

## § 251.112

*Landowner(s)* means the owner(s) of non-Federal land or interests in land within the boundaries of the National Forest System.

### § 251.112 Application requirements.

(a) A landowner shall apply for access across National Forest System lands in accordance with the application requirements of § 251.54 of this part. Such application shall specifically include a statement of the intended mode of access to, and uses of, the non-Federal land for which the special-use authorization is requested.

(b) The application shall disclose the historic access to the landowner's property and any rights of access which may exist over non-federally owned land and shall provide reasons why these means of access do not provide adequate access to the landowners property.

(c) The information required to apply for access across National Forest lands under this subpart is approved for use under subpart B of this part and assigned OMB control number 0596-0082.

### § 251.113 Instrument of authorization.

To grant authority to construct and/or use facilities and structures on National Forest System lands for access to non-Federal lands, the authorized officer shall issue a special-use authorization in conformance with the provisions of subpart B of this part or a road-use permit. In cases where Road Rights-of-way Construction And Use Agreements are in effect, the authorized officer may grant an easement in accordance with the provisions of part 212 of this chapter.

### § 251.114 Criteria, terms and conditions.

(a) In issuing a special-use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.

## 36 CFR Ch. II (7-1-12 Edition)

(b) Landowners must pay an appropriate fee for the authorized use of National Forest System lands in accordance with § 251.57 of this part.

(c) A landowner may be required to provide a reciprocal grant of access to the United States across the landowner's property where such reciprocal right is deemed by the authorized officer to be necessary for the management of adjacent Federal land. In such case, the landowner shall receive the fair market value of the rights-of-way granted to the United States. If the value of the rights-of-way obtained by the Government exceeds the value of the rights-of-way granted, the difference in value will be paid to the landowner. If the value of the rights-of-way across Government land exceeds the value of the rights-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization as provided in § 251.57(b)(5) of this part.

(d) For access across National Forest System lands that will have significant non-Forest user traffic, a landowner may be required to construct new roads or reconstruct existing roads to bring the roads to a safe and adequate standard. A landowner also may be required to provide for the operation and maintenance of the road. This may be done by arranging for such road to be made part of the local public road system, or formation of a local improvement district to assume the responsibilities for the operation and maintenance of the road as either a private road or as a public road, as determined to be appropriate by the authorizing officer.

(e) When access is tributary to or dependent on forest development roads, and traffic over these roads arising from the use of landowner's lands exceeds their safe capacity or will cause damage to the roadway, the landowner(s) may be required to obtain a road-use permit and to perform such reconstruction as necessary to bring the road to a safe and adequate standard to accommodate such traffic in addition to the Government's traffic. In such case, the landowner(s) also shall enter into a cooperative maintenance arrangement with the Forest Service

## Forest Service, USDA

## § 251.121

to ensure that the landowner's commensurate maintenance responsibilities are met or shall make arrangements to have the jurisdiction and maintenance responsibility for the road assumed by the appropriate public road authority.

(f) In addition to ensuring that applicable terms and conditions of paragraphs (a) through (e) of this section are met, the authorizing officer, prior to issuing any access authorization, must also ensure that:

(1) The landowner has demonstrated a lack of any existing rights or routes of access available by deed or under State or common law;

(2) The route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land;

(3) The location and method of access is as consistent as reasonably possible with the management of any congressionally designated area and is consistent with Forest Land and Resource Management Plans or the plans are amended to accommodate the access grant, and;

(4) When access routes exist across the adjacent non-Federal lands or the best route as determined by the authorizing officer is across non-Federal lands, the applicant landowner has demonstrated that all legal recourse to obtain reasonable access across adjacent non-Federal lands has been exhausted or has little chance of success.

(g) In addition to the other requirements of this section, the following factors shall be considered in authorizing access to non-federally owned lands over National Forest System lands which are components of the National Wilderness Preservation System:

(1) The use of means of ingress and egress which have been or are being customarily used with respect to similarly situated non-Federal land used for similar purposes;

(2) The combination of routes and modes of travel, including non-motorized modes, which will cause the least lasting impact on the wilderness but, at the same time, will permit the

reasonable use of the non-federally owned land;

(3) The examination of a voluntary acquisition of land or interests in land by exchange, purchase, or donation to modify or eliminate the need to use wilderness areas for access purposes.

### Subpart E—Revenue-Producing Visitor Services in Alaska

AUTHORITY: 16 U.S.C. 3197.

SOURCE: 68 FR 35121, June 11, 2003, unless otherwise noted.

#### § 251.120 Applicability and scope.

(a) These regulations implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3197) with regard to the continuation of visitor services offered as of January 1, 1979, and the granting of a preference to local residents and certain Native Corporations to obtain special use authorizations for visitor services provided on National Forest System lands within Conservation System Units of the Tongass and Chugach National Forests in Alaska.

(b) Except as may be specifically provided in this subpart, the regulations at subpart B shall apply to special use authorizations issued under this subpart. However, if subpart B conflicts with subpart E, subpart E controls.

(c) This subpart does not apply to the guiding of sport hunting and fishing.

#### § 251.121 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

*Best application*—the application, as determined by the authorized officer, that best meets the evaluation criteria contained in a prospectus to solicit visitor services.

*Conservation System Unit (CSU) as it relates to the Tongass and Chugach National Forests in Alaska*—a National Forest Monument or any unit of the National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, including existing units and any such unit established, designated, or expanded hereafter.