



United States  
Department of  
Agriculture

Forest  
Service

Santa Fe National Forest

1474 Rodeo Road  
P.O. Box 1689  
Santa Fe, New Mexico 87504-1689  
505-438-7840  
Fax 505-438-7834

File Code: 2730-3-2

Date: March 26, 2001

Mr. Roger Montgomery  
Apache Canyon Landowners Assoc.  
RR-19 Box 120-H  
Santa Fe, NM 87505

Dear Mr. Montgomery:

Enclosed, for your records, is a fully executed and recorded copy of a Private Road Easement authorizing access off of Forest Road 79, Pecos Ranger District, Santa Fe National Forest.

The easement was filed for record on March 23, 2001, in Book 1877, pages 32 through 35, in the records of the County of Santa Fe, Santa Fe County Courthouse.

Also enclosed, in accordance with Clause 1 of your private road easement, is a bill for collection in the amount of \$55.31. Payment of the enclosed bill for collection is due on or by April 25, 2001.

Thank you for your patience throughout this process. If you should have any questions in regard to your easement, please feel free to call Wilfred Varela, Pecos Ranger District, at (505) 757-6121.

Sincerely,

FOR LEONARD ATENCIO  
Forest Supervisor

Enclosures

cc: Pecos RD w/encs.



Authorization ID PEC408001  
Contact ID APACHE,CLOA  
Expiration Date: 12/31/2031



1877032

FS-2700-9j (8/99)

OMB No. 0596-0082

COUNTY OF SANTA FE } SS 647  
STATE OF NEW MEXICO }

I hereby certify that this instrument was filed for  
record on the 23 day of March A.D.  
2001 at 2:37 o'clock PM and  
was duly recorded in book 1877 page  
32-35 of the records of Santa Fe County.

Witness my Hand and Seal of Office

Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.

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 23rd day of March, 2001, from the United States of America, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to **APACHE CANYON LAND OWNERS ASSOC. a NON-PROFIT ASSOCIATION, c/o Mr. Roger Montgomery, RR-19 Box 120-H, Santa Fe, NM 87505** of the State of **NEW MEXICO**, 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 **Santa Fe**, State of **New Mexico**, 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 **Santa Fe**, State of **New Mexico**:

Said premises are more specifically described by a centerline description contained in exhibit 1 attached hereto. (Filed for Record on September 7, 2000, in Book of Plats 454 Page 014 of the Records of Santa Fe County. (1128-797)

Said easement shall be 30 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 needed for access to the **private land inholdings**; 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 **\$55.31** for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of **\$55.31** 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:

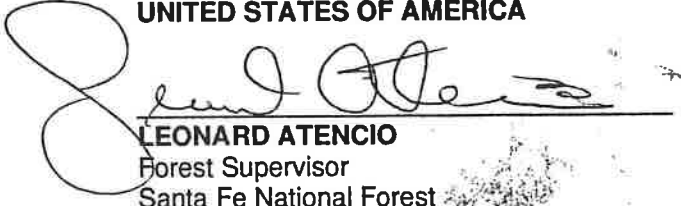
- 1. The right to cross and recross the road at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with Grantee's use of the road.
- 2. The right to all timber now or hereafter growing on the right-of-way, subject to Grantee's right to cut such timber 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.

IN WITNESS WHEREOF, the Grantor, by its Forest Supervisor, Santa Fe National Forest, 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, to the Regional Foresters, dated August 16, 1982, (47 FR 36465), and the delegation of authority by the Regional Forester, Southwestern Region, to the Forest Supervisors, dated October 5, 1992, (57 FR 52756-52757) on the day and year first above written.

UNITED STATES OF AMERICA

  
**LEONARD ATENCIO**  
 Forest Supervisor  
 Santa Fe National Forest  
 Forest Service  
 Department of Agriculture

ACKNOWLEDGMENT

STATE OF NEW MEXICO )  
 ) ss  
 COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 23rd day of March, 2000, by Leonard Atencio, known to me to be the Forest Supervisor, Santa Fe National Forest, United States Department of Agriculture who being by me duly sworn states that he signed said instrument on behalf of the United States of America under authority duly given, and he executed same as the free act and deed of the United States of America for the consideration and purpose therein contained.

My Commission expires: May 18, 2004

  
 Notary Public

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 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.