

as of 5/10/07

Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, 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.

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 "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).

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.

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 instrument, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this instrument, this instrument shall prevail.

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

2. *Road Uses.* 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 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.

3. *Road Access Points.*

(a) *On Plum Creek's land.* Where the easement area crosses Plum Creek lands, Plum Creek may, subject to paragraph (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 access point(s) so as to minimize impacts on the road or roads.

(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 road segments are part of the National Forest Road System and the occupancy and use of the roads are subject to applicable state law and such federal statutes, regulations (e.g., 36 C.F.R. §§ 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 the road lies solely with the United States. Except for emergency closures as described in paragraph 4(a) 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 road 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 the road has been incorporated into a public road system administered by a public road authority, the United States shall be solely responsible only for its proportionate share of road maintenance costs under the Federal road standard ~~which~~ as the United States deems necessary for National Forest System purposes. Plum Creek and its lessees, invitees, and agents, shall not be deemed as members of the public for purposes of calculating proportionate use under the Prior Easements or this Easement Amendment.

(b) *Subdivision by Plum Creek.* ~~For~~ if any lands appurtenant to the Prior Easements that ~~are hereafter subdivided by Plum Creek for residential, commercial, or industrial purposes, the rights under the Prior Easements and this Easement Amendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public road authority by the United States, or by Plum Creek to a legally established~~ are hereafter subdivided into lots containing less than 160 acres, the subdividing party shall legally establish a road users association or a homeowners association. ~~Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires such ("association"), and shall create legally binding covenants that run with the land that require, at minimum: (i) all individual owners of the subdivided lots to join the association; (ii) the association to abide by the terms and obligations contained in the Prior Easements and this Easement Amendment, and (iii) the members of such association to be jointly and severally liable for the road construction and maintenance obligations of such association as are provided for in the Prior Easements and this Easement Amendment.~~ Unless provided otherwise by written agreement of the Parties, in the event that a road users association or homeowners ~~such an~~ association terminates, or otherwise ceases to fulfill its obligations under the Prior Easements and this Easement Amendment, then: (1) the members of such association shall be jointly and severally liable for

~~the road maintenance obligations of such association; and (2) such termination or cessation constituting a default thereunder. such default shall be deemed to begin a period of nonuse as that term is used in the Prior Easements. **The Parties retain any existing enforcement rights available to them in law or in equity.**~~

(c) *Operation and Maintenance Standards.* A Party shall only be required to operate and maintain the 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 any road is not needed for motorized use by the general public, the United States shall restrict the road to nonmotorized 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 for its purposes. A Party may operate and maintain the road 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, then 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 the road or damages resulting from uses beyond a road's designed capacity.

(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 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.* 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 sub-paragraph (c) of this paragraph.

(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.

7. *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.

i. Commercial Use.

A. Prior to using any road or roads for commercial purposes, a Party must obtain and maintain an insurance policy that has an AM Best's Key Rating Guide of B+ VI (financial class) or better rating, and further provides:

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.

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.

B. Each such policy shall include an endorsement which shall name [to be filled in by USDA] as additional insureds on a primary basis for the term of this agreement. The additional insured endorsement must be ISO CG20 10 11 85 (or other form with like wording).

C. Each such policy shall provide that [name from par. B1] 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.

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

E. The party conducting such commercial activity shall furnish to The United States of America 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.

F. 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 the same amount as are required under this agreement.

~~(b) Insurance. The United States may require Plum Creek to acquire automobile insurance to use the road in such amount that is usual and customary in the State within which such roads are located.~~ ii. Individual Use. All persons using any road or roads for any purpose shall obtain and maintain a policy of Automobile Liability Insurance in a form and limits generally acceptable in the State of Montana and customary in the area of the road or roads.

(c) *Disclaimer by United States.* 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.

8. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to the United States and Plum Creek, including their respective successors and assigns. 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.

(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 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 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.

(ed) To Public Road Authorities and Third Parties. The United States alone shall have the authority/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 authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *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.

10. Construction. This Easement Amendment has been fully negotiated at arms 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 such Party shall be deemed the scrivener of the Easement Amendment; and, 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.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement 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, ~~Forest Service, Northern Region~~

By _____
Gregory C. Smith, Director of Recreation, Minerals, Lands, Heritage and Wilderness

OGC Draft March 9, 2007

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____, 2007, 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.

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

The term "Party" means the United States, Plum Creek, or one of their respective successors or assigns, while the term "Parties" means two or more Parties.

The term "public 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.

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 timberland of the parties. The road system was created by means of ~~were parties to~~ Road Right-of-Way Construction and Use Agreements, cost share agreements, reciprocal easements, and similar agreements which provided for the construction, operation, maintenance of a road segments. system serving the intermingled lands of the parties thereto;

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, ~~without creating any new rights or obligations~~, the Parties desire and intend by this instrument to clarify and define further certain rights and obligations for roads created by the Prior Easements.

NOW THEREFORE, for and in consideration of ~~one dollar (\$1.00) received by the United States and~~ 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 instrument, the terms of the Prior Easements shall continue in effect, provided that in the event of a conflict between the Prior Easement and this instrument, this instrument shall prevail.

1. *Roads Affected.* This easement amendment applies to those roads, ~~as described in or authorized by~~ the Prior Easements.

2. *Road Uses.* Except as herein limited, Plum Creek shall have the right to use the roads described in ~~or authorized by~~ the Prior Easements ~~without cost~~ for all purposes deemed necessary or desirable by Plum Creek 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.

3. *Road Access Points.* Where the authorized representative of the United States determines it is reasonable to believe that public safety or public resources (particularly wetlands and waterways) located on federal lands ~~would~~ may be adversely affected by the number or location of proposed road access points related to a planned use of Plum Creek's appurtenant lands, the authorized representative may reasonably prescribe ~~Parties shall consult in good faith with respect to the number or location of such proposed road access points after good faith consultation with Plum Creek;~~ provided, however, that where it is not reasonable to believe such interests of the United States would be affected, the right to choose the number and location of road access points will be solely that of Plum Creek.

4. *Regulations and Closures.*

(a) The road segments are part of the National Forest Road System (formerly known as forest development roads) and the occupancy and use of the roads are subject to such statutes, traffic control regulations 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. In winter, for snowmobile and cross country skiing routes, the United States may impose reasonable restrictions to protect snow conditions on or near the roads designated as routes for use by over-snow vehicles and/or for skiing. provided, however that such restrictions shall not adversely affect Plum Creek's ingress and egress.

(b) The United States may restrict or exclude vehicles from road uses pursuant to applicable regulations (e.g. 36 C.F.R. 212), such as for winter vehicle restrictions to accommodate winter recreational use. In such event, Plum Creek may continue road uses if it undertakes at its own expense mitigation measures approved in advance by the Forest Service, which approval shall not be unreasonably delayed or denied insofar as mitigation protects public safety and prevents resource damages.

5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the United States Forest Service, 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, and such authorization will only be granted for noncommercial directional signs. The right to exclude the public from the road lies solely with the United States. ~~Except for emergency closures as described in paragraph 4 above, the~~ The United States shall not block or gate a road in a manner that will ~~adversely affect~~ preclude reasonable ingress and egress to Plum Creek's appurtenant lands.

6. *Road Maintenance and Reconstruction.*

(a) *In General:* All users of the road 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 the road has been incorporated into a public road system administered by a public authority, the United States shall be solely responsible for road maintenance costs [related to use of the roads by members of the public] under the Federal road standard which the Forest Service deems necessary for public purposes. Plum Creek and its successors, and their invitees, agents and assigns, shall not be deemed as members of the public for purposes of any road use under the Prior Easements or this Easement Amendment.

(b) *Subdivision by Plum Creek:* For any lands appurtenant to the Prior Easements that are hereafter subdivided and/or conveyed by Plum Creek for residential, commercial, or industrial purposes, the rights under the Prior Easements and this Easement Amendment shall either be conveyed and assigned or partially conveyed and assigned, as appropriate, to a public authority by the United States, or by Plum Creek to a legally established road users association, or a homeowners association. Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires such association to abide by the terms and obligations contained in the Prior Easements and this Easement Amendment. No easement rights shall accrue to any party not belonging to said association, and the assignment of rights or conveyance shall terminate with respect to such easement rights should the association be discontinued, unless by written agreement between the parties. In the event of such termination, continuing or future access by subdivision residents shall be addressed under appropriate federal regulations and laws existing at that time.

(c) *Maintenance Standards.* A Party shall only be required to operate and maintain the 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 the road is not needed for public purposes. In the event the United States determines that any road is not needed for public purposes, the United States shall close such road to public use. A Party shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for its purposes. A Party may operate and maintain the road 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. ~~provided further that such~~ Maintenance by other than the United States shall be in accord with a road maintenance plan approved by the United States Forest

Service, which plan shall be promptly and reasonably processed and reviewed in accordance with existing laws and regulations. ~~; provided further that approval of any such road maintenance plan shall not be unreasonably delayed or withheld, and any such plan not approved within sixty (60) days from the date of its submission to the United States Forest Service for approval shall be deemed approved.~~ As part of any such plan, the United States Forest Service may require bonding or indemnity in the event of damage to the road or damages resulting from uses beyond a road's designed capacity.

(d) *Road Reconstruction.* When any existing or planned use of appurtenant public or private lands will cause the use of a road in excess of its design elements, design standards and road maintenance standards ~~causes or will cause capacity or road maintenance standards exceeding the existing capacity or road maintenance standards necessary for a Party's purposes,~~ 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 design element, design standards and road maintenance standards ~~bring the capacity and road maintenance standards up to a level that can accommodate such existing or planned use (as well as other existing uses), or to any prevailing and applicable public authority standards.~~ ~~; provided, however, that nothing contained herein shall obligate a Party to bring a road up to any standard that is not specifically required by applicable public authority.~~

(e) *Snow, Ice and other Road Operation Activities.* ~~To the extent contemplated by the Prior Easements,~~ 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 road maintenance plan described in sub-paragraph (c) of this paragraph.

(f) *Chemicals.* ~~To the extent contemplated by the Prior Easements,~~ Plum Creek may maintain and control right-of-way vegetation by means of chemicals pursuant to approval granted it by the Forest Service Supervisor. ~~As contemplated in this Easement Amendment and the Prior Easements,~~ Plum Creek shall seek approval from the Forest Service Supervisor to maintain and control vegetation in the right-of-way by means of chemicals 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 Forest Service shall not unreasonably delay or withhold action on the proposed use insofar as is consistent with existing laws and regulations. ~~; provided that approval of any such request shall not be unreasonably delayed or withheld, and any such request not approved within sixty (60) days from the date of its submission to the Forest Supervisor for approval shall be deemed approved.~~

7. 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.* The United States may require Plum Creek, its successors and assigns, including any road users association or homeowners association, ~~to provide proof of~~ acquire

liability insurance to use the road, provided that such insurance is available at commercially reasonable rates. The United States may further require that any such policy of insurance name the United States as an additional insured, and additionally require that written proof of coverage be reasonably provided at the request of the Forest Service.

(c) *Disclaimer by United States.* The development of appurtenant lands by Plum Creek shall not ~~impliedly~~ 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.

8. *Successors.*

(a) *In General.* The terms of the Prior Easements and this Easement Amendment shall apply to the United States and Plum Creek, including their respective successors and assigns.

(b) *Assignment.* Any Party may convey, in whole or 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 any such successors 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. No easement rights shall pass to a third party except by affirmative action; no easement rights shall pass by implication.

(c) *To Public Agencies.* The United States ~~reserves~~ shall have the exclusive right to extend rights and privileges for use of the roads to a public authority. In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Appurtenances.* The Prior Easements and this Easement Amendment shall be deemed appurtenant to lands owned by Plum Creek as of the date of the Prior Easements and to lands thereafter acquired by Plum Creek from ~~or~~ its predecessors in interest to the Prior Easements to the date of this Easement Amendment: The Prior Easements and this Easement Amendment shall be deemed in gross as to the United States or to a public agency, but any other assignment by the United States shall be subject to 8(b).

~~10. *Rights and Obligations.* The rights and obligations referred to or defined herein are those created by the Prior Easements. This Easement Amendment does not create any new rights or obligations. [This, of course, is what all the argument is about.]~~

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.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement 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, Forest Service, Northern Region

By _____
Director of Recreation, Minerals, Lands, Heritage and Wilderness

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 _____,
2007.

Witness my hand and official seal.

Notary Public



"SNOW, JAMES B."
 <JAMES.SNOW@OGC.USDA.GOV>
 01/12/2007 02:54 PM

To "James Davis" <jdavis08@fs.fed.us>, "Suk, Tom -FS" <Tom.Suk@usda.gov>, "PAUR, KENNETH" <KENNETH.PAUR@OGC.USDA.GOV>, "SAJNA, MARY" <MARY.SAJNA@OGC.USDA.GOV>
 cc gsmith08@fs.fed.us, "POLING, JAN" <JAN.POLING@OGC.USDA.GOV>, "MILLET, THOMAS" <THOMAS.MILLET@OGC.USDA.GOV>, "WAH, MARCUS" <MARCUS.WAH@OGC.USDA.GOV>, "LODINE, MARK" <MARK.LODINE@OGC.USDA.GOV>, "RIDER, JOSHUA" <JOSHUA.RIDER@OGC.USDA.GOV>

bcc

Subject Plum Creek cost share

*bs
Refer
to
OGC*

Hi folks,



From: [redacted]@verizon.net [mailto:[redacted]@verizon.net]
Sent: Friday, January 12, 2007 2:39 PM
To: dwolff@crowell.com
Cc: SNOW, JAMES B.
Subject: Plum Creek Easement

(b)(6)

Dan,

Here's our first draft of a proposed easement amendment. I'm in the office on Tuesday and you may call me thereafter if you have any questions.

I have attached the same document in two computer formats, MS Word, and Wordperfect.

Hopefully, you can download and use either or both.

We're looking forward to working with you on this.

Regards,
 Jim Snow

James B. Snow
 USDA Office of the General Counsel
 Washington, DC 20250



(202) 720-6055 Plum Creek Revised Easement Jan 12.rtf Plum Creek Easement January 12.wpd

JAN 16 2007

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Easement Amendment

THIS EASEMENT AMENDMENT is dated this _____ day of _____ 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 Timber Company, Inc.**, a Delaware Corporation with offices at 999 Third Avenue, Seattle, Washington, hereinafter called "Plum Creek".

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.

The terms "road" or "roads" mean the property rights conveyed by the prior easements and covers the road right-of-ways as constructed as of the date of this instrument.

The term "Parties" means the United States and Plum Creek.

The term "public 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.

WITNESSETH:

WHEREAS, the United States and the predecessors in title to Plum Creek were parties to Road Right-of-Way Construction and Use Agreements, reciprocal easements, and similar agreements which provided for the construction, operation, and maintenance of a road system serving the intermingled lands of the parties thereto;

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 to define further the rights and obligations with respect to certain roads constructed on National Forest System lands in the State of Montana.

NOW THEREFORE, for and in consideration of one dollar (\$1.00) and 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 instrument, the terms of the prior easements shall be maintained, provided that in the event of a conflict between the prior easement and this instrument, this instrument shall prevail.

1. *Roads Affected.* This easement amendment applies to those roads, as actually constructed as of the date of this instrument, as described in the prior easements.
2. *Road Uses.* Except as herein limited, Plum Creek shall have the right to use the roads for all purposes deemed necessary or desirable by Plum Creek 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 as referenced in the prior easements, and the subdivision, sale and development of any such land for commercial, industrial, or residential purposes.
3. *Road Access Points.* For uses of appurtenant private lands, the United States shall approve the number and location of all road access points so as to promote public safety, facilitate maintenance, protect adjacent resources (particularly wetlands and waterways), while providing reasonable access.
4. *Regulations and Closures.* The occupancy and use of the roads are subject to such traffic-control regulations and rules as the United States reasonably may impose including speed limits, vehicle size, and emergency closures in the event of fire, flood, wind, or other natural disasters. In winter, for snowmobile and cross country skiing routes, the United States may impose reasonable restrictions to protect snow conditions for use by over-snow vehicles and for skiing.
5. *Prohibitions.* Plum Creek shall not block, gate, or otherwise impede traffic or road use without written authorization by the Forest Service, nor shall Plum Creek take actions creating the appearance of the road being 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 the prior permission of the United States, and such permission will only be granted for noncommercial directional signs. The right to exclude the public from the road lies solely with the United States.

6. *Road Maintenance.*

(a) *In General:* All users of the road are responsible for maintenance made necessary by their traffic and shall share in the upkeep and maintenance commensurate with the particular needs and uses of each party. For maintenance activities that benefit all users, the share to be borne by each user shall be proportionate to total use.

(b) *Subdivision:* For any properties subdivided and conveyed by Plum Creek for residential, commercial, and industrial purposes, the rights under the prior easements and this easement amendment shall either be conveyed and assigned to a public authority by the United

States, or by Plum Creek to a legally established road users association, or a homeowners association. Conveyance and assignment of such rights in part or in whole to a road users association or homeowners association requires the successor/assignee to abide by the terms and obligations contained in this easement amendment.

(c) *Non-Federal Maintenance.* The United States shall only be required to operate and maintain the roads to the lowest standard suitable and necessary for National Forest purposes, including no maintenance if it determines that the road is not needed for public purposes. The United States shall not be financially responsible for additional costs of operation and maintenance to achieve levels of service exceeding those for National Forest purposes. Plum Creek may operate and maintain the road to a higher level at its own cost, provided such maintenance shall be in accord with a road maintenance plan approved by the Forest Service. As part of such plan, the Forest Service may require bonding or indemnity in the event of damage to the road.

(d) *Non-Federal Road Reconstruction.* When proposed traffic requires capacity or standards on roads covered by this easement amendment and the prior easements exceeding the existing capacity or standards necessary for National Forest purposes, Plum Creek shall be responsible for any additional road reconstruction costs to bring the road standard and capacity up to a level that can accommodate such additional planned use and Federal use, or to prevailing applicable public authority standards.

(e) *Snow, Ice and other Road Operation Activities.* Plum Creek may provide for snow plowing, ice control, dust control, and other road operation activities at Plum Creek's expense in accordance with an approved written road maintenance plan.

(f) *Chemicals.* Plum Creek may maintain right-of-way vegetation by means of chemicals only after the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

7. *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 the aforementioned uses authorized under the prior easements and this easement amendment.

(b) *Insurance.* The United States may require Plum Creek, its successors and assigns, including any road users association or homeowners association, to provide liability insurance to use the road naming the United States as an additional insured.

(c) *Disclaimer by United States.* The development of appurtenant lands by Plum Creek shall not impliedly create any obligation on the part of the United States to provide fire

protection, emergency services, or commercial services for the benefit of such lands or to maintain the roads to accommodate access for such purposes.

8. *Successors.*

(a) *In General.* The terms of the prior easements and this amended easement shall apply to the United States and Plum Creek, and their successors and assigns.

(b) *Assignment.* Plum Creek and the United States may convey, in whole or part, their rights under this easement amendment to one or more successors having land appurtenant to the roads, provided that such successors shall abide by the terms and conditions herein including bearing their commensurate shares of upkeep and maintenance.

(c) *To Public Agencies.* The United States reserves the exclusive right to extend rights and privileges for use of the roads to a public authority. In the event that the roads or segments thereof are incorporated within the jurisdiction of a public authority, Plum Creek agrees to abide by such public authority's regulations generally applicable to such roads.

9. *Appurtenances.* The prior easements and this easement amendment shall be deemed appurtenant only to the land owned as of the date of the prior easements. The acquisition of additional land shall not automatically extend the application of the prior easement or this easement amendment without the express written agreement of the Parties.

10. *Termination.* The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) with the consent of Plum Creek, (2) by condemnation, or (3) after a five-year period of nonuse, provided that the easement, or segment thereof, shall not be terminated for nonuse as long as the road, or segment thereof, is being preserved for prospective future use. Use that does not conform with the requirements of the prior easement or this easement amendment shall be deemed non-use for purposes of termination.

11. *Binding Effect.* By acceptance of this easement amendment, as evidenced by the signatures below of their authorized representatives, Plum Creek and the United States agree to the terms and conditions herein stated on behalf of themselves and their successors and assigns.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement 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 F.R. 34283).

UNITED STATES OF AMERICA
Department of Agriculture, Forest Service, Northern Region

By _____
Director of Recreation, Minerals, Lands, Heritage and Wilderness

PLUM CREEK TIMBER COMPANY, INC.

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 _____,
2007.

Witness my hand and official seal.

Notary Public

State of _____,

County of _____, s.s.

The foregoing instrument was acknowledged before me by _____,
authorized official of the Plum Creek Timber Company, Inc., this _____ day of
_____, 2007.

Witness my hand and official seal.

Notary Public

12/22/06

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
Revised Easement

THIS REVISED EASEMENT is dated this _____ day of _____ from the United States of America, acting by and through the Department of Agriculture, Forest Service, Northern Region, hereinafter called "United States", the Grantor, and Plum Creek Timber Company, Inc., a Delaware Corporation with offices at 999 Third Avenue, Seattle, Washington, hereinafter called "Plum Creek", the Grantee. The United States and Plum Creek are jointly referred to herein as the "Parties."

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

Definition: As used herein, the term "road" refers to the property rights conveyed by the Easements referenced below and this Revised Easement, and covers the road right-of-ways as constructed.

WITNESSETH:

WHEREAS, the United States and the predecessors in title to Plum Creek were parties to reciprocal right-of-way agreements, Road Right-of-Way Construction and Use Agreements, and reciprocal easements which provided for the construction, operation and maintenance of a road system serving the intermingled lands of the parties thereto;

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);

WHEREAS, the United States and Plum Creek desire to clarify rights and obligations with respect to certain roads constructed on National Forest System lands in the State of Montana;

WHEREAS, this Revised Easement amends and clarifies those easements from the United States of America to Plum Creek's predecessors as shown on Exhibit A attached hereto and, in the land records of _____ County, Montana.

NOW THEREFORE, the United States, for one dollar (\$1.00) and the exchange of a reciprocal revised easement, receipt of which is hereby acknowledged, does hereby grant this Easement Revision to Plum Creek.

The Parties agree that the rights conveyed by the prior Easements identified on Exhibit A, as may be modified by this Revised Revision, are subject to the following terms and conditions:

1. *Roads Affected.* Those roads, as actually constructed as of the date of this instrument,

as described in those certain easement from the United States of America as shown on Exhibit A, and recorded in the land records of _____ County, Montana (hereafter "prior Easements").

2. Road Uses. Except as herein limited, Plum Creek and its successors and assigns shall have the right to use the roads for all purposes deemed necessary or desirable by Plum Creek and its successors and assigns 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 as referenced in the prior Easements, and the subdivision, sale and development of any such land for commercial, industrial or residential purposes subject to the conditions contained in the prior easements and this revised easement.

3. Road Access Points. For uses of appurtenant private lands, the United States shall approve the number and location of all road access points so as to maximize public safety, facilitate maintenance, protect adjacent resources (particularly wetlands and waterways), while providing reasonable access.

4. Regulations and Closures. The occupancy and use of the roads are subject to such traffic-control regulations and rules as the United States reasonably may impose including speed limits, vehicle size, and emergency closures in the event of fire, flood, wind, or other natural disasters. In winter, for established snowmobile and cross country skiing routes, the United States may impose reasonable restrictions on wheeled vehicular use to permit snowmobiling and skiing.

5. Prohibitions. Plum Creek, its successors and assigns, shall not block, gate, or otherwise impede traffic or road use without written authorization by the Forest Service, nor shall the former take actions creating the appearance of the road being 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 the prior permission of the United States, and such permission will only be granted for noncommercial directional signs. The right to exclude the public lies solely with the United States.

6. Road Maintenance.

(a) *In General:* All users of the road shall share in the upkeep and maintenance commensurate with the particular use. Such maintenance to be borne by each user shall be proportionate to total use.

(b) *Subdivision:* For any properties subdivided and conveyed by Plum Creek or its successors and assigns for residential, commercial, and industrial purposes, the rights under the prior Easements and this Revised Easement shall either be conveyed and assigned to a non-federal public road management agency by the United States, or to a legally established Road Users Association, or a Homeowners Association by Plum Creek, its successors and assigns. Conveyance and assignment of such rights in part or in

whole to a Road Users Association or Homeowners Association requires the assignee to maintain the terms and maintenance obligations contained in this easement associated with their proportionate use as agreed upon by the United States and Plum Creek.

(c) *Non-Federal Maintenance.* The United States shall only maintain the roads to the lowest standard suitable and necessary for National Forest purposes including no maintenance if it determines that the road is not needed for public purposes. Plum Creek or its successors or assigns may maintain the road to a higher levels at their own cost, provided such maintenance shall be in accord with a road maintenance plan approved by the Forest Service. As part of such plan, the Forest Service may require bonding or indemnity in the event of damage to the road.

(d) *Non-Federal Road Reconstruction.* When the planned use of the roads covered by this easement and the prior easements exceeds that necessary for National Forest purposes, Plum Creek, its successors and assigns shall be responsible for any additional road reconstruction costs to bring the road standard and capacity up to a level that can accommodate such additional planned use, or to prevailing applicable non-federal public road agency standards prior to commencing such use.

(e) *Snow plowing.* Plum Creek its successors and assigns may provide for snow plowing in accordance with an approved written road maintenance plan.

(f) *Chemicals.* The Plum Creek shall maintain the right-of-way clearing by means of chemicals only after the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

7. *Liability.*

(a) *Hold Harmless.* Plum Creek, its successors and assigns 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 the aforementioned uses authorized under the prior easements and this Revised Easement.

(b) *Insurance.* The United States may require commercial users of the road as well as any Road Users Association or Homeowners Association to provide liability insurance to use the road naming the United States as an additional insured.

(c) *Disclaimer by United States.* The development of appurtenant lands by Plum Creek and its successors and assigns shall not impliedly create any obligation on the part of the United States to provide fire protection, emergency services, or commercial services for the benefit of such lands.

8. *Successors.*

(a) *In General.* Plum Creek and the United States may convey, in whole or part,

their rights under this easement to one or more successors having land appurtenant to the roads, provided that such successors shall abide by the terms and conditions herein including bearing their proportionate costs of upkeep and maintenance.

(b) *To Public Agencies.* The United States reserves the exclusive right to extend rights and privileges for use of the roads to other Government departments and agencies, States, and local subdivisions thereof.

9. *Termination.* The Chief, Forest Service, may terminate this easement, or any segment thereof, (1) by consent of the Plum Creek, (2) by condemnation, or (3) after a five-year period of nonuse, provided that the easement, or segment thereof, shall not be terminated for nonuse as long as the road, or segment thereof, is being preserved for prospective future use.

10. *Binding Effect.* By its acceptance of this Revised Easement, as evidenced by the signature below of its authorized representative, Plum Creek does hereby agree to the terms and conditions herein stated on its behalf and that of its successors and assigns.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this easement as of the date first written above. The United States has executed this easement 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 F.R. 34283).

UNITED STATES OF AMERICA
Department of Agriculture, Forest Service, Northern Region

By _____
Director of Recreation, Minerals, Lands, Heritage and Wilderness

PLUM CREEK TIMBER COMPANY, INC.

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 _____, 2007.

Witness my hand and official seal.

Notary Public

State of _____,
County of _____, s.s.

The foregoing instrument was acknowledged before me by
_____,
authorized official of the Plum Creek Timber Company, Inc., this _____ day of
_____, 2007.

Witness my hand and official seal.

Notary Public