

00

A
L
A
S
K
A

2009-000545-0

Recording Dist: 102 - Ketchikan
2/26/2009 10:49 AM Pages: 1 of 5



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

THIS EASEMENT (hereafter ROW Easement), is made this 3rd day of February, 2009 between the United States of America, acting by and through the United States Department of Agriculture, Forest Service (hereafter Grantor), and the State of Alaska, acting by and through the Department of Transportation and Public Facilities (hereafter Grantee):

WITNESSETH:

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

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

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

Commencing at the boundary of National Forest System land in Section 33, T. 73 S R. 91 E.; thence northwesterly through Section 28 T. 73 S., R. 91 E., to the North South Section line of Sections 28 & 29 T. 73 S., R. 91 E. being the Southeast ¼ of Section 29 T. 73 S., R. 71 E.; thence southeasterly and northeasterly through Section 28, T. 73 S., R. 91 E.; thence northerly and easterly through Section 21 to the boundary of National Forest System land being the west section line of Section 22, T. 73 S., R. 91 E.

Commencing at the boundary of National Forest System land in Section 12 T. 73 S., R. 91 E. being the Southwest ¼ of Section 12 T. 73 S., R. 91 E. near common corners of Sections 11, 12, 13 & 14 T. 73 S., R. 91 E.; thence northeasterly & northerly through Section 12 T. 73 S., R. 91 E.; thence northerly crossing near the common corners of Sections 1 & 12 T. 73 S., R. 91 E. & Sections 6 & 7 T. 73 S., R. 92 E. through Section 1 along the North South Section line of Sections 1 T. 73 S., R. 91 E. & Section 6 R. 73 S., R. 92 E.; thence southeasterly through Section 6 T. 73 S., R. 92 E. crossing near the common corners of Section 6, 5, 7 & 8 T. 73 S., R. 92 E. southeasterly through Section 7, T. 73 S., R. 92 E.;

thence southeasterly through Section 8 T. 73 S., R. 92 E.; thence southeasterly through Section 17, T. 73 S., R. 92 E.; thence southeasterly through Section 16, T. 73 S., R. 92 E.; thence southeasterly through Section 15, T. 73 S., R. 92 E., crossing near the common corner of Sections 15, 16, 21 & 22 T. 73 S., R. 92 E.; thence southeasterly & northeasterly through Section 22 T. 73 S., R. 92 E.; thence northeasterly through Section 15 T. 73 S., R. 92 E.; thence northeasterly through Section 14, T. 73 S., R. 92 E.; thence northeasterly & southeasterly through Section 11, T. 73 S., R. 92 E.; thence southeasterly through Section 14, T. 73 S., R. 92 E.; thence northeasterly & southeasterly to a junction with the existing Forest Service 83 road in Section 13, T. 73 S., R. 92 E., and generally following the Forest Service 83 road through Section 13, T. 73 S., R. 92 E.; thence southeasterly & northeasterly through Section 24 T. 73 S., R. 92 E.; thence northeasterly through Section 13 T. 73 S., R. 92 E.; thence easterly through Section 18, T.73S., R.92E. to the line of mean high tide of Carroll Inlet.

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

Containing approximately 497 acres more or less

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

1. Easements, rights and reservations of the United States and third parties, if any, of record existing on the date of this grant, and Grantee shall obtain such permission as may be necessary on account of any such interests.
2. Unless Grantor and Grantee stipulate otherwise, this ROW Easement shall terminate fifty (50) years from the date of the execution of this ROW Easement by operation of its terms in the event construction of a highway or utility on the right-of-way described herein is not authorized by a grant of a fifty-five year renewable easement pursuant to the MOU. The grant of such fifty-five year easement shall, without further action by Grantor or Grantee, terminate this ROW Easement.
3. The rights granted herein are limited to use of the described right-of-way and do not include the grant of any rights for non-highway or non-utility planning purposes; Provided, that the right of the Grantor to use or authorized the use of any portion of the right-of-way for non-highway and non-utility purposes shall not be exercised when such use would be inconsistent with the rights granted herein.
4. The jurisdiction and operational control of any roads located within the lands described herein existing as of the date of the execution of this ROW Easement are not affected by this grant, but Grantor and Grantee may agree upon the transfer of jurisdiction or sharing of operational responsibilities by separate agreement.
5. All rights not otherwise granted and conveyed to Grantee herein are reserved to the United States, including, but not limited to, the right to the standing timber within the right-of-way, the subsurface estate, the right of public access and use, the right to regulate acts or omissions, and the right to enforce regulations related to the occupancy and use of National Forest System Lands. Such rights will be exercised in such a manner so as not to unreasonably interfere with the rights granted herein.
6. Grantee may conduct such surveys and investigations as are necessary for the preparation of plans and drawings for future construction or placement of highway and/or utility developments within the land area described herein, including brushing for ground surveys, geotechnical investigations to determine foundation conditions, and other similar actions. Grantee shall, in advance, advise Grantor of its plans for field activities and of any changes thereto.
7. Grantee shall comply with all applicable law in the performance of the rights granted herein.
8. (a). Grantee's liability and obligation to pay the United States for all injury, loss, or damage,



including fire suppression costs, arising from Grantee's use or occupancy authorized by this ROW easement shall be determined in accordance with existing Federal and State laws. A judicial determination of liability of Grantee is not a condition precedent for the United States to recover under the State's self-insurance program.

(b). Grantee is self-insured and enjoys no blanket statutory caps limiting Grantee's liability. If Grantee subsequently passes legislation modifying its self-insurance program or creating blanket liability caps in such a manner as to reduce the liability protections provided in this ROW easement, Grantor may demand that paragraph 8(a) be renegotiated. If the parties are unable through good faith negotiations to agree on mutually satisfactory terms, Grantee shall be provided the reasonable opportunity to obtain legislation to resolve the matter. If neither negotiations nor legislation is successful in resolving liability concerns, Grantor may revoke this ROW easement.

(c). Grantee has waived sovereign immunity for enforcement of contracts pursuant to AS 09.50.250. If this provision is subsequently amended by the Alaska legislature, Grantor may demand that sub-paragraph 8(a) be renegotiated to provide for a cause of action to enforce the terms and conditions of this ROW easement against the State of Alaska in the event the United States is otherwise unable to do so. If the parties are unable through good faith negotiations or legislation to provide the United States with a cause of action to enforce the terms and conditions of this ROW easement against the State of Alaska, Grantor may revoke this ROW.

(d). Any permit or contract issued by Grantee to a utility under this ROW easement must require the utility to maintain liability insurance commensurate with the risk of the approved occupancy and use and must require that Grantor be named as an additional insured in the insurance policy.

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

UNITED STATES OF AMERICA



By: Dennis E. Bschor
Regional Forester
Forest Service
Department of Agriculture



ACKNOWLEDGEMENT

STATE OF ALASKA)
1st JUDICIAL DISTRICT)

) ss.

ON THIS 3rd day of February in the year 2009, before me, the undersigned notary public, personally appeared Dennis E. Bschor known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

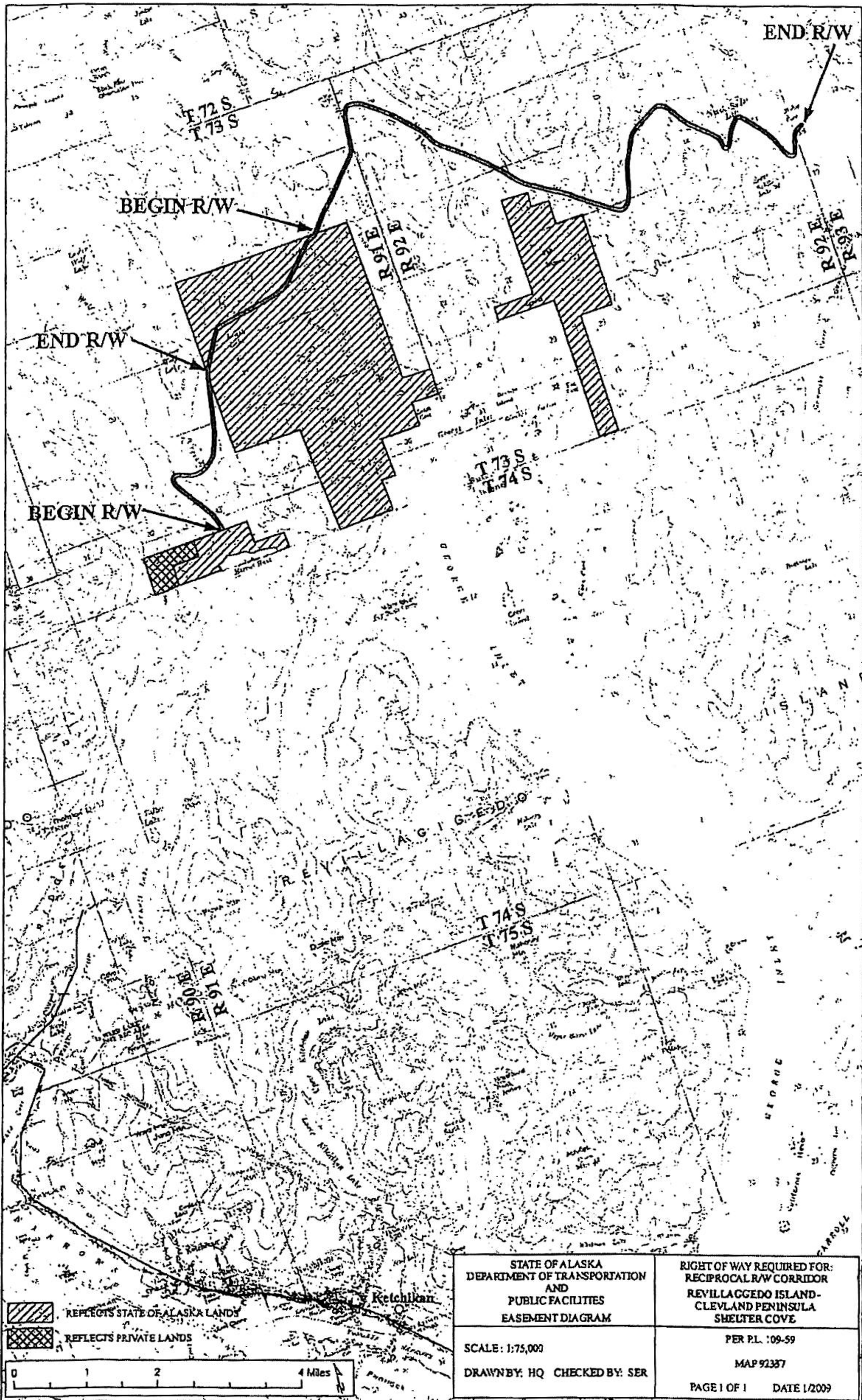
Notary Public: *Jackie R. Swanson*

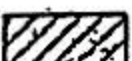

My commission expires: 11/16/2012

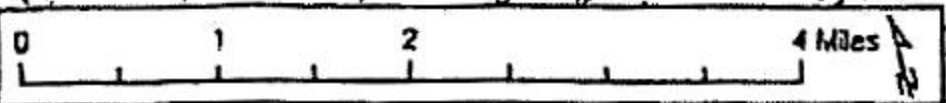
Return to: USDA Forest Service, Regional Office, Attn: Jackie Swanson, RLM, P.O. Box 21628, Juneau, AK 99802-1682

Filed for Record at the Request of:
Dept. of Transportation & Public Facilities
Right of Way
State Business - No Charge

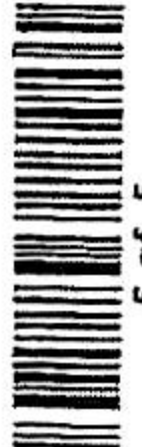




 REFLECTS STATE OF ALASKA LANDS
 REFLECTS PRIVATE LANDS



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES EASEMENT DIAGRAM	RIGHT OF WAY REQUIRED FOR: RECIPROCAL R/W CORRIDOR REVILLAGGEDO ISLAND- CLEVELAND PENINSULA SHELTER COVE
SCALE: 1:75,000 DRAWN BY: HQ CHECKED BY: SER	PER PL. 109-59 MAP 92337 PAGE 1 OF 1 DATE 1/2009



5 of 5

2009 - 000545 - 0