



**HILARY S. FRANZ**  
COMMISSIONER OF PUBLIC LANDS

LICENSE  
for  
REDUCING RISK OF WILDFIRE FROM UTILITY DISTRIBUTION  
AND TRANSMISSION LINES

September 2022

# CONTENTS

## RECITALS

## LICENSE

1.0 – Definitions

2.0 - Scope of License

3.0 - Term

4.0 - Vegetation Management

4.1 - Routine Vegetation Management

4.2 - Emergency Vegetation Management

4.3 - Emergency Vegetation Management – Where Applicable

4.4 - Emergency Vegetation Management – Best Practices

5.0 - Tree Removal Notification Processes:

5.1 - Tree Removal Packet

5.2 - Review Process

5.3 - Payment

5.4 - Dispute Resolution

6.0 – GIS Data

6.1 - GIS Dataset

6.2 - GIS Dataset Sharing

7.0 - Rights and Obligations

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 - Notice/Communication

9.0 - General Provisions:

9.1 - Headings

9.2 - Amendments

9.3 - Waiver

9.4 - References

9.5 - Severability

9.6 - No Third Party Rights of Liabilities

9.7 - All Writings Contained Herein

9.8 - Limitation on Liability

LICENSE NO. -----

**THIS LICENSE** is between \_\_\_\_\_, a public utility company (Utility) and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources (DNR), dated and \_\_\_\_\_, 20\_\_\_\_\_.

## RECITALS

- A. This License for Reducing Risk of Wildland Fires From Distribution and Transmission Lines (**License**) memorializes a mutual commitment between Utility and DNR (individually referred to as “**Party**” and collectively the “**Parties**”) to find solutions to challenges caused by the differing 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 Parties intend that this License 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 DNR along with processes and timetables for dispute resolution when mitigating hazards.
  - c. Foster consistency with current policy related to DNR State Uplands’ electrical utility easement and rights of way granting.

## AGREEMENT

State, for and in valuable consideration, the receipt of which is hereby acknowledged, issues to Utility a non-exclusive revocable licenses over certain DNR managed land described in Exhibit A, (\_\_\_\_\_) subject to the terms and conditions stated below.

### 1.0 Definitions.

- 1.1 **Dead Tree:** A tree that is still standing, but no longer alive. This includes trees that do not meet the definition of Merchantable Timber as defined herein, or because of disease, damage, or structural defect would not reasonably be expected to meet the definition of Merchantable Timber at the expected time of harvest by DNR.
- 1.2 **Disposal:** The transportation of trees, processed logs, or tree residue away from the area of origin and off site.

- 1.3 **Distribution Line:** Utility facilities less than 34kV.
- 1.4 **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.
- 1.5 **Grow-in Trees:** Trees that grow into or whose limbs grow into the Utility Right-of-way.
- 1.6 **Incidental 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 Removal Trees.
- 1.7 **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.
- 1.8 **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.
- 1.9 **Off Right-of-way Tree(s):** Tree(s) outside the Utility Right-of-way.
- 1.10 **Habitat Conservation Plan (HCP):** An ecosystem-based forest management plan that helps DNR develop and protect habitat for at-risk species while carrying 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").

1.11 **Conservation Areas:** 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 do not include the locations of historic or archaeological sites and resources. Registered protected cultural and archaeological resources may exist on DNR managed lands that are not disclosed the GIS dataset described in Section 6 of this License. Cultural and archaeological data, which is sensitive in nature, can be obtained from the Department of Archaeology and Historic Preservation and it is unlawful to knowingly alter or damage any historic or prehistoric archaeological resource or site without a permit. 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 dataset. Some types of High Priority Conservation Areas are listed on Appendix I.

**Moderate Priority Conservation Areas** will be indicated by yellow in the GIS dataset. Some types of Moderate Priority Conservation Areas are listed on Appendix II.

The location of Conservation Areas described above are shown on the GIS dataset described in Section 6 of this License.

1.12 **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 License must be left on site unless authorized by DNR under this License.

1.13 **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 License. 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.

1.14 **Transmission Line:** Any Utility Facility transmitting electrical voltage of 34kV or greater.

- 1.15 **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.
- 1.16 **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 License, including but not limited to use in vegetation management planning, hazard tree removal, and determination of any compensation owed under the License. This definition is not intended to modify or contradict the North American Electrical Reliability Corporation (NERC) definition of utility right-of-way.
- 1.17 **Vegetation:** any tree, brush, shrub, other plant, or part thereof.

## 2.0 Scope of License.

- 2.1 This license authorizes Utility to remove Vegetation outside of the Utility Right-of-Way hazardous to the operation of Utility Facilities according to the processes and requirements set out in this agreement, provided that Utility compensates DNR for Removal of any Merchantable Timber.
- 2.2 Except as otherwise provided, this License applies to all of Utility’s Transmission and Distribution Lines, including additional utility infrastructure such as switch banks, guy wires, reclosers, transformers, and capacitor banks that encumber or are adjacent to DNR managed lands. DNR managed lands are defined as “State lands” and “State forestlands” as these categories of land are defined in RCW 79.02.010.
- 2.3 This License does not authorize any activity in Natural Area Preserves, Natural Resource Conservation Areas, or State-owned aquatic lands as these categories of land are defined in RCW chapters 79.70 \_\_, 79.71 \_\_ and 79.105 \_\_, respectively.
- 2.4 This License also does not authorize any activity state-owned lands not managed by DNR, and grants no rights to remove hazard trees on private land.
- 2.5 To the extent that this License is inconsistent or in conflict with an easement or right-of-way held by Utility and granted by DNR, or its predecessor in interest, the easement or right-of-way controls. The Parties may negotiate a mutually agreeable resolution to reconcile a conflict between the easement or right-of-way and this License, when

appropriate. To the extent an easement is silent on, or is not otherwise inconsistent with or in conflict with the License, this License controls.

2.6 Unless otherwise noted, any obligation or requirement in this License applies to contractors, licensees and other authorized easement or right-of-way users.

3.0 **Term.** This License replaces any existing agreement pertaining to Vegetation management and hazard tree removal outside of the Utility Right-of-way, except where an easement or right-of-way document addresses Off Right-of-way Trees or Vegetation, and will remain in effect for thirty (30) years after its execution unless amended, replaced by another agreement, terminated by mutual written consent of the Parties, or terminated by either party with (90) days of written prior notice.

#### 4.0 Vegetation Management

4.1 Routine Vegetation Management. Utility may remove or prune any vegetation within the Utility Right-of-way. Compensation for Routine Vegetation Management within the Utility Right-of-way is not required unless required by the easement or right-of-way document. 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. Grow-in Trees may be mitigated or resolved by the following methods:

4.1.1. Pruning and Directional Pruning. Directional Pruning means pruning or cutting of tree branches and limbs that are growing toward the Utility Facility, while leaving those branches growing away from the Utility Facility. Utility shall prune or cut all cut all branches and limbs within one inch of the tree's branch or limb bark ridge ("branch collar"). When a Utility is Directional Pruning, Utility will retain branches or limbs not growing towards the target, and allow for continued growth without increasing future Utility maintenance costs. When more than 50% of a live branch or limb is removed, Utility shall prune or cut outside the tree's branch collar and to avoid scaring or damaging the cambium layer of the remaining tree. When Directional pruning Utility shall not remove more than 33% of the tree's live crown.

4.1.2. Side Pruning: Pruning of tree branches that are growing toward the Utility Facility, removing all branches on one side of the tree, within the area of the Utility Facility, removing branches back to the main trunk. When a Utility is Side Pruning, Utility shall remove all branches within the target area, including those branches not growing towards the target area. Utility may retain branches above and below the target area, when maintenance requirements and conditions allow. 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.

4.1.3. Ground to sky pruning: Pruning of tree branches that are growing toward the Utility Facility, removing all branches on the side of the tree facing the power line or target, removing branches back to the main trunk. When a Utility is Ground to sky pruning, Utility shall remove ALL branches on the side of the tree facing the Utility Facility, pruning back to the trunk of the tree. Ground to sky pruning should not remove more than 45% of the trees live crown.

4.1.4. Or by other means, including tree growth regulators.

4.2 Emergency Vegetation Management. Utility may remove any Off-right of Way Trees or 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, or other governmental entities. In the event there are Off Right-of-way Trees in High Priority Conservation Areas that, in the estimation of Utility, pose an immediate hazard to safe operation of the Utility Facilities or the public, the Utility may remove those trees, subject to any mitigation required as per Section 7.4 of this License. Utility shall be responsible for any mitigation for removals and cumulative impacts of removals as required per Section 7.4 of this License and determined by the applicable regulatory agency.

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 Appendix II. Utility shall be responsible for any mitigation for removals and cumulative impacts of removals should Utility exceed the operational restrictions in section 6.1 for Yellow areas in the GIS datasets required per Section 7.4 of this License and determined by the applicable regulatory agency.

4.3 Emergency Vegetation Management – Where Applicable. The locations of Conservation Areas are shown on the GIS dataset defined in Section 6.1 as described in Section 3.11. Section 4.2 (Emergency Vegetation Management) applies only to those areas in the GIS

dataset marked in Green, Yellow, and Red. This License does not authorize Emergency Vegetation Management in areas marked in Black or in unmarked areas.

4.4 Emergency Vegetation Management – Best Practices. Reasonable care should be taken to minimize the number of Incidental Removal Trees. 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 to DNR roads, trails, or improvements. Utility may leave trees Removed on DNR managed lands off the Utility 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 30 calendar days after removing any Off Right-of-way Trees that did not involve prior consultation on DNR managed lands under Section 4.2 of this License 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 Trees;
- (2) Utility Right-of-way documents (if applicable);
- (3) List of trees, including species, heights, DBH, and percentage of structural defect of the tree (if any);
- (4) Timber appraisal or proposed value, if required by this agreement; and
- (5) Utility's calculation of total payments due DNR, if any.

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 reflects the fair market value, (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, as further addressed in paragraph 7.4, 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 date
- 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 the dispute to a qualified third-party timber appraiser. The determination of the third party appraiser shall be binding, and the costs of the appraiser shall be shared by the parties.

## 6.0 GIS Data

- 6.1 GIS Dataset. Upon execution of this agreement DNR shall provide Utility a dataset showing DNR managed lands that contains information on Conservation Areas. This dataset will include a field for Utility to use which will include the following:

Green: Areas where Utility can conduct Emergency Vegetation Management without consultation.

Yellow: Areas of limited impact to DNR land management activities. Utility may conduct Emergency Vegetation Management of a minor nature (less than five trees or less than  $\frac{1}{10}$  acres) without consultation.

Red: High priority conservation. Where consultation with DNR is required prior to Emergency Vegetation Management. Mitigation or site specific plans will be required, or work may be done under the authority of the Utility's Incidental Take Permit, subject to concurrence by the applicable regulatory agency. Contact information for Utility to consult with DNR shall be included in the dataset.

Black: Special Lands.

This License does not authorize any activity in Special Lands. Contact information for the Special Lands manager to arrange for site-specific plans and restrictions are included in the GIS dataset.

- 6.2 GIS Dataset Sharing. DNR shall provide or make available in its online data portal for Utility the dataset described in Section 6.1. 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, any change to conservation area locations, 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. Utility shall use the most recent dataset available when performing Vegetation Management under Section 4.0 or preparing a Tree Removal Packet under Section 5.0.

## 7.0 Rights and Obligations.

- 7.1 General. DNR has no obligation to identify or remove Off Right-of-way Trees that have the potential to impact the operation of Utility Facilities. Similarly, Utility has no affirmative obligation to identify or remove Off Right-of-way Trees that have the potential to impact the operation of Utility Facilities. All Off Right-of-way Trees and Incidental 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. Utility shall leave all downed timber in place, except as otherwise specified in Section 4.4 (Emergency Vegetation Management—Best Practices). Utility shall not sell, gift or allow Disposal of such trees to any person or entity without DNR’s prior written approval. If Utility requests and DNR approves Utility to sell timber removed from State Trust Lands Utility 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 (at the time of this License HCP lands include all DNR managed uplands west of the eastern crest of the Cascades). 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, Utility 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.

- 7.5 Fire Prevention. Utility shall ensure 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 License.
- 7.6 Compliance with Laws. In addition to the requirements of this License 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, cultural and archaeological resource protection, 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, continuously, and adversely impacts DNR timber management activities, including timber production, crop production and habitat protection or enhancement, beyond the scope of the Utility Right-of-way, DNR may initiate a request to expand the Utility Right-of-way, or initiate other agreed upon solutions. Compensation for any additional Utility Right-of-way 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 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:

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 Utility's Transmission or Distribution Line corridor. If there are Utility Rights-of-ways and Utility Transmission or Distribution Lines in the work area, or immediately adjacent to permitted work areas, before starting active felling operations, 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 shall contact Utility when removal operations are occurring within minimum separation distance of the tree and the Transmission or Distribution Line. Contractors shall also consult with Utility when the tree removal poses a risk to the Transmission or Distribution Line.

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 to Utility Facilities during 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 safe 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 Utility Facilities. To the extent practicable, DNR can include training to DNR foresters involved in timber sales planning on leave tree (trees required to be left standing under Forest Practices rules) locations to minimize potential impacts on Utility Facilities.

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

- 8.4 Cooperative Planning. DNR foresters also should 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 Notice/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 Headings. The headings in this License 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 License nor the meaning of any of its provisions.
- 9.2 Amendments. This License 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 License, the Parties will negotiate in good faith an amendment to this License.
- 9.3 Waiver. A failure by either Party to exercise its rights under this License shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this License. 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 License unless stated to be such in writing and signed by personnel authorized to bind each of the Parties.

- 9.4 References. All references in this License 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 License. Until the Parties adopt a substitute Reference or terms, the Reference that existed upon the Effective Date of this License will govern, unless there is a change in law or regulation.
- 9.5 Severability. If any term or condition of this License is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this License.
- 9.6 No Third Party Rights or Liabilities. This License does not create any third party rights or liabilities.
- 9.7 All Writings Contained Herein. This License contains all the terms and conditions agreed upon by the Parties for Off-Right of Way Trees and Vegetation management, unless an easement or right-of-way document contains more specific terms addressing the same topic. No other understanding, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the Parties hereto.
- 9.8 Limitation of Liability. In no event shall the failure, by either party, to strictly adhere to the guidelines and recommendations outlined in this agreement constitute evidence of negligence for purposes of proving liability under RCW 76.04.495.