

MEMORANDUM OF UNDERSTANDING
between

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

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

A. PURPOSE

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

B. STATEMENT OF MUTUAL INTEREST AND BENEFITS

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

C. DEFINITIONS

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

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

D. THE UNITED STATES SHALL:

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

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

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

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

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

E. THE STATE OF ALASKA SHALL:

1. Log Transfer Facilities.

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

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

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

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

2. Marine Access Points.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA

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

9/22/16
Date

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

9/29/06
Date

UNITED STATES OF AMERICA

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

9/22/2006
Date

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

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

List of Attachments

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