

Auth ID: SWA196
Contact ID: 851757010602
Use Code: 752

FS-2700-23 (v. 10/09)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AMENDMENT
FOR**

SPECIAL-USE AUTHORIZATION


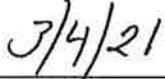


Amendment#: 1

This amendment is attached to and made a part of the SWA196 special use authorization for FEDERAL LAND POLICY & MGMT ACT EASEMENT issued to STILL RIVER, LLC on 12/21/2004 which is hereby amended as follows:

Easement transferred to new Grantee:
Jeffrey S. Eshleman and Carey M. Eshleman
928 Dakota Ave.
Whitefish, MT 59937

This Amendment is accepted subject to the conditions set forth herein, and to conditions N/A to N/A attached hereto and made a part of this Amendment.

HOLDER:

 _____ JEFFREY S. ESHLEMAN	 _____ DATE
 _____ CAREY M. ESHLEMAN	 _____ DATE

U.S.D.A. FOREST SERVICE:

 _____ KURTIS E. STEELE Forest Supervisor Flathead National Forest	 _____ DATE
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Authorization ID SWA196
(8/99)
Contact ID STILLRIVER
0596-0082
Expiration Date 12/31/2034
Use Code 752

FS-2700-9j

OMB No.

U. S. DEPARTMENT OF AGRICULTURE
Forest Service
PRIVATE ROAD EASEMENT
Act of October 21, 1976 (P. L. 94-579);
36 CFR 251.50, et seq

THIS EASEMENT, dated this 21st day of December, 2004, from the United States of America, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to STILL RIVER, LLC of 8755 Given Road, Cincinnati, OH 45243 a Limited Liability Company of the State of Montana, hereinafter called Grantee.

WITNESSETH:

WHEREAS, Grantee has applied for a grant of an easement under the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761), for a road over certain lands or assignable easements owned by the United States in the County of Missoula, State of Montana, and administered by the Forest Service, Department of Agriculture.

NOW THEREFORE, Grantor, for and in consideration of the payment of an annual use fee paid by Grantee does hereby grant to Grantee, subject to existing easements and valid rights, a nonexclusive easement for use of a road, along and across a strip of land, over and across the following described lands in the County of Missoula, State of Montana:

T.19N., R16W., P.M.M.
SW¹/₄ SE¹/₄, Section 5

Said premises are more specifically described by a centerline description contained in exhibit A attached hereto.

Said easement shall be 15 feet on each side of the centerline with such additional width as required for accommodation and protection of cuts and fills. If the road is located substantially as described herein, the centerline of said road as constructed is hereby deemed accepted by Grantor and Grantee as the true centerline of the easement granted.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantee, its permittees, contractors, assignees, and successors in interest.

- A. Grantee shall comply with applicable Federal or State law and shall comply with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes, if those standards are more stringent than applicable Federal standards.
- B. The rights herein conveyed do not include the right to use the road for access to developments for short- or long-term residential purposes, unless and until the Grantor and the Grantee agree upon traffic control regulations, rules, and other provisions to accommodate such use of the road.
- C. Upon change in ownership of the land or facility served by this road, the rights granted under this easement may be transferred to the new owner upon written notification to the Regional Forester.
- D. This easement shall continue for as long as the property served is used for two single-family residences and a guest house; provided, that the Grantor shall review the terms and conditions of

this easement at the end of each 30-year period from the date of issuance, and may incorporate in the easement such new terms, conditions, and stipulations as existing or prospective conditions may warrant. These shall have the same force and effect in the future as if incorporated in this grant.

- E. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Grantor prior to beginning such construction or reconstruction.
- F. Grantee shall have the right to cut timber upon the easement area to the extent necessary for maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into standard log lengths or other products as specified by the authorized officer and decked along the road for disposal by the owner of such timber.
- G. The Grantee shall maintain the right-of-way clearing by means of chemicals only after the Grantor 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.
- H. The Grantee shall provide maintenance so that there is no damage on adjacent National Forest land. The Grantee shall construct and maintain lead-off drainage and water barriers as necessary to prevent erosion.
- I. Grantee shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this easement. The initial payment is set at \$55.00 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of \$55.00 adjusted using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fair-market value of the use. At intervals to be determined by certain changes in the indexes used to establish the linear rights-of-way fee schedule, the fee shall be reviewed and adjusted as necessary to assure that it is commensurate with the value of the rights and privileges authorized. Failure of the holder to pay the annual payment, late charges, or other fees or charges shall cause the permit to terminate.
- J. Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, *et seq.*)

K. This easement shall terminate in the event an easement is granted subsequently by the United States to a public road agency for operation of this road as a public highway.

L. Grantee shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with existing Federal and State laws.

M. Grantee shall indemnify the United States for any and all injury, loss, or damage, including fire suppression costs the United States may suffer as a result of claims, demands, losses, or judgments caused by the Grantee's use or occupancy under this easement.

N. Upon termination of this easement, the Grantee shall remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the Grantor, unless otherwise waived in writing. If the Grantee fails to remove the structures or improvements within a reasonable period, as determined by the Grantor, the Grantor may remove and dispose of any improvements and restore the area and all costs shall be paid by the Grantee.

If the Grantor waives the removal of the improvements and restoration of the site, all improvements shall become the property of the United States.

The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, and assignees:

1. The right to cross and recross the road at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with Grantee's use of the road.
2. The right to all timber now or hereafter growing on the right-of-way, subject to Grantee's right to cut such timber as herein provided.
3. The right alone to extend rights and privileges for use of the road constructed on the premises to other users, provided that nonfederal users shall bear a fair share of the current replacement cost less depreciation of the road and shall reconstruct the road as necessary to accommodate their use.
4. The Grantor reserves the right to use or authorize the use of the road by other Federal agencies, without cost other than the performance or payment, as it may elect, for its proportionate share of maintenance costs.
5. The Grantor retains the right to occupy and use the right-of-way, and to issue or grant rights-of-way for other land uses, for other than road purposes, upon, over, under, and through the easement area provided that the occupancy and use do not interfere unreasonably with the

rights granted herein.

6. The right to terminate this easement if the Grantor assumes jurisdiction and control of the road as a Forest Development Road and issues a replacement easement providing only for use of the road. The replacement easement shall be in the current standard format, which provides the Grantee the right to use the road for the purposes and for the period authorized by this easement, subject to such traffic control regulations and rules as Grantor may impose reasonably upon or require of other users of the road without unreasonably reducing the rights herein granted.

The Grantor may take action to suspend, revoke, or terminate this easement under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes in 7 CFR 1.130-1.151. An administrative proceeding is not required when the easement terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

Special Clauses

Alienation of Property. (R1-G3) If Holder ceases to be the owner of the real property described above, or any portion thereof, this permit shall terminate. At its discretion and in accordance with then-existing laws, regulations, and policies, the Forest Service may grant additional authorization(s) to subsequent property owners.

Noxious Weed/Exotic Plant Prevention and Control. (R1-D4) The Holder shall be responsible for the prevention and control of noxious weeds and/or exotic plants of concern on the area authorized by this authorization and shall provide prevention and control measures prescribed by the Forest Service. Noxious weeds/exotic plants of concern are defined as those species recognized by the national forest in which the authorized use is located.

The Holder shall also be responsible for prevention and control of noxious weed/exotic plant infestations which are not within the authorized area, but which are determined by the Forest Service to have originated with the authorized area.

When determined to be necessary by the authorized officer, the Holder shall develop a site-specific plan for noxious weed/exotic plant prevention and control. Such plan shall be subject to Forest Service approval. Upon Forest Service approval, the noxious weed/exotic plant prevention and control plan shall become a part of this authorization, and its provisions shall be enforceable under the terms of this authorization.

Forest Service Representative. (R1-X16) The District Ranger, Swan Lake Ranger District, telephone number 406-837-7500, is responsible for administering this special use authorization. The Holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

Grizzly Bear Protection. (R1-X10) This special use authorization includes land which is part of the habitat of the grizzly bear. Therefore, in compliance with Forest Service responsibilities under the Endangered Species Act of 1973, 16 U.S.C. 1531, the following conditions apply to this special use authorization:

1. The authorized officer may order an immediate temporary suspension of all human activities permitted by this authorization and, if needed, revoke or terminate the special use authorization when, in his/her judgement, such action is necessary in order to prevent confrontation or conflict between humans and grizzly bears. The Holder shall immediately comply with such order. The United States shall not be liable for any consequences from such a suspension, revocation, or termination. Such suspension, revocation, or termination may be appealed to the next higher level as provided in 7 C.F.R. 1.130-1.151.
2. The Holder, his/her agents, employees, contractors, and subcontractors will comply with the requirements of the attached Grizzly Bear Management and Protection Plan dated 12/21/2000 in the conduct of any and all activities authorized. The authorized officer may review and revise the plan as needed.
3. The Holder assumes full responsibility and shall hold the United States harmless from any and all claims by him/her or by third parties for any damages to life or property arising from the activities authorized by this special use authorization and encounters with grizzly bears, or from suspension, revocation, or termination of activities authorized by this special use authorization.
4. Intentional or negligent acts by the Holder, his/her agents, employees, contractors, and

subcontractors that result in injury or death of a grizzly bear will be cause for revocation or termination of this authorization in whole or in part.

5. Failure to comply with provisions 1, 2, or 3 may result in suspension, revocation, or termination of this authorization in whole or in part, and may cause criminal action to be taken against the Holder under provisions of the Endangered Species Act of 1973, as amended, or other applicable authority.

IN WITNESS WHEREOF, the Grantor, by its Forest Supervisor, Flathead National Forest, Region One, U.S.D.A. Forest Service, has executed this easement pursuant to the delegation of authority by the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Conservation, the delegation of authority by the Assistant Secretary for Natural Resources and Conservation, to the Chief, Forest Service, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, dated August 16, 1982, (47 FR 36465), on the day and year first above written.

UNITED STATES OF AMERICA

CATHERINE S. BARBOULETOS

Forest Supervisor
Flathead National Forest
Region One, Forest Service
Department of Agriculture

ACKNOWLEDGMENT

State of Montana)
)ss.
County of Flathead)

On this _____ day of December, 2004, before me, the undersigned, a Notary Public within and for said State, personally appeared Gary Dahlgren, Acting for the Forest Supervisor, Flathead National Forest, Region One Forest Service, Department of Agriculture, the same person who executed the within and foregoing instrument, who being by me duly sworn according to law, did say that he is the Acting Forest Supervisor, Flathead National Forest, and that said instrument was signed on behalf of the United States of America by its authority duly given and by he delivered as and for its act and deed. And he did further acknowledge that he executed said instrument as the free act and deed of the United States of America, for the purposes and consideration herein mentioned and set forth, and I do hereby so certify.

Montana

(SEAL)

2007

Notary Public for the State of

Harry W. McAllister
Residing at Kalispell
My Commission Expires: January 4,

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.