

MEMORANDUM OF UNDERSTANDING
between

UNITED STATES OF AMERICA
Through the U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
ALASKA REGION
and the
STATE OF ALASKA,
Through the DEPARTMENT OF NATURAL RESOURCES and
the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

This **MEMORANDUM OF UNDERSTANDING** (“MOU”), is entered into by and between the United States of America (“United States”), acting through the USDA Forest Service, Alaska Region (“Forest Service”) and the State of Alaska (“State”), acting through the Departments of Natural Resources (“DNR”) and Transportation and Public Facilities (“DOT&PF”) (collectively, the "parties").

A. PURPOSE

The purpose of this MOU is to establish a framework and process for granting the reciprocal rights-of-way and easements described in Section 4407 of Public Law 109-59 (“Section 4407”), which provides as follows: “Notwithstanding any other provision of law, the reciprocal rights-of-way and easements identified on the map numbered 92337 and dated June 15, 2005, are hereby enacted into law.”

B. STATEMENT OF MUTUAL INTEREST AND BENEFITS

The State and the United States each have a need for access and rights across their intermingled ownerships for such uses as transportation and utility corridors, log transfer facilities and marine access facilities in and around the Tongass National Forest. The parties have identified their respective access needs on the map entitled Transfer Facilities, Marine Access Points and Proposed Transportation Corridors in Southeast Alaska, numbered 92337, and dated June 15, 2005 (“Map”), which is Attachment A and is hereby incorporated and made part of this MOU. The parties intend to use their best efforts to grant the identified rights-of-way and easements in the manner prescribed in this MOU, thereby providing for development and maintenance of access and the adjunct rights of construction, operation and maintenance of facilities and improvements, which will provide substantial benefits to the public. The parties recognize that such rights will be granted consistent with their respective obligations to protect scenic, archaeological, recreation, and fish and wildlife values, resources and habitats on National Forest System lands and State of Alaska lands.

C. DEFINITIONS

Solely for purposes of this MOU, the following definitions shall apply:

1. Right-of-way. Land authorized to be used or occupied for the construction, operation, maintenance and termination of a project, such as roads, marine structures, and utilities, passing over, upon, under or through such land. A right-of-way shall be conveyed by an easement or other instrument agreed upon by the parties.
2. Easement. An interest in land owned by another party that entitles the holder to a specific limited use or enjoyment, including the right to construct, reconstruct, operate, and maintain authorized improvements.
3. Log Transfer Facility (“LTF”). A facility that is constructed in whole or in part in marine or inland waters and is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft. Also included are appurtenant constructed facilities such as equipment loading ramps, docks, floats, buoys, booms, log rafts, pilings, and anchors. LTFs that are subject to this MOU are identified on the Map.
4. Marine Access Point. (“MAP”). A facility that is constructed or may be constructed in marine or inland waters and is utilized for the purpose of providing public access to adjacent National Forest system lands and facilities. Such facilities may include docks, boat ramps, floats, buoys, anchors, breakwaters, boat haulouts, and similar improvements and facilities. MAPs that are subject to this MOU are identified on the Map.
5. Highway. Any public way for vehicular travel and other transportation related uses, including the entire area within the right-of-way and related facilities.
6. Utility. The term utility or utilities includes but is not limited to poles, lines, trenches, bridges, utildors, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, steam, heat, light, air, sewage, drainage not connected with highway drainage, or irrigation.

D. THE UNITED STATES SHALL:

1. The United States shall grant to the State rights-of-way substantially similar in form to Attachment B. The rights-of-way shall include at least those rights necessary for DOT&PF to conduct engineering and all other activities necessary or incident to highway and utility planning, design and environmental review processes. The term of the rights-of-way shall be fifty (50) years and non-renewable. The location of the rights-of-way will be as set forth in the Map. The Map is intended, in part, to identify the servient estate. Attachment B shall identify the section, township, range and meridian designation of the servient estate, and will include a starting point, ending point, and approximate width and alignment of each right-of-way corridor. The location of the right-of-way will be further detailed by a survey diagram or diagrams at times and places mutually agreed by the parties and such survey diagram will be prepared during the course of activities described above, but prior to construction (see D.2). Rights-of-way issued pursuant to this section shall terminate upon issuance of an easement pursuant to paragraph D.2.

2. If, within the term of the right-of-way granted pursuant to paragraph D.1, and prior to any construction, the State submits a survey diagram that has received written acceptance pursuant to paragraph F.6, the Forest Service shall grant a renewable fifty-five (55) year easement substantially similar in form to Attachment C. The easement shall be for the construction, reconstruction, operation and maintenance of roads, utilities, and other linear transportation and utility purposes. The easement shall confer upon the State non-exclusive rights, at no charge. The easement shall reserve in the United States, among other things, the right to the standing timber within the right-of-way, the subsurface estate, the right of public access and use other than for highway and utility purposes, the right to regulate acts or omissions, and the right to enforce regulations related to the occupancy and use of National Forest System lands. Exercise of any of the rights reserved to the United States may not unreasonably interfere with the highway or utility purposes of the easement, and is subject to all applicable rules and requirements associated with operating and maintaining a public highway and utilities. Subject to existing Forest Service regulations and Forest Service approval of pit location, either a free use permit shall be issued for access to and use of mineral materials within construction limits if used for construction of a highway or for highway repair purposes, or the easement will be drafted, amended or modified to include such right.

3. Granting of an easement under paragraph D.2 shall not be unreasonably withheld. If an easement is not granted pursuant to paragraph D.2, any rights-of-way previously granted shall terminate without the necessity for any decision or action by an authorized representative of the United States or the State. Prior to termination, the parties may mutually agree to an extension of any right-of-way previously granted under paragraph one of this section.

4. The easements in paragraph D.2 shall be sufficient to satisfy the requirements of 23 CFR 1.23 for the construction, operation, and maintenance of roads, utilities, and other linear transportation and utility purposes for each route identified on the Map.

5. The grant of rights-of-way in Attachment B shall be in accordance with the schedule of priorities prepared by the State, which appears as Attachment D and is hereby incorporated into this MOU.

E. THE STATE OF ALASKA SHALL:

1. Log Transfer Facilities.

a. Subject to the requirements of paragraph E.3 below, DNR shall grant to the United States a tideland easement with a term of fifty-five (55) years for each LTF site as represented on a State-approved easement diagram. The easement granted by DNR shall be substantially similar in form to Attachment E, and is subject to the reservations in paragraph E.1.b. Such easement shall confer upon the United States the non-exclusive right to utilize the site, at no charge, and shall be renewable. The easement shall generally encumber approximately ten (10) acres for each LTF site. The grant of easements shall be in accordance with the schedule of priorities prepared by the United States, which appears as Attachment F and is hereby incorporated into this MOU. If, for any reason, DNR rejects a particular site for an LTF easement, the Forest Service shall have the opportunity to select an alternative site in the area

that will serve its needs. All easements shall be applied for within fifty years of the effective date of this MOU.

b. If DNR determines that, due to adjacent uses or other considerations, it is necessary that an Alaska Tideland Survey for the easement area and constructed improvements thereon be prepared, the Forest Service shall undertake such survey, at its expense. The authority to permit third-party use within the area encumbered by the easement is expressly reserved by the State, except that such use shall not unreasonably interfere with the rights granted to the United States including actual log transfer operations and the ability of the Forest Service to restrict third-party use for purposes of public safety. The easement shall reserve in the State, among other things, the right to the standing timber, the subsurface estate, the right of public access and use, the right to regulate acts or omissions, and the right to enforce regulations related to the occupancy and use of State lands. Except as provided in paragraph E.1.c below, third party use does not include Forest Service contractors, permittees and assigns.

c. The State shall not require a permit or other written authorization for users that access National Forest System lands or other public lands through LTFs if the use is noncommercial and does not interfere with public access or another public use. The State further agrees, in order to effectuate the purposes of this MOU, that it shall not require a permit or other written authorization for users that access National Forest System lands for commercial use through LTFs, except that the State may require a third party to obtain a permit or other written authorization for access through LTFs to a lodge, hotel, industrial facility, or other similar improvement located on National Forest System or other public lands.

2. Marine Access Points.

a. The State acknowledges and agrees that pursuant to the regulations at 11 AAC 96.020, the United States, as an upland landowner, without a permit or other written authorization for itself and its assigns and permittees, may construct, operate, and maintain, in lakes, rivers or marine waters within the Tongass National Forest, public docks, boat ramps, mooring buoys, floating breakwaters, and other facilities that are designed and used for access to and from water and provide public access to adjacent National Forest System lands and facilities if the use of such facilities is noncommercial and does not interfere with public access or another public use. The State further agrees, in order to effectuate the purposes of this MOU, that it shall not require a permit or other written authorization for users that access National Forest System lands for commercial use through such facilities constructed at those MAP locations identified on the Map, except that the State may require a third party to obtain a permit or other written authorization for access through constructed facilities at a MAP location to a lodge, hotel, industrial facility, or other similar improvement located on National Forest System or other public lands.

b. In the event that DNR subsequently changes its regulations at 11 AAC 96.020 such that the facilities referenced above are required to come under a State authorization for noncommercial use or be removed, or that new facilities could not be constructed without such authorization, the United States may nevertheless continue the same uses without the need for making formal application to DNR to continue such uses. The parties must nevertheless consult,

and DNR shall issue such authorization as necessary to memorialize the use of MAP facilities for noncommercial use, at no charge to the Forest Service. The authorization must be in a form acceptable to both parties.

3. State Process for Grant of Easements. DNR will follow the relevant requirements of AS 38.05 in the granting of an easement under this section, including preparing a preliminary and final best interest finding and providing public notice as required by AS 38.05.850.

F. THE STATE AND UNITED STATES MUTUALLY AGREE AND UNDERSTAND:

1. Mutual Use. The parties intend that the reciprocal interests granted herein shall be available for mutual use, so long as such uses do not unreasonably interfere with the rights granted, and the terms and conditions of the easements described herein. The right of reasonable mutual use includes the right to perform surveys, collect data, and perform geotechnical drilling, and other engineering investigation measures.

2. Public Use. Both parties shall allow reasonable public use of the land interests identified herein so long as such use does not unreasonably interfere, limit, or obstruct the rights identified herein.

3. Operation, Maintenance and Use. The party constructing a particular improvement shall take responsibility for the proper operation, maintenance, and regulation of uses of such improvement.

4. Existing Rights. All grants of interests are subject to valid existing rights.

5. Change in Ownership. When a transfer of ownership in any of the land interests subject to this MOU occurs, the parties shall update all records for the affected features and determine any obligations resulting from such transfer.

6. Plan Submission and Approval. When either the Forest Service or the State is considering the construction or reconstruction of an improvement within any lands subject to this MOU, it will give the other party written notice, which shall be accompanied by plans, drawings and specifications, and a plat showing the approximate location of the proposed improvements. Prior to beginning construction, written acceptance must be received from the other party of the plans, drawings and specifications, but such written acceptance shall not be unreasonably withheld. Such written acceptance shall not require any special form, and shall not require a special use authorization or DNR permit. Both parties shall endeavor to complete reviews within 60 days.

7. Construction Monitoring. Each party shall keep the other informed of construction progress. Periodic inspections may be made by either party as deemed necessary during construction, and objections or issues relating to construction or construction related activities must be raised in writing.

8. Dispute Resolution. The parties shall attempt to resolve any disagreement concerning implementation of this MOU expeditiously and informally at the field level and, if the parties agree, such resolution may involve the use of a mutually acceptable neutral to assist in resolving the dispute. If the parties fail to resolve such dispute informally at the field level, the dispute may continue to be referred to the next higher organization level of each party for resolution. This means, first, the assigned field staff from all parties, second, the Forest Supervisor and the Southeast Regional Managers for DNR and DOT&PF, and finally the Regional Forester and the Commissioners of DNR and DOT&PF.

9. Freedom of Information Act (FOIA). Any information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. 522).

10. Participation in Similar Activities. This MOU in no way restricts the Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.

11. Responsibilities of Parties. The Forest Service and the State and their respective agencies and offices shall handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

12. Principal Contacts. The principal contacts for this MOU are:

USDA Forest Service	Assistant Director, Lands
State of Alaska, Department of Transportation	Southeast Regional Director
State of Alaska, Department of Natural Resources	Southeast Regional Manager

13. Fund Obligating Document. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this MOU shall be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors shall be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically this MOU does not establish authority for noncompetitive award to the State of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

14. Modification. Modifications within the scope of this MOU shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

15. Termination. Any of the parties, in writing, may terminate this MOU in whole or in part, at any time before the date of expiration.

16. Authorized Representatives. By signature below, the State and the Forest Service certify that the individuals listed in this document as the representatives of the State and the Forest Service are authorized to act in matters related to this MOU.

17. Commencement/Expiration. This MOU is executed as of the date of the last signature below and is effective though December 31, 2018. The MOU may, however, be extended by written mutual consent of the parties to this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this Reciprocal Right-of-Way Memorandum of Understanding to be properly executed by their authorized representatives on the day and year first above written.

STATE OF ALASKA

By Mike Barton
Michael A. Barton
Commissioner
Department of Transportation and Public Facilities

9/22/16
Date

By Michael L. Menge
Michael L. Menge
Commissioner
Department of Natural Resources

9/29/06
Date

UNITED STATES OF AMERICA

By Dennis E. Bschor
Dennis E. Bschor, Regional Forester
Forest Service, Alaska Region
United States Department of Agriculture

9/22/2006
Date

The authority and format of this instrument has been reviewed and approved for signature.

/s/Linda L. Jones September 20, 2006
FS Agreement Specialist Date

List of Attachments

Attachment A	Map 92337
Attachment B	Right-of-Way Easement (MOU Paragraph D.1)
Attachment C	Right-of-Way Easement (MOU Paragraph D.2)
Attachment D	Listing of Transportation and Utility Corridors
Attachment E	Public Easement (ADL) (MOU Paragraph E.1)
Attachment F	Listing of Log Transfer Sites

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2010-001437-0

Recording Dist: 103 - Sitka

11/4/2010 11:42 AM Pages: 1 of 6



U.S Department of Agriculture – Forest Service
Right of Way Easement

Filed for Record at the Request of and Return to:
State of Alaska
Department of Transportation and Public Facilities
P.O. Box 112506
Juneau, Alaska 99811-2506

STATE BUSINESS – NO CHARGE

**U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Right of Way Easement
Section 4407 of Public Law 109-59**

THIS EASEMENT (hereafter ROW Easement), is made this 29th day of October, 2010 between the United States of America, acting by and through the United States Department of Agriculture, Forest Service (hereafter Grantor), and the State of Alaska, acting by and through the Department of Transportation and Public Facilities (hereafter Grantee):

WITNESSETH:

WHEREAS, pursuant to Section 4407 of Public Law 109-59, the United States Congress has directed that the reciprocal rights-of-way and easements identified on a map numbered 92337 be enacted and thereby granted between the United States and the State of Alaska; and

WHEREAS, Grantor and Grantee have entered into a Memorandum of Understanding (MOU), dated September 29, 2006, to establish a framework and process for granting such reciprocal rights-of-way and easements, including this ROW Easement and any subsequent conditioned easement for construction, operations, and maintenance of highway and utility developments;

NOW THEREFORE, Grantor, as authorized by law, does hereby grant and convey to Grantee, subject to conditions, restrictions and limitations of record, a right-of-way easement of approximately 300 feet in width, for a term of fifty (50) years, which is non-renewable, for highway and utility planning purposes, including the right to conduct engineering and all other activities necessary or incident to highway and utility planning, design and environmental review processes, along, over and across the following described lands within the Sitka Recording District based on protracted Sections, Townships (T), and Ranges (R) located South (S) and East (E) of the Copper River Meridian.

Commencing at the boundary of other ownership in the northeast $\frac{1}{4}$ of Section 34, T. 54 S. R. 63 E.; moving northeasterly through Section 34, T. 54 S. R. 63 E.; thence northeasterly through Section 35, T. 54 S. R. 63 E.; thence easterly and northerly through Section 26, T. 54 S. R. 63 E.; thence easterly and northerly through Section 25 T. 54 S. R. 63 E.; ending at boundary of other ownership along the east-west centerline of Section 25, T. 54 S. R. 63 E.;

Commencing at boundary of other ownership east-west centerline of the north $\frac{1}{2}$ of Section 14, T. 54 S. R. 63 E.; thence northwesterly through Section 14, T. 54 S. R. 63 E.; thence northerly and westerly through Section 11, T. 54 S. R. 63 E.; thence northerly and westerly through Section 10, T. 54 S. R. 63 E.; thence northerly through Section 3, T. 54 S. R. 63 E.; thence northerly then westerly through Section 34, T. 53 S. R. 63 E.; thence northerly and easterly through Section 35, T. 53 S. R. 63 E.; thence easterly and northerly through Section 36, T. 53 S. R. 63 E.; thence northerly and westerly through Section 25 T. 53 S. R. 63 E.; thence northerly and westerly to existing road in Section 24, T. 53 S. R. 63 E.; thence generally following existing road northerly and westerly through Section 23, T. 53 S. R. 63 E.; to the end



of the existing road near the common boundary of Sections 22, 23, 26 and 27, T. 53 S. R. 63 E.; thence westerly then southerly through Section 22, T. 53 S. R. 63 E. to existing road at common boundary between Sections 22 and 27, T. 53 S. R. 63 E.; thence generally following road westerly then northerly through Section 27, T. 53 S. R. 63 E.; thence westerly and northerly through Section 22, T. 53 S. R. 63 E.; thence northwesterly to end of road in Section 21, T. 53 S. R. 63 E.; thence westerly through Section 21, T. 53 S. R. 63 E.; thence southwestly through Section 20, T. 53 S. R. 63 E.; thence westerly and southerly through Section 29, T. 53 S. R. 63 E.; thence northerly and westerly through Section 30, T. 53 S. R. 63 E.; thence northerly and westerly to existing road in Section 19, T. 53 S. R. 63 E.; thence generally following road northerly through Section 19, T. 53 S. R. 63 E.; thence northerly and westerly through Section 18, T. 53 S. R. 63 E. to common boundary between Section 13, T. 53 S. R. 62 E. and Section 18, T. 53 S. R. 63 E.; thence northerly and easterly through Section 18, T. 53 S. R. 63 E.; thence northerly and westerly through Section 7, T. 53 S. R. 63 E. to common border between Sections 6 and 7, T. 53 S. R. 63 E. and Sections 12 and 1, T. 53 S. R. 62 E.; thence northerly through Section 1, T. 53 S. R. 62 E. to end of road; thence northerly through Section 1, T. 53 S. R. 62 E. along the section between Section 1 T53S R62E & Section 6 T53S R 63E; thence northerly and westerly through Section 33, T. 52 S. R. 62 E.; thence northwesterly through Section 28, T. 52 S. R. 62 E.; thence northerly and westerly through Section 29, T. 52 S. R. 62 E.; thence northerly to existing road in Section 20, T. 52 S. R. 62 E.; thence generally following road easterly through Section 20, T. 52 S. R. 62 E.; thence easterly through Section 21, T. 52 S. R. 62 E. thence northeasterly & southeasterly through Section 16 T. 52 S. R. 62 E.; thence southeasterly through Section 21 T. 52 S. R.62 E; thence southeasterly then northeasterly through Section 22, T. 52 S. R. 62 E.; thence northeasterly through Section 23, T. 52 S. R. 62 E.; thence northwesterly through Section 14, T. 52 S. R. 62 E. to end of road in Section 15, T. 52 S. R. 62 E.; thence westerly and northerly through Section 15, T. 52 S. R. 62 E.; thence northwesterly through Section 16, T. 52 S. R. 62 E.; thence northwesterly through Section 9, T. 52 S. R. 62 E. crossing near common corners of Sections 8, 9, 16 & 17 T. 52 S. R. 62 E.; thence westerly and northerly through Section 8, T. 52 S. R. 62 E.; thence northerly and westerly through Section 7, T. 52 S. R. 62 E.; thence northwesterly through Section 6, T. 52 S. R. 62 E.; thence northwesterly through Section 1, T. 52 S. R. 61 E.; thence northerly then northeasterly through Section 36, T. 51 S. R. 61 E.; thence northerly through Section 25, T. 51 S. R. 61 E.; thence northwesterly through Section 24, T. 51 S. R. 61 E.; thence northerly and easterly through Section 19, T. 51 S. R. 62 E.; thence northerly then easterly through Section 18, T. 51 S. R. 62 E.; thence easterly through Section 17, T. 51 S. R. 62 E.; thence easterly to road in Section 16, T. 51 S. R. 62 E.; thence generally following an existing road northeasterly through Section 16, T. 51 S. R. 62 E. near the common corner of Sections 9, 10, 15 and 16, T. 51 S. R. 62 E.; thence northeasterly then southeasterly through Section 10, T. 51 S. R. 62 E.; thence southeasterly through Section 11, T. 51 S. R. 62 E. crossing near the common corners of Sections 10, 11, 14 & 15 T. 51 S. R. 62 E.; thence easterly and southerly through Section 14, T. 51 S. R. 62 E.; thence northerly and easterly through Section 11, T. 51 S. R. 62 E.; thence northeasterly through Section 12, T. 51 S. R. 62 E.; thence northeasterly through Section 1, T. 51 S. R. 62 E. ending near the section line between Section 1, T. 51 S. R. 62 E. and Section 6, T. 51 S. R. 63 E. in southeast ¼ of Section 1, T. 51 S. R. 62 E.

And as shown in the attached Easement Diagram titled "State of Alaska Department of Transportation and Public Facilities Easement Diagram Right of Way Required for: Reciprocal R/W Corridor Sitka – Rodman Bay per P.L. 109-59 Map 92337 Page 1 of 1" dated 1/2009.

Containing approximately 1424 acres more or less

SUBJECT, however, to the following terms, conditions, and covenants:

1. Easements, rights and reservations of the United States and third parties, if any, of record existing on the date of this grant, and Grantee shall obtain such permission as may be necessary on account of any such interests.
2. Unless Grantor and Grantee stipulate otherwise, this ROW Easement shall terminate fifty (50) years from the date of the execution of this ROW Easement by operation of its terms in the event construction of a highway or utility on the right-of-way described herein is not authorized by a grant of a fifty-five year



renewable easement pursuant to the MOU. The grant of such fifty-five year easement shall, without further action by Grantor or Grantee, terminate this ROW Easement.

3. The rights granted herein are limited to use of the described right-of-way and do not include the grant of any rights for non-highway or non-utility planning purposes; Provided, that the right of the Grantor to use or authorized the use of any portion of the right-of-way for non-highway and non-utility purposes shall not be exercised when such use would be inconsistent with the rights granted herein.
4. The jurisdiction and operational control of any roads located within the lands described herein existing as of the date of the execution of this ROW Easement are not affected by this grant, but Grantor and Grantee may agree upon the transfer of jurisdiction or sharing of operational responsibilities by separate agreement.
5. All rights not otherwise granted and conveyed to Grantee herein are reserved to the United States, including, but not limited to, the right to the standing timber within the right-of-way, the subsurface estate, the right of public access and use, the right to regulate acts or omissions, and the right to enforce regulations related to the occupancy and use of National Forest System Lands. Such rights will be exercised in such a manner so as not to unreasonably interfere with the rights granted herein.
6. Grantee may conduct such surveys and investigations as are necessary for the preparation of plans and drawings for future construction or placement of highway and/or utility developments within the land area described herein, including brushing for ground surveys, geotechnical investigations to determine foundation conditions, and other similar actions. Grantee shall, in advance, advise Grantor of its plans for field activities and of any changes thereto.
7. Grantee shall comply with all applicable law in the performance of the rights granted herein.
8.
 - (a). Grantee's liability and obligation to pay the United States for all injury, loss, or damage, including fire suppression costs, arising from Grantee's use or occupancy authorized by this ROW easement shall be determined in accordance with existing Federal and State laws. A judicial determination of liability of Grantee is not a condition precedent for the United States to recover under the State's self-insurance program.
 - (b). Grantee is self-insured and enjoys no blanket statutory caps limiting Grantee's liability. If Grantee subsequently passes legislation modifying its self-insurance program or creating blanket liability caps in such a manner as to reduce the liability protections provided in this ROW easement, Grantor may demand that paragraph 8(a) be renegotiated. If the parties are unable through good faith negotiations to agree on mutually satisfactory terms, Grantee shall be provided the reasonable opportunity to obtain legislation to resolve the matter. If neither negotiations nor legislation is successful in resolving liability concerns, Grantor may revoke this ROW easement.
 - (c). Grantee has waived sovereign immunity for enforcement of contracts pursuant to AS 09.50.250. If this provision is subsequently amended by the Alaska legislature, Grantor may demand that sub-paragraph 8(a) be renegotiated to provide for a cause of action to enforce the terms and conditions of this ROW easement against the State of Alaska in the event the United States is otherwise unable to do so. If the parties are unable through good faith negotiations or legislation to provide the United States with a cause of action to enforce the terms and conditions of this ROW easement against the State of Alaska, Grantor may revoke this ROW.
 - (d). Any permit or contract issued by Grantee to a utility under this ROW easement must require the utility to maintain liability insurance commensurate with the risk of the approved occupancy and use and must require that Grantor be named as an additional insured in the insurance policy.



IN WITNESS WHEREOF, the Grantor, by its Regional Forester, Forest Service, has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 FR 34283), on the day and year first above written.

UNITED STATES OF AMERICA

Beth G. Pendleton

By: Beth G. Pendleton
Regional Forester
Forest Service
Department of Agriculture

ACKNOWLEDGEMENT

STATE OF ALASKA)
1st JUDICIAL DISTRICT) ss.

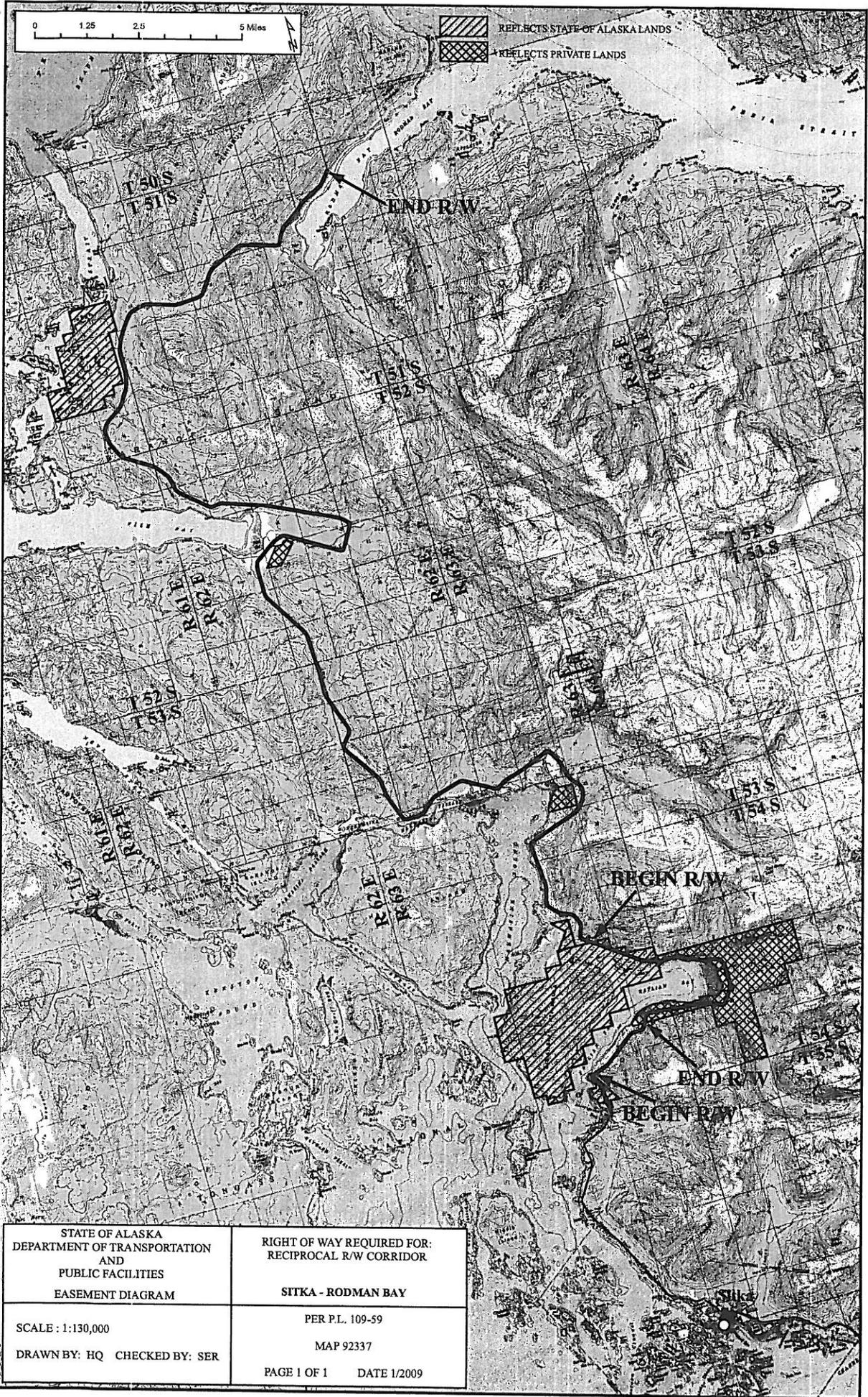
ON THIS 29th day of October in the year 2010, before me, the undersigned notary public, personally appeared Beth G. Pendleton known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public: *Jackie Swanson*
My commission expires: 11/16/2012

Return to: USDA Forest Service, Regional Office, Attn: Jackie Swanson, RLM, P.O. Box 21628, Juneau, AK 99802-1682





<p>STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES EASEMENT DIAGRAM</p>	<p>RIGHT OF WAY REQUIRED FOR: RECIPROCAL R/W CORRIDOR</p> <p>SITKA - RODMAN BAY</p>
<p>SCALE : 1:130,000</p> <p>DRAWN BY: HQ CHECKED BY: SER</p>	<p>PER P.L. 109-59</p> <p>MAP 92337</p> <p>PAGE 1 OF 1 DATE 1/2009</p>



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