

76342

TLM Contract
No. 7534Easement Deed
No. 27125-WROAD USE AGREEMENT AND EASEMENT EXCHANGE

THIS AGREEMENT is entered into this 29th day of January, 1973,
by and between INTERNATIONAL PAPER COMPANY, a New York corporation, herein called
"International" a/d BURLINGTON NORTHERN INC., a Delaware corporation, herein
called "Burlington".

WHEREAS, the parties hereto each own or otherwise hold interest in lands within
the area covered by this agreement as shown on Exhibit A, attached hereto, and
made a part hereof; and

WHEREAS, the parties hereto have need for establishing access roads to their
intermingled land ownerships for managing, protecting and utilizing resources
therefrom; and

WHEREAS, the parties hereto desire to join in developing and maintaining such
roads serving their ownerships and to share costs thereof;

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the parties
agree as hereinafter set forth:

I

- A. International hereby grants and conveys to Burlington, its successors and assigns, a perpetual, non-exclusive easement upon, over and along a right of way 60 feet in width upon, over and across the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 6 North, Range 5 East, W.M., and the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34, Township 7 North, Range 6 East, W.M., Skamania County, Washington, as shown colored red on Exhibit A, subject to all matters of public record as of the date of this agreement.
- B. Burlington grants and conveys to International, its successors and assigns, a perpetual, non-exclusive easement upon, over and along a right of way 60 feet in width upon, over and across Government Lot 1, Section 3, the E $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 2, and the E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11, Township 6 North, Range 5 East, W.M., and Government Lots 1, 5, 6, 7, the SW $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 35, Township 7 North, Range 6 East, W.M.,

Skamania County, Washington, as shown colored green on Exhibit A; subject to the terms and conditions of that contract between Burlington and International designated as T&M Contract 2557 and to all matters of public record as of the date of this agreement.

II

The parties hereto hereby agree that the rights hereinabove granted by each party hereto to the other shall be subject to the following terms and conditions:

- A. The easements are conveyed for construction, reconstruction, use and maintenance of a road, or roads, to provide access to or from lands now owned or hereafter acquired by the parties hereto.
- B. Each party hereto reserves for itself, its successors and assigns, the right at all times and for any purpose to go upon, cross and recross, at any place on grade or otherwise, said rights of way on lands owned by it and to use the roads on said rights of way in a manner that will not unreasonably interfere with the rights granted to the other party hereunder.
- C. Each party hereto may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such third parties shall be subject to the terms and conditions of this agreement and shall not unreasonably interfere with the rights granted to the other party hereunder.
- D. Each party hereto may permit its respective contractors, licensees, purchasers of timber or other valuable materials, and their agents, hereinafter individually and collectively referred to as "Permittee", to exercise the rights granted to it herein; provided, that when a party hereto or its Permittee plans to use any portion of said roads for the purpose of hauling timber or other valuable materials, such party shall notify the other thereof at least fifteen (15) days prior to the commencement of use of said rights, advising of the portion of road to be used, the approximate dates when such use will begin and end, and of the approximate volumes of forest products or valuable materials to be hauled, and forthwith upon the completion of such use notify the other party thereof.

E. The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said roads. When either party hereto uses a road, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing occasioned by such use as hereinafter provided. During periods when a road is being used solely by one party, such party shall maintain that portion of said road so used to the standards existing at the time use is commenced. During periods when more than one party is using the same road or any portion thereof, the parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

1. The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed at a reasonable and agreed upon rate the maintenance and resurfacing of a road or the portion thereof being used; and
2. A method of payment by which each party using said road or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For purposes of this agreement, road maintenance is defined as that work normally necessary to preserve the facility in a condition equivalent to the standard to which it was originally constructed or to which it has been or is hereafter improved. In the event a road user does not maintain the road as hereinabove defined, the other party hereto may accomplish or cause to be accomplished said maintenance, as well as repair of any damage caused by the delay in performance of said maintenance, by contract or otherwise; provided, that the party failing to perform be notified before such work is undertaken. The party failing to perform shall be obligated to reimburse the party or parties actually accomplishing said work for all costs associated therewith. Because further delay is to be avoided, the party undertaking such work shall not be obligated to seek competitive bids therefor.

Should either party hereto, or its permittee, cause damage to a road in excess of that which may be expected to occur through normal and prudent use of said road, said party shall repair, or cause to be repaired, such damage at its sole cost and expense. If the road is severely damaged or destroyed by means other than authorized use so that additional capital expenditure will be required, the parties hereto shall meet and endeavor to agree on the nature and cost of said work to be done, the party to undertake such work and the share of the cost to be borne by each.

F. Unless the parties hereto agree in writing to share the costs of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

G. Each party hereto reserves to itself all timber now on or hereafter growing within the rights of way on its own lands.

H. International will assume all risk of, and indemnify and hold harmless, and at its expense defend Burlington from and against any claims, loss, cost, legal actions, liability or expense on account of personal injury to or death of any persons whomsoever, including but not limited to employees of Burlington, or damage to or destruction of property to whomsoever belonging, including but not limited to property of Burlington, resulting partly or wholly, directly or indirectly from International's exercise of the rights herein granted it.

I. Burlington will assume all risk of, and indemnify and hold harmless, and at its expense defend International from and against any claims, loss, cost, legal actions, liability or expense on account of personal injury to or death of any persons whomsoever, including but not limited to employees of International, or damage to or destruction of property to whomsoever belonging, including but not limited to property of International, resulting partly or wholly, directly or indirectly from Burlington's exercise of the rights herein granted it.

J. Each party hereto shall require its Permittee, before using any of said roads or the lands of other parties hereto, to:

1. Obtain and, during the term of such use, maintain a policy of liability insurance in a form generally acceptable in the trade and customary in the area of said rights of way, insuring said Permittee against liability arising out of its operations, including use of vehicles. Minimum amounts of insurance shall be:

- (a) One Hundred Thousand Dollars (\$100,000.00) for injury to or death of one person, Three Hundred Thousand Dollars (\$300,000.00) for injury to or death of two or more persons for any one occurrence, and One Hundred Thousand Dollars (\$100,000.00) property damage for any one occurrence; and
- (b) Such other limits as the parties hereto may agree upon in writing from time to time.

2. Deliver to each party hereto a certificate from the insurer of said Permittee certifying that coverage is not less than the above named amounts is in force and that in the event of cancellation or modification of such coverage, the insurer will give each party hereto ten (10) days' written notice prior to any cancellation or modification.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

BURLINGTON NORTHERN INC.

INTERNATIONAL PAPER COMPANY

By C. R. Seeger
Vice President

By R. K. Ladd
Title: Assistant General Manager
Long-Bell Division

Attest: [Signature]
Title: SECRETARY

Attest: [Signature]
Title: ~~Assistant Secretary~~
Assistant Secretary

No. 2024
TRANSACTION EXCISE TAX

JUL 12 1973

Amount Paid Five Dollars
Skamania County Treasurer
By [Signature]

STATE OF WASHINGTON)
COUNTY OF COWLITZ) ss

On this 29th day of June, 1973, before me personally appeared
R. K. Hood and L. E. LaBerge, to me
Assistant General Manager of
known to be the Long-Bell Division and Assistant Secretary, respectively,
of INTERNATIONAL PAPER COMPANY, one of the corporations that executed the within
and foregoing instrument, and acknowledged said instrument to be the free and
voluntary act and deed of said corporation, for the uses and purposes therein
mentioned, and on oath stated that they were authorized to execute said instrument
and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year last above written.

Melvin R. Whitney
Notary Public in and for the State
of Washington.
Residing at Longview.
My Commission Expires: 3-26-74

STATE OF MINNESOTA)
COUNTY OF RAMSEY) ss

On this 29th day of January, 1973, before me personally appeared
C. R. Binger and R. M. O'Kelly, to me known
to be the VICE PRESIDENT and SECRETARY, respectively, of
BURLINGTON NORTHERN INC., one of the corporations that executed the within and
foregoing instrument, and acknowledged said instrument to be the free and volun-
tary act and deed of said corporation, for the uses and purposes therein mentioned,
and on oath stated that they were authorized to execute said instrument and that
the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year last above written.

J. W. Mayer
J. W. MAYER
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Nov. 17, 1978

SOUTH SHORE SHARE-COST AGREEMENT AREA

