by the Postal Service, Realty will make a good faith effort to contact landowner before vegetation is removed.
 - If the landowner receives the letter (return receipt to Realty), an inspection will be scheduled for 30-45 days following the return receipt date.
- 6) NRS or TLM will inspect site for compliance.
 - If agreement is in compliance, continue to monitor during working and aerial patrols.
 - If agreement is out of compliance, vegetation is scheduled for removal.
- 7) NRS will schedule to have out-of-compliance vegetation removed. Realty will cancel agreement and close file.
- 8) BPA may charge landowner for cost incurred to remove out-of-compliance vegetation.

At any time during the monitoring process if vegetation becomes an imminent hazard to the transmission line, it will be removed immediately or scheduled for removal within 24 hours (see Danger Tree and Brush Selection Criteria).

4. SUMMARY OF CHANGES

04/15/2016

Dave Baldwin Revised

1. Pages 1-4 - Converted the document to the BPA Standards Group document format.

**AFTER RECORDING, RETURN TO
Bonneville Power Administration
TERO-3
P.O. BOX 3621
PORTLAND, OR 97208-3621**

Legal description: A portion of the _____ of Section _____, Township _____, Range _____, Meridian _____, County _____, as described in Exhibit _____, and shown on Exhibit _____. (Affects Tax Account No. _____.)

**VEGETATION AGREEMENT
Case Number:**

This Vegetation Agreement (Agreement) is made between _____ (Landowner), whether one or more and THE UNITED STATES OF AMERICA, acting through the Department of Energy, Bonneville Power Administration (BPA).

I. RECITALS

1. The Landowner is the owner of the property located at _____, and this property is encumbered by the easement described in 2 below.
2. By virtue of the _____, dated _____, and recorded _____, BPA has a perpetual easement identified as BPA Tract No. _____ for electric power transmission facilities which includes the right to clear and keep the easement area, clear of _____ as well as the right to take all appropriate actions to eliminate uses that would interfere with BPA's right to safely operate and maintain BPA facilities.
3. Vegetation that grows too close to a high-voltage transmission line can create cascading electrical power outages leaving millions of people without power. Trees or vegetation can also create a public safety hazard. Trees do not have to touch power lines to be dangerous. In the case of high-voltage transmission lines, if circumstances are right, electricity can jump or arc between wires and vegetation or other objects connected to the ground that are up to 15 feet away. If electricity flows through a tree to the ground, that tree essentially becomes "electrified", and anyone who touches it can be seriously injured or even killed.
4. The North American Electric Reliability Corporation (a national regulatory body that oversees reliability of the U.S. power grids) requires BPA to maintain and comply with specific standards for managing vegetation under or adjacent to its electric transmission lines. According to these standards, vegetation under and adjacent to BPA's high-voltage transmission lines must be managed to keep clear a distance of 25 feet between the lowest point that the high-voltage transmission lines will sag (the point of maximum sag) and swing under extreme conditions and the closest point of the vegetation (vegetation clearance requirement). When power lines carry more electric load, they normally heat up, which causes the wire to expand and sag. In the summer, for example, when the air is hot and customers demand for electricity is high, lines can sag several feet lower than at other times of the year.

Now therefore the parties agree as follows:

II. GENERAL PROVISIONS

1. This Agreement covers that portion of BPA Tract No. _____, described in Exhibit _____, and shown on Exhibit _____, attached to this document, and made a part hereof.
2. BPA's vegetation clearance requirement is determined by a variety of factors and influences (e.g., operational conditions, BPA standards as well as national reliability and safety standards, physical attributes associated with the transmission facilities or the right-of-way, etc.). If future changes to any of these factors result in a modification to the vegetation clearance requirement and thus require changes to the height of vegetation prescribed in section III.2. of this Agreement, BPA may, without further consideration, unilaterally modify this Agreement. Such modification will be in writing. In lieu of modifying this Agreement, either party may elect to terminate this Agreement.
3. In the event the Landowner allows the vegetation within the designated areas to exceed heights specified in the Agreement or if the Landowner fails to comply with any other term or condition of this Agreement, BPA at its discretion, without notice, compensation, or liability, may cut to the ground, trim, remove, destroy and dispose of said vegetation by spraying or other means, and this Agreement shall terminate.
4. Failure by BPA to take an action to manage the vegetation under section II.3, when the vegetation at any time exceeds the heights specified in this Agreement, shall not waive BPA's ability to take an action in the future.
5. This Agreement may not be leased, sold, transferred, assigned, or subject to a change of control, in whole or in part, in any manner without the prior written consent of BPA.

III. LANDOWNER'S RESPONSIBILITIES

The Landowner shall:

1. Mark the area covered under this Agreement with signs reading, "Vegetation Agreement Case # _____ - Do Not Cut or Spray." Signs shall be so placed as to be clearly visible from the access roads to and along the easement at the points of entry into the vegetation agreement area.
2. Not allow any vegetation, whether planted or naturally growing upon the designated areas of the easement, to exceed _____ feet in height.
3. Provide and maintain a route, 20 feet in width, within the easement area for access to and between BPA structures. The Landowner shall repair damages to the route of access caused by or arising out of Landowner's use.
4. Not plant any vegetation within 50 feet of any transmission line structure and shall keep the area maintained to enable BPA vehicle access to structures.
5. Eradicate and control any noxious weeds/brush, as required by local, County, State, or Federal laws.
6. Be responsible for the cost of any damage to BPA transmission line facilities or other property, caused by any act or omission of the Landowner or Landowner's assigns, agents, employees, or contractors.

7. Remove all vegetation and signs covered by this Agreement and notify BPA if the Landowner sells or vacates the property, unless BPA agrees in writing to reassign this Agreement to the new Landowner.
8. Notify BPA in the event of Landowner's desire to terminate this Agreement, and following such notification, remove all vegetation and signs covered by this Agreement.

IV. BPA'S RESPONSIBILITIES

BPA shall:

1. Notify the Landowner of any construction or changes to its facilities or changes to reliability or safety standards that require modification or termination of this Agreement.
2. Shall compensate Landowner for damages to vegetation permitted under this Agreement, provided such damage was caused by BPA, and Landowner has not violated any term or condition of this Agreement. Payment for such damage shall be made on the basis of a damage estimate approved by BPA.

V. EFFECTIVE DATE OF THE AGREEMENT

This Agreement will become effective when signed by both Parties. The date this Agreement is signed by the last Party (as indicated by the date associated with that Party's signature) will be deemed to be the effective date of this Agreement.

<p>Accepted for the UNITED STATES OF AMERICA</p> <p>By _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>_____ Landowner: Date: _____</p> <p>_____ Landowner: Date: _____</p> <p>_____ Landowner: Date: _____</p>
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Department of Energy

Bonneville Power Administration
86000 Highway 99 South
Eugene, OR 97405

September 1, 1999

In reply refer to:TSRF/Alvey

TRACT No. VE-56-A-183

LAND USE No. 19990599

LINE: Vancouver-Eugene line

Operated as Chemawa-Salem No. 1 Str. 1/4

CERTIFIED - RETURN RECEIPT REQUESTED

(b) (6)

Keizer, OR 97307

LAND USE AGREEMENT

Bonneville Power Administration (BPA) hereby agrees to your use of BPA's easement area for construction/installation, use, and maintenance of a fence and landscaping.

The location of your use is partially within the SE $\frac{1}{4}$ /SW $\frac{1}{4}$ of Section 25, Township 6 South, Range 3 West, Willamette Meridian, Marion County, State of Oregon, as shown on the attached segment of BPA Drawing marked Exhibit A.

PLEASE NOTE: BPA is not the owner of this property, if you are not the owner, you must obtain the owner(s) permission to use this property. There may also be other uses of the property, which might be located within the same area as your project. This agreement is subject to those other rights.

This agreement is entered into with the express understanding that it is not assignable or transferable to other parties without the prior written consent of BPA.

BPA'S AGREEMENT IS CONTINGENT ON THE FOLLOWING CONDITIONS:

1. Storage of flammable materials or refueling of vehicles/equipment is prohibited.
2. Access to transmission line structures by BPA's maintenance crews shall not be interfered with or obstructed.
3. Trees (landscaping) shall not exceed 10 feet in height, obstruct access to structures, or be planted within 25 feet of any structure. BPA personnel may remove trees (landscaping) which violate this permit at any time unless a Tree Agreement for special height conditions is obtained by the landowner.

4. Location of neighborhood fences is a particular concern of BPA's maintenance personnel. A major portion of these are under BPA's transmission lines and run parallel to the transmission line wire (electrical conductors). The fences provide a barrier which make it difficult for BPA trucks, equipment and personnel to access and perform maintenance activities along the conductors and to the structure. BPA may require the installation of a 16-foot wide gate for maintenance access, at your expense, any time in the future.
5. The fencing material should be wood or plastic, not chain link which could conduct electricity.

Other uses and utilities on the right-of-way must be applied for separately.

You shall not make any changes or additions to your use of the right-of-way without BPA's review and written approval.

IN ADDITION, THE FOLLOWING IS BROUGHT TO YOUR ATTENTION AND MUST ALSO BE COMPLIED WITH:

Hazard or Interference: The subject use of this easement area has been determined not to be a hazard to, nor an interference with, BPA's present use of this easement for electric transmission line purposes. Accordingly, there is no present objection to such use. However, if such use should, at any time, become a hazard to the presently installed electrical facilities of BPA, or any facilities added or constructed in the future, or if such use should interfere with the inspection, maintenance, or repair of the same, or with the access along such easement, you will be required to remove such hazard or interference at no expense to BPA.

Liability: You will have to assume risk of loss, damage, or injury which may result from your use of the easement area, except for such loss, damage, or injury for which BPA may be responsible under the provisions of the Federal Tort Claims Act, 62 Stat. 982, as amended. It is understood that any damage to BPA's property caused by or resulting from your use of the easement area may be repaired by BPA, and the actual cost of such repair shall be charged against and be paid by you.

This Land Use Agreement becomes effective upon the commencement of use as set forth in the Agreement. If you have any questions or concerns, please notify us. This Agreement is a permit, revocable at will by the U.S., and does not convey any easement, estate, or interest in the land.

IF WE DO NOT HEAR FROM YOU WITHIN 30 DAYS FROM THE RECEIPT OF THE AGREEMENT, THE TERMS OF THE AGREEMENT WILL BE ASSUMED TO BE ACCEPTABLE. THE AGREEMENT WILL THEN BECOME A PART OF OUR PERMANENT FILE AND MAPPING SYSTEM.

You may direct any communication to this office, Bonneville Power Administration, Real Estate Services (TSRF/Alvey), 86000 Franklin, Eugene, OR 97405, or by telephoning me at 541-465-6555.

THIS AGREEMENT IS HEREBY AUTHORIZED

(b) (6)

Susan A. Adams
Realty Specialist

bcc:

M. McCracken – TFEK/Chemawa
Aircraft Services – TC/Hangar
Alvey Line File
Official File - TSR-3 (Case No. 19990599)

Tract Nos. S-OC-106

Case No. 20020010

Lines: John Day-Keeler No. 1 and Big Eddy-Oregon City (Oper. as Big Eddy-Chemawa No. 1)

U.S. Department of Energy - Bonneville Power Administration

TREE AND BRUSH CONTROL AGREEMENT

This Agreement, made and entered into between the UNITED STATES OF AMERICA, acting through the Administrator of the Bonneville Power Administration (hereinafter called "the Government"), and

(b) (6) (hereinafter called "the Owner"),

WITNESSETH:

That the Owner desires to maintain trees and brush upon all, or portions of, Owner's lands that are now, or may become, subject to the Government's easement for one or more electric transmission lines, and in order to avoid interference with each other in the exercise of their respective rights in and to the described lands, the Owner and the Government do stipulate and agree that:

1. This agreement shall become effective upon signature of both parties. If construction of a transmission line is currently scheduled on the designated easement area, this agreement shall become effective on completion of construction.
2. This agreement shall apply to the easement area of the Owner's lands described on page 4 hereof, and such additional easement area as the Owner may designate by supplements to said description.
3. All growing and harvesting operations covered under the conditions of this agreement shall be without cost to the Government.
4. The Owner shall mark the tree and brush-growing areas on the easement(s) with signs reading, "**Trees and Brush - Do Not Cut or Spray.**" Signs shall be so placed as to be clearly visible from the access roads to and along the easement at the points of entry into the brush and tree growing area.
5. The Owner shall not permit any trees or brush, whether planted or naturally growing upon the designated areas of the easement, to exceed 15 feet in height.
6. An access of 20 feet in width along the right-of-way for access to and between structures shall be well defined. Access by BPA's maintenance crews to transmission line structures and along the right-of-way shall not be interfered with or obstructed.

7. The Owner shall not plant any trees within 50 feet of any transmission line structure. The Government shall have the right, at its own expense, to keep all such areas within 50 feet of any transmission line structures, and within roadways used by the Government for access to structure sites, free and clear of growth of trees and brush, either naturally growing or planted.
8. The Owner shall be responsible for the eradication and control of any noxious weeds/brush, as required by local, County, State, or Federal laws.
9. Government access roads that are used by the Owner shall be maintained in as good a condition as existed at the commencement of the Owner's operations. All costs of such maintenance and of any additional improvements, made by the Owner on such access roads shall be borne by the Owner. Maintenance and improvements must meet government standards.
10. The Owner shall provide in all agreements with contractors, agents, and lessees engaged in any part of the work of maintaining or harvesting said trees and brush on such easement area, that such contractors, agents, and lessees will comply with the provisions of this agreement.
11. It is understood that in some instances the Government's rights-of-way were acquired in widths suitable for future circuits and that the Government's transmission lines are subject to being reconstructed. If such additional transmission lines are to be constructed, or if the present transmission lines are to be reconstructed, then the Government shall notify the above named owner by mail or in person of the intended construction or reconstruction. Such notice shall be as far in advance as is feasible in order to allow sufficient time to remove any of said trees and brush, if desired.
12. Damage to the transmission line facilities or other property of the Government caused by negligence or intentional act of the Owner or Owner's assigns, agents, employees, or contractors, shall be repaired at the Owner's expense.
13. If the Owner decides to discontinue the maintenance of said trees and brush in the easement area or portions thereof, the Owner shall remove said trees and brush, remove the signs, and notify the Government of such termination, and the area affected. Thereafter, the Government may cut, remove, destroy, and dispose of all remaining brush and trees on such easement area by spraying or other means of its choice.
14. **As a result of the Owners failure to comply with the terms of this agreement, or through a request of the Owner to terminate this agreement, the Owner hereby**

agrees to pay all additional costs that are incurred by the Government to clear the right-of-way.

15. In the event the Owner permits the trees and brush within the designated areas to exceed heights specified in Paragraph 5 above, the Government in its discretion may cut, remove, destroy and dispose of said trees and brush by spraying or other means, all trees and brush growing within said areas, and this agreement shall be terminated. The Government shall not be liable for damage by reason of any action taken by it under this paragraph.
16. In the exercise of its rights under said easements, the Government's responsibility for damages shall be for acts or omissions only in accordance with the provisions of the Federal Tort Claims Act, 62 Stat. 982, as amended.
17. If the Owner shall assign this agreement or any part thereof, notice thereof shall be given in writing to Bonneville Power Administration, Real Estate Field Services TRF-TPP-4, P.O. Box 61409, Vancouver, Washington 98666-1409, or by calling our toll free number, 1-800-836-6619.
18. The Government may cancel this agreement at its discretion.

DATED this Feb. day of 19 2002.

BONNEVILLE POWER ADMINISTRATION

(b) (6)

Joan Dietz
Field Realty Specialist
Real Estate Field Services

(b) (6)

(Owner)

(Owner)

(Date)