

Protecting the Ecology in Utility Rights-of-Way: A Land Trust and Landowners Guide

Connecticut Botanical Society Ecology & Conservation Committee (Final 10/22/2022)

Introduction

In Connecticut, much of the land within powerline corridors is not owned by utility companies as one might assume. Nearly 70 percent of these corridors are easements for passage and use called Rights-of-Way (ROWs) on lands owned by individuals, land trusts, towns and state agencies. This Guide provides information to help private land trusts and landowners understand their rights and options when negotiating with electrical utilities about planned work within ROWs on their land. It will help them preserve the value of their land during and after maintenance activities, while not interfering with the utility's need to provide safe and reliable electricity to the public. The Guide was written in response to Eversource's recent introduction of vegetation and transmission line maintenance protocols that can damage the environment within ROWs. Additional resources are linked at the end of this document for reference. **Please note that this document does not substitute for legal advice, and it is recommended that landowners consult with their attorney on these issues.**

Land in and adjacent to ROWs has value—not only monetary worth, but the ecological value of its plants, animals, wetlands, soils and geologic features, as well as the quality of life it provides to landowners and their neighbors. Land trusts and individuals owning land within or abutting a ROW have the right to protect these values. With proper information, a landowner can have respectful - but meaningful - negotiations with utility companies to reduce the negative impacts from maintenance projects and still maintain a reliable energy infrastructure.

The land in Connecticut's utility ROWs currently supports important low-growing plant communities, which are especially valuable since the surrounding landscapes are mostly forested. ROWs may include critical habitats with rare plants and wildlife. The rockiness, acidity and fertility of the soil in a particular ROW segment determine which shrub and herb species are dominant. These natural resources are being threatened by recent changes in Eversource maintenance policies and practices, and need landowners to protect them. Land trusts and landowners should not rely on government entities to provide this protection.

Summary of Recent Changes in Management and Maintenance in ROWs

In 2015, Eversource began to dramatically change their policies and practices for transmission line maintenance within the ROWs, using a much more aggressive and indiscriminate approach to vegetation management (versus the Integrated Vegetation Management or IVM approach used for decades) and constructing wide gravel roads and large work pads under utility poles. These changes include:

- 1) More restrictive height limits for vegetation in the different ROW zones;
- 2) Increased use of large mowers and other heavy equipment to manage vegetation;
- 3) Clearcutting of trees and plants in an easement area, not just under wires;
- 4) More plants being declared "incompatible" based on their potential height, not the actual height or their distance from the wires (and with no consideration for effects of moisture level and fertility on potential height); and
- 5) Replacement of wooden poles with taller steel poles, and the associated construction of gravel roads and work pads to support the equipment to do this.

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Your Rights and Theirs: Petition 1293 – Replacement of utility poles and associated gravel roads and work pads

Many of landowners' options to steer ROW management on their properties are built into [Petition 1293](#), the same document that gives Eversource leeway to start utility pole replacement projects without further environmental review.

In 2017, Eversource filed Petition 1293 with the Connecticut Siting Council requesting a waiver to replace wooden poles in ROWs across the state with taller steel poles without a Certificate of Environmental Compatibility and Public Need. Eversource cited wood deterioration and a need for greater clearance to comply with recent changes in the National Electrical Safety Code. The Petition was approved with a [Declaratory Ruling in March of 2017](#).

The approval of Petition 1293 was, in effect, a waiver of the need for environmental reviews and public hearings before work is started in ROWs. It is the basis of over two hundred sub-petitions that have been filed since 2017, each requesting approval for the replacement of 60 to 75 poles along a segment of ROW.

However, Petition 1293 also provides the framework and ground rules for citizens to respond to proposed utility pole work, maintenance, and associated road and work pad construction on their properties.

To support their request for a Declaratory Ruling on the Petition, Eversource stated that proposed projects would “have no substantial adverse environmental effect on the environment or ecology, nor would they damage existing scenic, historical or recreational values”. They also stated that they would “use existing access where possible, retain upland work pads unless the landowner requests removal, and remove matting from wetland areas after construction”, and “restore disturbed/exposed areas after completion of construction with topsoil, landscaping or seed”. ***This language indicates that the landowner may request removal of upland work pads.*** The provision to allow landowners to remove work pads was one of the conditions for approval of Petition 1293 by the Siting Council.

Large “fill” work pads, several feet deep and up to 150 feet on a side, are built to support cranes, excavators, and drilling equipment. Larger cranes and pads are required when utilities choose to move “live” wires from old to new poles rather than turning off the power first. The work pads, as well as access roads that are expanded to accommodate heavy equipment, are impervious, made up of gravel, stone, and stone process; this often causes erosion and diverts water flow. Even if the compact gravel is covered with topsoil, it is usually colonized by dense, weedy, invasive plants such as common mugwort rather than the plant community that was adapted to local natural soils.

If a landowner informs Eversource beforehand that removal of work pads will be requested, it is likely that Eversource will agree to use alternative methods, such as timber matting and a temporary shut-off of power-shut-off, in order to avoid the expense of pad removal.

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The Siting Council also agreed to the following other conditions in Petition 1293 for the approval of any sub-petitions going forward:

- Eversource will file with the Council a sub-petition for each “site-specific transmission line maintenance activity” including “an impact statement relating to the potential environmental effects of construction”.
- Eversource shall provide a “mitigation plan for any identified environmental impacts, including, but not limited to, best management practices, erosion and sediment controls, re-vegetation and site stabilization.”
- Eversource shall provide notice to the host municipality and abutting property owners of the proposed maintenance activity with a copy of the site-specific sub-petition indicating that comments and concerns should be submitted to the Siting Council within 30 days of the date the sub-petition is filed.

Landowners can monitor and help guide Eversource’s actions on their land by keeping abreast of sub-petitions, mitigation plans, and notices relating to their properties. Previously approved 1293 Sub-Petitions can be accessed on the Connecticut Siting Council website (<https://portal.ct.gov/CSC>) by selecting “Decisions” and then “By Town”. Pending sub-petitions are listed under “Pending Matters” but are not sorted by town, so one needs to scan the list. The sub-petitions include site maps with the numbers and lines of the poles being replaced.

Impacts of Recent Changes ROW Vegetation Maintenance

Major changes in ROW vegetation maintenance policies by Eversource have resulted in significant impact on the environment and ecology of landowners’ properties.

Current plant removal protocols are indiscriminate compared to previous long-standing strategies. Species capable of exceeding pre-set height limits are deemed “incompatible” with electrical transmission, despite the potential for site-specific soil conditions or seasonal maintenance to limit the actual heights attained. In “one zone” ROWs, Eversource removes any plants that might grow above 15 feet at maturity from a Wire Zone extending 25-40 feet in each direction from the wires, depending on the voltage. Note that it is not clear how Eversource determines a ROW is “one-zone”. In “two zone” ROWs, Eversource applies the same strategy to a Wire Zone extending 20-30 feet in each direction; they also remove all woody plants that can grow taller than 25 feet from an additional Border Zone extending to the edge of the maintained ROW. This use of a “two-zone” strategy is consistent with Federal Energy Regulatory Commission recommendations. When large mowers and non-selective herbicide applications are used, valuable native shrubs may be destroyed, including blueberries, laurels, shrub dogwoods, viburnums, maleberries, sweet pepperbush, and azaleas, in addition to the targeted tree saplings.

Following the [Federal Energy Regulatory Commission’s \(FERC\) recommendations](#) after Storm Albert, in October 2011, Eversource has also widened the “clear zone” for the vegetation management work performed every four years and has begun to clear trees outside the ROW that have the potential to fall into wires. Through a program called Transmission Right-of-Way Reliability Program (TRRP), Eversource uses large equipment, including skidders, excavators,

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and forestry mulchers, to clear 100 feet in each direction from the Wire Zone (or, in narrower ROWs, to the edge of the easement). Large equipment can severely damage soil horizons and rocky scarps, and sometimes causes extensive erosion. However, landowners have the right to request alternative vegetation maintenance methods that do not use heavy equipment.

There is a strong historical precedent for utilities preserving the ecological value of landowners' property through alternative approaches to vegetation management on ROWs. For decades, beginning in the 1950s, Connecticut Light & Power and Northeast Utilities (the predecessors to Eversource) practiced selective cutting of taller species, working with plant ecologists from the Connecticut Botanical Society and Connecticut College. Tree saplings were hand-cut or spot-treated with herbicide. Slow growing, valuable trees such as eastern red cedars were often topped to prevent growth in height, rather than killed (see red cedar study, in "Resources" at the end of this document). Dense low shrub thickets developed and were left in place, resisting colonization by trees and providing valuable bird and pollinator habitat. Maintenance was needed only every seven years or so.

Past ROW vegetation managers conducted environmental assessments of the ROWs and consulted with state ecologists to help guide them to avoid negatively impacting these areas. Eversource's new vegetation management policies and practices have diminished the extent of important plant species critical to the ecology of the ROW environment. Diverse and sometimes rare early blooming ericaceous shrubs, important for wildlife and pollinators, have been impacted. Red cedars, which provide essential cover for songbirds, especially in winter, have been completely eliminated where the current policy is implemented. Invasive plant infestations have expanded. There is no assessment of the impact of this ROW work on the environment or ecology, aside from modifications for "listed" species as required by law. Instead, it is up to landowners to harness their rights to protect the ecological and environmental value of their land.

How to Protect Your Land in ROWs

Easement Rights

Whether you are a land trust or a landowner, your ability to protect your land from any adverse effects of Eversource maintenance activities starts with the easement that Eversource has on your property. Utility ROW easements can be found at town halls as attachments to land deeds, and contain the details of what the utility company can do to maintain the powerlines running through a property. They are usually written to cover almost every type of maintenance activity. Easements may be updated if land was added to expand the ROW, resulting in multiple versions.

A detailed description of the landowner's rights on that property is commonly absent or left vague. Often this includes limited agricultural activity and other uses of the land that the landowner deems important. The basic rights of a landowner include the *right to use and protect their property*, including plants and animals that occur there, so long as it does not interfere with the rights of the easement holder (Eversource or other utility company) to

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maintain poles and lines. This right extends to *having a say in how vegetation is maintained*, even if it is not cost effective for Eversource. It includes the *right to be notified* in a reasonable amount of time of any activity on the property and why that activity is occurring.

It would be prudent to make yourself familiar with the easement language on your property and keep a copy available. Consider adding a conservation easement to the property in and adjacent to the ROW to reinforce your intention to protect the environment and the wildlife there.

General Land Trust and Landowner Rights. If you own the land in a ROW, you have the following rights to protect your land, **so long** as it does not unduly interfere with the rights of the easement holder:

- To use and protect the environment on your land, including wildlife, birds, plants, insects, amphibians, wetlands, soils and geologic features.
- To request that heavy equipment, including mowers, not be utilized for vegetation management, as it compacts and damages soil. This includes the trimming of trees outside the ROW.
- To have all brush and wood chips removed from the site that result from vegetation management activities. (Note that brush and downed woody material may be used in wildlife brush piles).
- To perform your own ongoing vegetation management work as part of your right to protect the environment, ecology and wildlife in the ROW. This may require annual or ongoing maintenance of vegetation to keep the growth and resulting work reasonable.
- To be notified of any 1293 sub-petitions that include work on your land and what your rights are to comment to the Siting Council.
- To be notified in writing of any proposed or planned major work on your land in or abutting the ROW including *routine* vegetation management.
- To be notified in advance of *any* work on the property, or to be notified immediately if there is an emergency. You can put up a sign, preferably on any gates needed for access that states access requires approval by the property owner or “Land Steward” for the land trust with the name and number provided on the sign.
- To have any petition or sub-petition that has been filed to support planned work in your ROW provided in softcopy so it can be easily distributed.
- If the proposed work references Petition 1293, to have work pads removed and the impact on the environment minimized. This is best done by requesting that temporary timber mats (normally used for wetlands) be used as work pads and then removed, instead of using gravel and stone process, which is much more difficult to remove.
- To have the land restored to the extent practical to the way it was before work began.
- To protect wetland areas in the ROW, including vernal pools, including by using timber mats for wetland crossings.
- To request the combination lock number for any gates impeding access to your land.

Recommendations

Prepare for an Eversource Maintenance Project

- Have a trained ecologist assess the flora, fauna, insects, birds and soil types in the ROW and nearby, including their value and distribution. The expert should also assess the impacts of removing existing work pads and installing new work pads for future pole replacement. Prepare a suitable restoration plan for the site, including plans for planting and erosion protection.
- Check to make sure any wetlands on your property are on the Eversource maps. If they are not, retain a soil scientist to delineate them so that they will be protected.
- Research plantings, especially species already present and thriving, that would grow well in the ROW and support local wildlife, especially pollinators. ROWs are known pollinator pathways that are important to pollinators' survival.
- Update the DEEP Natural Diversity Database with any threatened, endangered or species of concern ("listed species") that are found on your ROW, <https://portal.ct.gov/DEEP/NDDDB/Contribute-Data-to-the-NDDDB>. Eversource is required to query this database to address listed species concerns when working in a ROW area. You can also query the Natural Diversity Database for listed species in your area at this link: <https://portal.ct.gov/DEEP/NDDDB/Requests-for-NDDDB-Environmental-Reviews>.
- Inventory all wooden poles in your ROW, including pole number and line number. Assume that Eversource plans on replacing them soon. Request a schedule of planned projects that would include these poles and what assessments have been made on their condition. Take pictures of any poles earmarked for replacement. Consider getting an independent assessment of these poles if they still look serviceable. Request the dates that these poles were installed to provide additional support of their actual condition. If warranted, provide this information with any correspondence with the Siting Council and Eversource to request postponement of their replacement as a more cost-effective solution as well as less invasive to the environment in the ROW.
- Notify Eversource if you want planned work pads removed and the impact of road work minimized. The cost of removal may cause them to switch to an alternative approach such as timber matting, with much less environmental impact.
- Land trusts should provide Eversource with a contact name, phone number, and address to be notified of any work being planned on the ROW. If there is a significant amount of land in ROW, you should appoint a "Land Steward" who is responsible for working with Eversource to coordinate work and ensure protection of the environment.
- Land trusts should provide the Connecticut Land Conservation Council (CLCC) with contact information as well. The CLCC provides this information to the Public Utilities Regulatory Authority (PURA) and the Siting Council to facilitate project-related communications with Eversource.
- Document any invasive species of plants that you believe were brought into the ROW due to any past utility maintenance projects, and request their removal. Highly invasive common mugwort commonly colonizes work areas after poles are replaced.
- Take an inventory of all steel poles that have already been installed. If they were replaced under a 1293 sub-petition, inform Eversource that you want the existing work

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pads removed and the land restored. If not, search the CSC website for earlier petitions related to those poles and the promised protections for the environment.

- *Be prepared to comment*, setting forth your concerns to the Siting Council in writing as soon as you receive a notice of a sub-petition for proposed work to replace transmission poles. Comments must be received within 30 days.
- Consider placing a *conservation easement* on the property in and adjacent to the ROW to clarify your intent to protect the environment and wildlife. Conservation easements provide additional legal protections that could help safeguard your land.

Communications with the Siting Council and Eversource

- *Comments to the Siting Council* should include the description of the site's natural resources that has been prepared, emphasizing resources of special sensitivity, and issues related to work pads, if they are used.
- *Prevention of invasive infestations*: Insist that all contractors that enter the property follow the [Connecticut Invasive Plants Council March 2020 recommendations](#) on limiting the spread of invasive species via seeds and root fragments on vehicles, tools, and in soil and mulch. Insist that fill/soil/mulch brought onto the site come from invasive-free sources.
- *Communicate ahead of time* with Eversource. Provide a designated contact person for each piece of land affected by work under the sub petition. Preferably there is one "ROW Land Steward" assigned for all land managed by a land trust to avoid miscommunication.
- *Meet with Eversource personnel*—the project manager, the public relations person assigned to the project and a representative of each contractor for the project—to discuss the scope and timing of work and how to minimize its impact. Request a *copy of the work plan*. Note that Eversource can move the transmission lines to the new poles *with the power turned off*, which requires less heavy equipment and reduces the size of the work pads. This significantly reduces impacts to habitat and vegetation.
- Notify the town officials that are in contact with Eversource of your intentions and the need for their support for your requests, which may include turning off the power.
- *Document all communications* with contractors and Eversource representatives and have your notes verified via emails to all parties in attendance at meetings.

Removing, Avoiding, or Minimizing Work Pads

With regard to work pads and restoration, a written submission to the Siting Council should refer to the original language in Petition 1293 and its conditions. Also note and quote language in the petition about protecting wetlands and limiting size of access roads. As pointed out above, after Eversource notifies you of transmission poles replacement on your land, communicate your concerns and objections to the Connecticut Siting Council within 30 days of the submission of the Petition by Eversource to the Council.

Placement of gravel work pads usually constitutes a massive adverse impact. If you want work pads removed, or other alternatives, make your intentions known in writing as early in the

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process as possible to encourage Eversource to use temporary timber mats instead of gravel to build the pads they need to support equipment.

If the use of timber mats is constrained by the terrain, request that Eversource shut off power when they put up the new poles and move the lines over. This will reduce the size and quantity of equipment and the size of the work pad they will need. They may resist this, but it is within their purview to have power shut off up to four days, rather than moving lines “live”. The work typically takes four to eight hours, including putting up the poles once the holes are drilled. The number of timber mats can be reduced by shutting off the power.

Make sure timber mats are not put down weeks ahead of time and left in place for weeks afterwards. Minimizing the time that mats are in place will significantly reduce impacts to the plants underneath. You may wish to dig up valuable shrubs, before work begins, and set them aside to replant after the mats are removed.

Summary

Landowners should review Petition 1293 and subsequent sub-petitions to the Connecticut Siting Council for other ROW segments to understand what assurances utility providers have made to protect the environment, and what conditions the Siting Council has laid out for approval of proposed work.

Be prepared for Eversource to file a sub-petition for your ROW section. Proactively describe and assess the value of the environmental resources on your land and be ready to comment to the Siting Council on the impact when a notice of a sub-petition filing is received.

Ensure that Eversource adheres to the conditions and promises made in Petition 1293 and the 1293 sub-petition, once a 1293 sub-petition is filed and approved. This will require meeting with Eversource representatives and their contractors to discuss the planned work, and discussing reasonable alternatives with minimum impact to the environment. Document the resulting agreements so that contractors doing the work will understand them.

Landowners need to be more proactive about protecting the value of their land, not only in monetary terms, but also the value of the plants, birds, insects (including pollinators) and other wildlife that depend on their land and its environment. Be informed of your rights as a landowner to help protect the value of your land and to do your part to preserve the environment in ROWs. Achieving a safe and reliable electric infrastructure does not need to be at the detriment of the environment or the value of property.

For support, see the step-by-step ROW Management Resources linked below.

Step-By-Step Resources for Conserving Ecological and Environmental Integrity in Powerline Rights-of-Way (ROWs), October 2022

Know and document what is growing/living in the powerline ROW that you own. This can and should be done well in advance of proposed work.

1. [Request a report](https://portal.ct.gov/DEEP/NDDDB/Requests-for-NDDDB-Environmental-Reviews) of endangered, threatened or special concern species (“listed species”), and critical habitats on your property from the CT DEEP, <https://portal.ct.gov/DEEP/NDDDB/Requests-for-NDDDB-Environmental-Reviews>.
2. It is possible that listed species occurring on your property have not yet been documented. Contact a [qualified botanist](#) who can conduct a comprehensive botanical survey identifying rare and listed plants and critical habitats. Land Trusts can also contact CBS to request an initial scouting survey.
3. [Report listed and rare species found in the ROW](#) to the CT Department of Energy and Environmental Protection. Also notify the utility company, being sure to document your communication with them, <https://portal.ct.gov/DEEP/NDDDB/Contribute-Data-to-the-NDDDB>.
4. Refer to this list of [rare and “listed” species found in CT ROWs](#). ([update link to CBS site](#))
5. Read up on the classification and distribution of [twenty-five rare and specialized wildlife habitats](#) in the state.

Understand the issues. The first documents below provide an industry perspective on ROW vegetation management. The next two position papers provide background on historical ecologically sensitive management of ROWs, and how recent changes pose ecological threats.

6. [ROW vegetation management presentation by Eversource](#), August 12, 2019. Also see the [CLCC Resource website](#) for other Eversource documents and contact information.
7. [Report by the Federal Energy Regulatory Commission following major snowstorm-related outages in October 2011](#). This report makes recommendations for clearing hazard and tall trees from the border zone in ROWs that pose a threat to wires.
8. [Connecticut Botanical Society Position Paper on Right-of-Way Management](#), April 2019.
9. [Assessment of Changes in Vegetation Management on Powerline Corridors in Connecticut](#), Robert Askins, Professor Emeritus of Biology, Connecticut College, 4-11-2019.

Use and encourage recommended conservation guidelines. The documents below were developed by professional ecologists and provide detailed recommendations for ecologically sound ROW management.

10. [CBS Recommendations for Electrical Utility Right-of-Way Vegetation Management](#), provided to Eversource, September 2020.
11. [Guidelines for Managing Utility Rights-of-Way for Birds and New England Cottontails](#), Robert Askins, Professor Emeritus of Biology, Connecticut College, June 2019.

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12. [Guidelines from the CT Invasive Plant Council](#) for preventing the spread of invasive plants through movement of topsoil and mulch.
13. [Best Management Practices for New England Cottontails](#) in ROWs (Eversource and CT DEEP)
14. [Integrated Vegetation Management Partners](#): a nonprofit liaison for industry, agencies and conservation that develops programs and provides education on vegetation management and conservation best practices.

Know your rights. If planning work on your property, Eversource is required to notify you, the town and abutters 30 days in advance. For replacement of utility poles and construction of roads and work pads, they will also provide a sub-petition document with detailed information about the proposed upgrades. The landowner has 30 days to notify the Connecticut Siting Council (CSC) of concerns or comments. For routine vegetation management, contact Eversource or whoever is indicated on the notice.

15. Connecticut Siting Council: <https://portal.ct.gov/CSC>.
16. Petition 1293: [https://portal.ct.gov/CSC/3 Petitions/Petition-Nos-1291-1300/Petition-No-1293Eversource](https://portal.ct.gov/CSC/3%20Petitions/Petition-Nos-1291-1300/Petition-No-1293Eversource). All detailed sub-petitions for pole replacement refer back to Petition 1293, which contains important provisions, namely that Eversource plans to “use existing access where possible, retain upland work pads unless the landowner requests removal, and remove matting from wetland areas after construction...” This implies the landowner can request that work pads be removed. It is recommended that landowners become familiar with Petition 1293. If they wish work pads to be removed, it is best to express this *before* work begins.
17. Slide presentation by Kimberly Stoner, CT Agricultural Experiment Station: [Advocating for your Right of Way Basics](#).

Research, Reports and Other Useful Resources:

18. 2019 Glastonbury Study by Rema Ecological Services (2020). The lead author is Sigrun Gadwa, ROW Committee Chair and a CBS Board member. Findings of the Glastonbury Study contributed substantially to the CBS ROW Guidelines, <https://caryaecological.com/wp-content/uploads/2020/04/Therrien-Lanata-ROW-Report-Plant-Communities-in-2019-Under-Several-Management-Regimes.pdf>. Appendices with data, <https://caryaecological.com/wp-content/uploads/2020/04/Attachment-C-Tables-1-3-Soil-Plant-Larval-Hosts.pdf>.
19. [Preliminary Recommendations with regard to Management of Eastern Red Cedar \(*Juniperus virginiana*\) on the Eversource Right-of-Way in Glastonbury, south of New London Turnpike, on the Therrien Property](#).
20. [Coming to a Right-of-Way Near You \(LINK NEEDED\)](#). Fall 2018 CBS Newsletter, Vol. 45, No. 2. This article lays out concerns with changes in ROW management and efforts by CBS to address the issue.
21. [A Transmission Right-of-Way as Habitat for Wild Bees \(Hymenoptera: Apoidea: Anthophila\) in Connecticut](#), 2014 David L Wagner, John S Ascher, and Nelson K Bricker.

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22. Importance of transmission line corridors for conservation of native bees and other wildlife, July 2019, David L Wagner, Kenneth J Metzler, and Henry Frye.
<https://www.sciencedirect.com/science/article/abs/pii/S0006320718318093#:~:text=In%20forested%20regions%2C%20electric%20transmission,otherwise%20targets%20of%20conservation%20efforts.>

An additional directory of resources is provided by the CT Land Conservation Council:
<https://ctconservation.org/resources/information-on-powerline-right-of-way-vegetation-management/>.