

Greg Smith/WO/USDAFS
04/09/2008 08:24 AM

To A L Richard/WO/USDAFS@FSNOTES
cc
bcc
Subject Fw: Meeting with Senator Tester Wednesday 5:15 PM,
Senate Russell 204

Per your request!

Thanks for your help!

Gregory C. Smith, Esq.
Director, Lands and Realty Management
USDA, Forest Service
Tel: 202-205-1248
Fax: 202-205-1604
Email: gsmith08@fs.fed.us



----- Forwarded by Greg Smith/WO/USDAFS on 04/09/2008 08:23 AM -----

"SNOW, JAMES B."
<JAMES.SNOW@OGC.USDA.GOV>

04/08/2008 06:18 PM

To tcleeland@fs.fed.us, dcrandall@fs.fed.us, ttidwell@fs.fed.us,
gsmith08@fs.fed.us
cc "Suk, Tom -FS" <Tom.Suk@usda.gov>, "Schofield, Gordon
-FS" <Gordon.Schofield@usda.gov>, "MILLET, THOMAS"
<THOMAS.MILLET@OGC.USDA.GOV>
Subject RE: Meeting with Senator Tester Wednesday 5:15 PM,
Senate Russell 204

Folks,

I can certainly go through the legal issues and how the easement amendment addresses them.

I suspect, however, that the Senator and staff may have some more basic questions, some of which I can answer and others not.

Some basic background on cost share under FRTA may be required: e.g.:

How many miles of cost share roads do we have in the nation? What States? How many miles in Montana?

What forests in Montana are subject to cost share systems with Plum Creek?

How much land does PC own in Montana ... any idea?

How much money changes hands between the FS and PC pursuant to cost share agreements?

If there is conveniently a map in pdf format showing an example of intermingled FS/PC ownership for a cost share road system, that could be a good graphic illustration. I can run copies on our color printer.

Be aware that Plum Creek knows about this meeting. I told their lawyers. Since we are technically in negotiations, we have a professional obligation to apprise them of this kind of development. Dan Wolff called me and said they will let us deal with this and asked to be kept apprised.

Jim

-----Original Message-----

From: tcleeland@fs.fed.us [mailto:tcleeland@fs.fed.us]
Sent: Tuesday, April 08, 2008 5:25 PM
To: dcrandall@fs.fed.us; ttidwell@fs.fed.us; gsmith08@fs.fed.us; SNOW, JAMES B.
Cc: Rey, Mark -USDA; Vlasaty, Andrew -USDA; FS Liaison Officer -NRE -USDA
Subject: Meeting with Senator Tester Wednesday 5:15 PM, Senate Russell 204

Confirmation of a meeting with Senator Tester and his legislative assistant
Matt Jennings tomorrow, April 9 at 5:15 pm in SR 204 regarding Forest Service discussions with Plum Creek. Attendees will be:

Tom Tidwell, Regional Forester, Region 1
Jim Snow, USDA Office of General Counsel
Doug Crandall, Director of Legislative Affairs
Greg Smith, Director of Lands

Tom and Jim, can you arrange to come to the LA office of the Yates building (5th floor) by 4:45 PM to discuss the briefing prior to departure to the Hill?

Teri Cleeland
Acting Deputy Director, Legislative Affairs
US Forest Service
Legislative Affairs, 5NW
201 14th Street, SW, Stop 1130
Washington, DC 20250-1130
202-205-0844 or 205-1637 (voice)
202-205-1225 (fax)

----- Forwarded by Teri Cleeland/WO/USDAFS on 04/08/2008 04:45 PM -----

Teri

Cleeland/WO/USDAF

S

To

"Jennings, Matt (Tester)"

04/08/2008 04:24

<Matt_Jennings@tester.senate.gov>

PM

cc

APPROVED

Easement Amendment

MAR 27 2008

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2008, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timberlands, L.P.**, a Delaware limited partnership, and **Plum Creek Land Company**, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104.

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

Definitions: As used herein:

The term "Prior Easements" means the easements referenced on the attached Exhibit A and incorporated herein as though fully set forth.

The terms "road" or "roads" mean the property rights conveyed by the Prior Easements as may be amended or supplemented herein; such road or roads are part of the National Forest Road System ("road system").

The term "Plum Creek" means Plum Creek Timberlands, L.P., Plum Creek Land Company, their subsidiaries, and/or their successors and assigns.

The term "Party" means either the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means the United States in addition to Plum Creek.

The term "person(s)" means any individual, partnership, limited partnership, corporation, association, organization, limited liability company, trust or other fiduciary arrangement, joint venture, cooperative, or any other type of entity, but does not include federal government agencies.

The term "public road authority" means a federal, state, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities. *See* 23 U.S.C. § 101(23). For purposes of this easement amendment, the Forest Service is not considered a public road authority, but this shall not be construed to preclude the Forest Service from exercising such authority in the future.

WITNESSETH:

WHEREAS, the United States, Plum Creek, and the predecessors in title to Plum Creek recognized the efficiency, cost savings and other benefits of jointly creating a single road

system serving the intermingled real property of the parties. The road system was created by means of Road Right-of-Way Construction and Use Agreements, cost-share agreements, reciprocal easements, and similar agreements which provided for the construction, operation, maintenance of roads and road segments; and

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. §§ 532-538); and

WHEREAS, the Parties desire and intend by this instrument to clarify and define certain rights and obligations with respect to the roads.

NOW THEREFORE, for and in consideration of the mutual covenants and benefits provided herein, the Parties agree to this Easement Amendment as follows.

The Parties agree that the rights conveyed by the Prior Easements identified on Exhibit A are hereafter subject to the following terms and conditions. Except as modified by this Easement Amendment, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easements and this Easement Amendment, this Easement Amendment shall be controlling.

1. *Roads Affected.* This Easement Amendment applies to those roads described and identified in the Prior Easements.

2. *Road Uses.*

(a) Except as herein limited, Plum Creek shall have the right to use the roads described and identified in the Prior Easements for all purposes deemed necessary or desirable by Plum Creek for ingress and egress in connection with the protection, administration, management, and utilization of Plum Creek's lands or resources, including the use of the appurtenant land for forest management purposes, subdivision, sale, or commercial, industrial, or residential development.

(b) The National Forest Roads and Trails Act of 1964 does not authorize the use of the roads for utilities. The United States may issue easements or permits to utility providers for the installation, use and maintenance of utilities over, along, across and under the roads described and identified in the Prior Easements under separate authorization.

3. *Road Access Points.*

(a) *On Plum Creek's Land.* Where the easement area crosses Plum Creek lands, Plum Creek may, subject to Paragraph 3(b), locate access points to the road system on its lands for purposes consistent with Paragraph 2 above, provided that Plum Creek uses reasonable efforts, after consultation with the United States, to site such access points so as to minimize impacts on the road or roads. Facilities at access points (driveways, crossings, etc.) shall utilize culverts, drains, contours, and other accepted engineering practices to assure that the road bed and right-

of-way area is not gullied, pitted, eroded, slumped or otherwise damaged or impaired beyond normal wear and tear.

(b) *On the Road System.* Where the authorized representative of the United States determines that user safety on the road system may be adversely affected by the number or location of road access points related to a change in use of Plum Creek's appurtenant lands, the authorized representative of the United States may reasonably prescribe the number or location of such road access points after good faith consultation with Plum Creek.

4. *Regulations and Closures.* The occupancy and use of the roads are subject to applicable state law and such federal statutes, regulations (*e.g.*, 36 C.F.R. Parts 212 & 261) and rules as the United States reasonably may impose including, but not limited to, traffic control, speed limits, vehicle size and weight, and emergency closures in the event of fire, flood, wind, or other natural disasters. The United States may designate public routes for winter recreation and other multiple-use activities and may impose reasonable restrictions to protect snow conditions on or near the roads designated as routes for use by over-snow vehicles and/or skiing. For a dual-use road involving both public winter recreation and other multiple-use activities, and ingress and egress by Plum Creek, the Parties shall address the allocation of costs and appropriate operation and maintenance standards in the plan provided for in Paragraph 6(c).

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States, or take actions creating the appearance that a road is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States. The right to exclude the public from a road or roads lies solely with the United States. Except for emergency closures as described in Paragraph 4 above, the United States shall not block or gate a road in a manner that will preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance and Reconstruction.*

(a) *In General.* All users of the roads are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road-maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. Unless a road has been incorporated into a public road system administered by a public road authority, the United States shall be responsible only for its proportionate share of road-maintenance costs as the United States deems necessary for National Forest System purposes. Plum Creek and its lessees, invitees, and agents, shall not be deemed members of the public for purposes of calculating proportionate use under the Prior Easements or this Easement Amendment.

(b) *Subdivision; Road Users Associations.*

(1) *Establishment of Road Users Associations.*

(A) The United States may, in its sole discretion, require the establishment of one or more road users associations by persons, existing road users associations, or, in the case of lands that have been subdivided, homeowners associations, to provide for performance or payment of construction, reconstruction, and maintenance costs, provide for other operational matters on roads within a common road system, and assume the obligations set forth in Paragraph 6(b)(1)(C). It is understood that the United States is not part of any such association.

(B) Such road users association ("Association") shall create legally binding covenants that run with the land which, at minimum, shall require that: (i) all owners of property appurtenant to such common road system, whether persons or members of a homeowners association, join the Association; (ii) the members of the Association abide by the terms and obligations contained in the Prior Easements and this Easement Amendment; and (iii) as to any other member, the members of such Association be entitled to costs, attorney fees, and interest at the highest legal rate in the event suit is brought against the Association or any of its members to enforce the road construction and maintenance terms as are provided for in the Prior Easements and this Easement Amendment. The rights of the United States shall not be impaired for the failure of an Association to abide by obligations required by this Paragraph.

(C) The Association shall also ensure that the covenant required in Paragraph 7 is recorded and that all requirements of the covenant applicable to homeowners are implemented.

(D) Unless provided otherwise by written agreement of the Parties, in the event an Association terminates, or otherwise ceases to fulfill its obligations under the Prior Easements and this Easement Amendment constituting a default thereunder, such default or termination shall be deemed to begin a period of nonuse as that term is used in the Prior Easements. In the event of termination of an Association, the parties referenced in Paragraph 6(b)(1)(A) who had been that Association's members shall be jointly and severally liable to provide for performance or payment of such Association's construction, reconstruction, and maintenance obligations.

(E) So long as Plum Creek Timberlands, L.P. or any of its successors or assigns continues to manage its lands tributary to a cost-share road system as a Cooperator under a Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement with the United States, it shall not be required to form or be a member of any Association. Should Plum Creek Timberlands, L.P., or any successor or assign, cease to be a cooperator under a Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement, the provisions of this Paragraph 6 shall apply, including the requirement to be a member of an Association if so required by the United States.

(2) *Establishment of Public Roads.* The United States may, in its discretion, grant an easement to a public road authority, over and across a road or road system that is

subject to the Prior Easements and this Easement Amendment. In this event, the rights of Plum Creek under the Prior Easements and this Easement Amendment shall be deemed subordinated to the rights conveyed to the public road authority. Plum Creek shall, if requested by a public road authority, execute any additional instruments deemed necessary by such authority to subordinate any interest it may have in the roads, the Prior Easements, and this Easement Amendment.

(c) *Operation and Maintenance Standards.* A Party shall only be required to operate and maintain a road or roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that no maintenance is necessary for its present purposes. In the event the United States determines that a road is not needed for motorized use by the general public, the United States shall restrict such road to non-motorized use by the general public. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those necessary for its purposes. A Party may operate and maintain a road or roads to a higher level at its own cost, provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level. Maintenance and road operation activities by other than the United States shall be in accord with a plan approved by the United States, which plan shall be promptly and reasonably processed and reviewed in accordance with existing laws and regulations. During such time that a plan is under consideration, the most recently approved plan will continue in operation. As part of any plan, the United States may require bonding or indemnity in the event of damage to a road or damages resulting from uses beyond a road's designed capacity. It is understood that there is no unilateral right by Plum Creek to undertake any road construction, including modifications to road design standards and specifications, or undertaking a different level of maintenance without agreement from the United States on a plan.

(d) *Road Reconstruction.* When any existing or planned use of public or private lands accessed by the road or roads will result in use of a road in excess of its design elements, design standards, and/or road-maintenance standards, the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to meet the design elements, design standards, and/or road-maintenance standards that can accommodate such existing or planned use (as well as other existing uses). The design elements and standards shall be defined in accordance with applicable federal, state, and National Forest System standards generally utilized in the area.

(e) *Snow, Ice, and other Road Operation Activities.* When not in conflict with reasonable restrictions established to protect snow conditions in accordance with Paragraph 4, Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the plan described in Paragraph 6(c).

(f) *Chemicals.*

(1) *On Plum Creek's Lands.* Where the easement area crosses Plum Creek lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals in

accordance with applicable state and federal laws and regulations pertaining to the use of pesticides and herbicides.

(2) *On Federal Lands.* Where the easement area crosses federal lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the United States. In such case, Plum Creek shall seek approval from the United States in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated, and any approval of such request shall also be in writing. The United States shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations.

(3) *On the Road System.* The United States may at any time maintain and control vegetation by means of chemicals on any portion of the road system right-of-way regardless of ownership insofar as such activities are in accordance with applicable federal laws and regulations.

(g) *Roadside Facilities.* All constructed roadside features and facilities, such as sign posts, delineators, mailboxes, utility poles, entrance archways, masonry monuments, and bridge railings shall be reviewed and approved by the United States or the appropriate public road authority for compliance with applicable requirements for roadside safety features contained in the then-current Roadside Design Guide of the American Association of State and Highway Transportation Officials or successor organization.

7. *Fire Prevention Covenant.*

(a) Plum Creek or any successor or assign shall attach to any appurtenant lands which it subdivides for residential or commercial purposes, prior to or upon conveying a subdivided lot to a third party or upon the final approval of the subdivision by the requisite governmental authority having authority for such subdivision, a covenant requiring homeowners of the subdivided tracts to abide by fire avoidance and protection measures for wildland urban interface, to be specified in the covenant.

(b) Such a covenant shall require land uses which conform with the Fire Protection Guidelines for Wildland Residential Interface Development dated July, 1993, as adopted by the Montana Fire Chiefs Association, Montana County Fire Wardens Association, and the Montana Fire District Association.

(c) A current designation of such appurtenant lands in the "Firewise Communities/USA" program of the National Fire Protection Association shall be deemed to meet all requirements of such covenant.

(d) In the event of enactment of state law or local ordinances or regulations which impose fire-protection and avoidance measures for the wildland urban interface which are equivalent to the measures required under paragraph 7(b), the covenant obligation of paragraph 7(a) shall automatically terminate.

(e) For purposes of eliminating title encumbrances where the covenant obligation has terminated, upon the request of Plum Creek, the United States, through the Forest Service, shall promptly authorize Plum Creek to record a release of such covenant obligation with respect to any appurtenant lands covered by the state law or local ordinances or regulations.

8. *Liability.*

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment, provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States.

(b) *Insurance.* Plum Creek or any other Party or its agents (other than the United States or a public road authority) which engages in commercial use and road operations including maintenance, construction, reconstruction, and snow plowing, shall maintain insurance having an AM Best's Key Rating Guide of B+ VI (financial class) or better rating, and as follows:

1. Commercial General Liability Insurance to include minimum limits of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include Contractual Liability, Products and Completed Operations, Independent Contractors, Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. The minimum limits may be adjusted by the United States to an amount that is usual and customary in the industry in the region.

2. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles, with a combined single limit of \$500,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

3. Each such policy shall include an endorsement which shall name the United States of America as additional insureds on a primary basis for the term of this agreement.

4. Each such policy shall provide that the United States will be given a 30-day written notice on a best efforts basis prior to cancellation, coverage modification or other material change in the policy.

5. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

6. The party conducting such activity shall furnish to the United States a certificate of insurance dated and signed by a stated, authorized agent for the insuring company or companies containing a representation that coverage of the types listed herein is provided with the required liability limits and the stated endorsements.

7. If a Party retains the services of any contractor, such Party shall cause each contractor to maintain insurance coverages and limits of liability of the same type and amount as are required under this agreement.

(c) *Disclaimer by United States.*

(1) *In General.* The development of lands by Plum Creek shall not create any obligation, express or implied, on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to regulate, operate, construct, or maintain the roads to accommodate access for such purposes.

(2) *Fire.* Nothing in this Easement Amendment obligates the United States to adopt any particular fire management regime, strategy, or methods for appurtenant public lands, or to provide fire protection or suppression for any development on Plum Creek's appurtenant lands.

9. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to all Parties. The Prior Easements and this Easement Amendment shall be deemed in gross as to the United States and as to any public road authority that is a successor or assign of the United States. The Prior Easements and this Easement Amendment shall be deemed appurtenant to, and the benefits and burdens shall run with, the lands owned as of the date of this Easement Amendment by Plum Creek, or to lands acquired by Plum Creek hereafter which are incorporated into an applicable Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement.

(b) *Disclosure to Prospective or Actual Purchasers.* Plum Creek shall disclose in clear, written terms to any prospective or actual purchaser or to any other person or entity taking title to property that is appurtenant to the Prior Easements as amended by this Easement Amendment the obligation to abide by the terms and conditions of the Prior Easements and this Easement Amendment including, without limitation, the obligation to contribute to costs associated with the ongoing construction, reconstruction, and maintenance of the roads.

(c) *Assignment.* Any Party may convey, in whole or in part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that thereafter any such successor or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads; and provided further that upon the transfer by Plum Creek of any appurtenant lands hereto, Plum Creek shall be released from any further obligations hereunder with respect to the lands so transferred.

(d) *To Public Road Authorities and Third Parties.* The United States alone shall have the right to extend rights and privileges for use of the roads to a public road authority or to non-

appurtenant third parties (non-appurtenant third parties being parties without privity with Plum Creek under the Prior Easements). In the event that the roads or segments thereof are incorporated within the jurisdiction of a public road authority, Plum Creek agrees to abide by such public road authority's regulations generally applicable to such roads.

(e) *Legal Access.* The access afforded by the Prior Easements and this instrument to appurtenant lands shall also constitute access for purposes of Section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3210(a)), and no appurtenant lands shall be subject to implied easements or easements by necessity over federal land.

10. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

11. *Construction.* This Easement Amendment has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto. No Party shall be deemed the scrivener of this Easement Amendment. Based on the foregoing, the provisions of this Easement Amendment and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

12. *Remedies.*

(a) This Easement Amendment is enforceable by any Party in law or equity in the United States District Court having jurisdiction.

(b) Any amounts owing the United States for cost share or other provisions under the Prior Easements or this Easement Amendment are subject to all remedies available under federal law including the provisions of 31 U.S.C. § 3711.

(c) At its option, in order to collect amounts owing, the United States may file a lien against the title of any land of a debtor which debtor's land is appurtenant to the roads.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this Easement Amendment as of the date first written above. The United States has executed this Easement Amendment pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA
Department of Agriculture

By _____
Name: _____
Title: _____

PLUM CREEK TIMBERLANDS, L.P.
By Plum Creek Timber I, L.L.C., its general partner

By _____
Its _____

PLUM CREEK LAND COMPANY
By: _____
Its: _____

Acknowledgments

State of Montana,

County of Missoula, s.s.

The foregoing instrument was acknowledged before me by _____,
authorized official of the United States of America, this _____ day of
_____, 2008.

Witness my hand and official seal.

Notary Public

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____, 2008, before me personally appeared _____ to me known to be the _____ of Plum Creek Timber I, L.L.C., general partner of Plum Creek Timberlands, L.P., the limited partnership that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires _____
Printed Name _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____, 2008, before me personally appeared _____ to me known to be the _____ of Plum Creek Land Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires: _____
Printed Name: _____

2/28

Easement Amendment

RIF
11/15

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2008, by and between the **United States of America**, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", and **Plum Creek Timberlands, L.P.**, a Delaware limited partnership, and **Plum Creek Land Company**, a Delaware corporation, each with offices at 999 Third Avenue, Suite 4300, Seattle, Washington, 98104.

Authority: The Act of October 13, 1964 ("National Forest Roads and Trails Act of 1964"); 16 U.S.C. §§ 532-538.

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WITNESSETH:

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system serving the intermingled real property of the parties. The road system was created by means of Road Right-of-Way Construction and Use Agreements, cost-share agreements, reciprocal easements, and similar agreements which provided for the construction, operation, maintenance of roads and road segments; and

WHEREAS, the reciprocal right-of-way agreements and easements were entered into under the authority of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. §§ 532-538); and

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(b) The National Forest Roads and Trails Act of 1964 does not authorize the use of the roads for utilities. The United States may issue easements or permits to utility providers for the installation, use and maintenance of utilities over, along, across and under the roads described and identified in the Prior Easements under separate authorization.

3. *Road Access Points*.

(a) *On Plum Creek's Land*. Where the easement area crosses Plum Creek lands, Plum Creek may, subject to Paragraph 3(b), locate access points to the road system on its lands for purposes consistent with Paragraph 2 above, provided that Plum Creek uses reasonable efforts, after consultation with the United States, to site such access points so as to minimize impacts on the road or roads. Facilities at access points (driveways, crossings, etc.) shall utilize culverts, drains, contours, and other accepted engineering practices to assure that the road bed and right-

of-way area is not gullied, pitted, eroded, slumped or otherwise damaged or impaired beyond normal wear and tear.

(b) *On the Road System.* Where the authorized representative of the United States determines that user safety on the road system may be adversely affected by the number or location of road access points related to a change in use of Plum Creek's appurtenant lands, the authorized representative of the United States may reasonably prescribe the number or location of such road access points after good faith consultation with Plum Creek.

4. *Regulations and Closures.* The occupancy and use of the roads are subject to applicable state law and such federal statutes, regulations (e.g., 36 C.F.R. Parts 212 & 261) and rules as the United States reasonably may impose including, but not limited to, traffic control, speed limits, vehicle size and weight, and emergency closures in the event of fire, flood, wind, or other natural disasters. The United States may designate public routes for winter recreation and other multiple-use activities and may impose reasonable restrictions to protect snow conditions on or near the roads designated as routes for use by over-snow vehicles and/or skiing. For a dual-use road involving both public winter recreation and other multiple-use activities, and ingress and egress by Plum Creek, the Parties shall address the allocation of costs and appropriate operation and maintenance standards in the plan provided for in Paragraph 6(c).

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States, or take actions creating the appearance that a road is private and not open to general public use (such as signs declaring "private road" or "not open to public entry"). No signs shall be permitted within the easement area without prior authorization of the United States. The right to exclude the public from a road or roads lies solely with the United States. Except for emergency closures as described in Paragraph 4 above, the United States shall not block or gate a road in a manner that will preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance and Reconstruction.*

(a) *In General.* All users of the roads are responsible for maintenance made necessary by their respective use of such roads and shall share in the upkeep and maintenance of the roads commensurate with the particular needs and uses of each user. For road-maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to that user's total use of the road or roads being maintained. Unless a road has been incorporated into a public road system administered by a public road authority, the United States shall be responsible only for its proportionate share of road-maintenance costs as the United States deems necessary for National Forest System purposes. Plum Creek and its lessees, invitees, and agents, shall not be deemed members of the public for purposes of calculating proportionate use under the Prior Easements or this Easement Amendment.

(b) *Subdivision; Road Users Associations.*

(1) *Establishment of Road Users Associations.*

(A) The United States may, in its sole discretion, require the establishment of one or more road users associations by persons, existing road users associations, or, in the case of lands that have been subdivided, homeowners associations, to provide for performance or payment of construction, reconstruction, and maintenance costs, provide for other operational matters on roads within a common road system, and assume the obligations set forth in Paragraph 6(b)(1)(C). It is understood that the United States is not part of any such association.

(B) Such road users association ("Association") shall create legally binding covenants that run with the land which, at minimum, shall require that: (i) all owners of property appurtenant to such common road system, whether persons or members of a homeowners association, join the Association; (ii) the members of the Association abide by the terms and obligations contained in the Prior Easements and this Easement Amendment; and (iii) as to any other member, the members of such Association be entitled to costs, attorney fees, and interest at the highest legal rate in the event suit is brought against the Association or any of its members to enforce the road construction and maintenance terms as are provided for in the Prior Easements and this Easement Amendment. The rights of the United States shall not be impaired for the failure of an Association to abide by obligations required by this Paragraph.

(C) The Association shall also ensure that the covenant required in Paragraph 7 is recorded and that all requirements of the covenant applicable to homeowners are implemented.

(D) Unless provided otherwise by written agreement of the Parties, in the event an Association terminates, or otherwise ceases to fulfill its obligations under the Prior Easements and this Easement Amendment constituting a default thereunder, such default or termination shall be deemed to begin a period of nonuse as that term is used in the Prior Easements. In the event of termination of an Association, the parties referenced in Paragraph 6(b)(1)(A) who had been that Association's members shall be jointly and severally liable to provide for performance or payment of such Association's construction, reconstruction, and maintenance obligations.

(E) So long as Plum Creek Timberlands, L.P. or any of its successors or assigns continues to manage its lands tributary to a cost-share road system as a Cooperator under a Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement with the United States, it shall not be required to form or be a member of any Association. Should Plum Creek Timberlands, L.P., or any successor or assign, cease to be a cooperator under a Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement, the provisions of this Paragraph 6 shall apply, including the requirement to be a member of an Association if so required by the United States.

(2) *Establishment of Public Roads.* The United States may, in its discretion, grant an easement to a public road authority, over and across a road or road system that is

subject to the Prior Easements and this Easement Amendment. In this event, the rights of Plum Creek under the Prior Easements and this Easement Amendment shall be deemed subordinated to the rights conveyed to the public road authority. Plum Creek shall, if requested by a public road authority, execute any additional instruments deemed necessary by such authority to subordinate any interest it may have in the roads, the Prior Easements, and this Easement Amendment.

(c) *Operation and Maintenance Standards.* A Party shall only be required to operate and maintain a road or roads to the lowest standard suitable and necessary for its purposes, including, with respect to the United States, no maintenance if the United States determines that no maintenance is necessary for its present purposes. In the event the United States determines that a road is not needed for motorized use by the general public, the United States shall restrict such road to non-motorized use by the general public. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those necessary for its purposes. A Party may operate and maintain a road or roads to a higher level at its own cost, provided that such higher level of maintenance accommodates all existing uses at no additional cost to Parties whose purposes do not require the higher level. Maintenance and road operation activities by other than the United States shall be in accord with a plan approved by the United States, which plan shall be promptly and reasonably processed and reviewed in accordance with existing laws and regulations. During such time that a plan is under consideration, the most recently approved plan will continue in operation. As part of any plan, the United States may require bonding or indemnity in the event of damage to a road or damages resulting from uses beyond a road's designed capacity. It is understood that there is no unilateral right by Plum Creek to undertake any road construction, including modifications to road design standards and specifications, or undertaking a different level of maintenance without agreement from the United States on a plan.

(d) *Road Reconstruction.* When any existing or planned use of public or private lands accessed by the road or roads will result in use of a road in excess of its design elements, design standards, and/or road-maintenance standards, the Party or Parties responsible for such existing or planned use shall likewise be responsible for any additional road reconstruction costs that are necessary to meet the design elements, design standards, and/or road-maintenance standards that can accommodate such existing or planned use (as well as other existing uses). The design elements and standards shall be defined in accordance with applicable federal, state, and National Forest System standards generally utilized in the area.

(e) *Snow, Ice, and other Road Operation Activities.* When not in conflict with reasonable restrictions established to protect snow conditions in accordance with Paragraph 4, Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with the plan described in Paragraph 6(c).

(f) *Chemicals.*

(1) *On Plum Creek's Lands.* Where the easement area crosses Plum Creek lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals in

accordance with applicable state and federal laws and regulations pertaining to the use of pesticides and herbicides.

(2) *On Federal Lands.* Where the easement area crosses federal lands, Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the United States. In such case, Plum Creek shall seek approval from the United States in writing, specifying the time, method, chemicals, and precise section of the right-of-way that it proposes be chemically treated, and any approval of such request shall also be in writing. The United States shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations.

(3) *On the Road System.* The United States may at any time maintain and control vegetation by means of chemicals on any portion of the road system right-of-way regardless of ownership insofar as such activities are in accordance with applicable federal laws and regulations.

(g) *Roadside Facilities.* All constructed roadside features and facilities, such as sign posts, delineators, mailboxes, utility poles, entrance archways, masonry monuments, and bridge railings shall be reviewed and approved by the United States or the appropriate public road authority for compliance with applicable requirements for roadside safety features contained in the then-current Roadside Design Guide of the American Association of State and Highway Transportation Officials or successor organization.

7. *Fire Prevention Covenant.*

(a) Plum Creek or any successor or assign shall attach to any appurtenant lands which it subdivides for residential or commercial purposes, prior to or upon conveying a subdivided lot to a third party or upon the final approval of the subdivision by the requisite governmental authority having authority for such subdivision, a covenant requiring homeowners of the subdivided tracts to abide by fire avoidance and protection measures for wildland urban interface, to be specified in the covenant.

(b) Such a covenant shall require land uses which conform with the Fire Protection Guidelines for Wildland Residential Interface Development dated July, 1993, as adopted by the Montana Fire Chiefs Association, Montana County Fire Wardens Association, and the Montana Fire District Association.

(c) A current designation of such appurtenant lands in the "Firewise Communities/USA" program of the National Fire Protection Association shall be deemed to meet all requirements of such covenant.

(d) In the event of enactment of state law or local ordinances or regulations which impose fire-protection and avoidance measures for the wildland urban interface which are equivalent to the measures required under paragraph 7(b), the covenant obligation of paragraph 7(a) shall automatically terminate.

(e) For purposes of eliminating title encumbrances where the covenant obligation has terminated, upon the request of Plum Creek, the United States, through the Forest Service, shall promptly authorize Plum Creek to record a release of such covenant obligation with respect to any appurtenant lands covered by the state law or local ordinances or regulations.

8. *Liability.*

(a) *Hold Harmless.* Plum Creek shall indemnify and hold harmless the United States against any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with Plum Creek's uses of the roads authorized under the Prior Easements and this Easement Amendment, provided, however, that nothing contained herein shall obligate Plum Creek to indemnify the United States against the negligence or willful misconduct of the United States.

(b) *Insurance.* Plum Creek or any other Party or its agents (other than the United States or a public road authority) which engages in commercial use and road operations including maintenance, construction, reconstruction, and snow plowing, shall maintain insurance having an AM Best's Key Rating Guide of B+ VI (financial class) or better rating, and as follows:

1. Commercial General Liability Insurance to include minimum limits of \$1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include Contractual Liability, Products and Completed Operations, Independent Contractors, Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. The minimum limits may be adjusted by the United States to an amount that is usual and customary in the industry in the region.

2. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles, with a combined single limit of \$500,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

3. Each such policy shall include an endorsement which shall name the United States of America as additional insureds on a primary basis for the term of this agreement.

4. Each such policy shall provide that the United States will be given a 30-day written notice on a best efforts basis prior to cancellation, coverage modification or other material change in the policy.

5. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

6. The party conducting such activity shall furnish to the United States a certificate of insurance dated and signed by a stated, authorized agent for the insuring company or companies containing a representation that coverage of the types listed herein is provided with the required liability limits and the stated endorsements.

7. If a Party retains the services of any contractor, such Party shall cause each contractor to maintain insurance coverages and limits of liability of the same type and amount as are required under this agreement.

(c) Disclaimer by United States.

(1) *In General.* The development of lands by Plum Creek shall not create any obligation, express or implied, on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands or to regulate, operate, construct, or maintain the roads to accommodate access for such purposes.

(2) *Fire.* Nothing in this Easement Amendment obligates the United States to adopt any particular fire management regime, strategy, or methods for appurtenant public lands, or to provide fire protection or suppression for any development on Plum Creek's appurtenant lands.

9. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to all Parties. The Prior Easements and this Easement Amendment shall be deemed in gross as to the United States and as to any public road authority that is a successor or assign of the United States. The Prior Easements and this Easement Amendment shall be deemed appurtenant to, and the benefits and burdens shall run with, the lands owned as of the date of this Easement Amendment by Plum Creek, or to lands acquired by Plum Creek hereafter which are incorporated into an applicable Road Rights-of-Way Construction and Use Agreement and/or Cooperative Road Maintenance Agreement.

(b) *Disclosure to Prospective or Actual Purchasers.* Plum Creek shall disclose in clear, written terms to any prospective or actual purchaser or to any other person or entity taking title to property that is appurtenant to the Prior Easements as amended by this Easement Amendment the obligation to abide by the terms and conditions of the Prior Easements and this Easement Amendment including, without limitation, the obligation to contribute to costs associated with the ongoing construction, reconstruction, and maintenance of the roads.

(c) *Assignment.* Any Party may convey, in whole or in part, its rights under the Prior Easements and this Easement Amendment to one or more successors or assigns having land appurtenant to the roads, provided that thereafter any such successor or assign shall become a party to, and abide by the terms and conditions contained in, the Prior Easements and this Easement Amendment, including the obligation to bear a share of the road upkeep and maintenance costs commensurate to that Party's use of the roads; and provided further that upon the transfer by Plum Creek of any appurtenant lands hereto, Plum Creek shall be released from any further obligations hereunder with respect to the lands so transferred.

(d) *To Public Road Authorities and Third Parties.* The United States alone shall have the right to extend rights and privileges for use of the roads to a public road authority or to non-

appurtenant third parties (non-appurtenant third parties being parties without privity with Plum Creek under the Prior Easements). In the event that the roads or segments thereof are incorporated within the jurisdiction of a public road authority, Plum Creek agrees to abide by such public road authority's regulations generally applicable to such roads.

(e) *Legal Access.* The access afforded by the Prior Easements and this instrument to appurtenant lands shall also constitute access for purposes of Section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3210(a)), and no appurtenant lands shall be subject to implied easements or easements by necessity over federal land.

10. *Binding Effect.* By acceptance of this Easement Amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek Timberlands, L.P., Plum Creek Land Company, and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

11. *Construction.* This Easement Amendment has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto. No Party shall be deemed the scrivener of this Easement Amendment. Based on the foregoing, the provisions of this Easement Amendment and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

12. *Remedies.*

(a) This Easement Amendment is enforceable by any Party in law or equity in the United States District Court having jurisdiction.

(b) Any amounts owing the United States for cost share or other provisions under the Prior Easements or this Easement Amendment are subject to all remedies available under federal law including the provisions of 31 U.S.C. § 3711.

(c) At its option, in order to collect amounts owing, the United States may file a lien against the title of any land of a debtor which debtor's land is appurtenant to the roads.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this Easement Amendment as of the date first written above. The United States has executed this Easement Amendment pursuant to the delegation of authority to the Chief, Forest Service, 7 C.F.R. § 2.60, and the delegation of authority by the Chief, Forest Service, dated August 22, 1984 (49 Fed. Reg. 34283).

UNITED STATES OF AMERICA

Department of Agriculture

By _____

Name: _____

Title: _____

PLUM CREEK TIMBERLANDS, L.P.
By Plum Creek Timber I, L.L.C., its general partner

By _____
Its _____

PLUM CREEK LAND COMPANY
By: _____
Its: _____

Acknowledgments

State of Montana,

County of Missoula, s.s.

The foregoing instrument was acknowledged before me by _____,
authorized official of the United States of America, this _____ day of
_____, 2008.

Witness my hand and official seal.

Notary Public

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2008, before me personally appeared _____ to me known to be the _____ of Plum Creek Timber I, L.L.C., general partner of Plum Creek Timberlands, L.P., the limited partnership that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires _____
Printed Name _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2008, before me personally appeared _____ to me known to be the _____ of Plum Creek Land Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for the
State of Washington
Residing at _____
My Commission Expires: _____
Printed Name: _____