

## 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.

*Controlling interest*—in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

*Historical operator*—a holder of a valid special use authorization to provide visitor services in a CSU under Forest Service jurisdiction who:

(1) On or before January 1, 1979, was lawfully and adequately providing visitor services in that CSU;

(2) Has continued lawfully and adequately to provide the same or similar types of visitor services within that CSU; and

(3) Is otherwise determined by the authorized officer to have a right to continue to provide the same or similar visitor services.

*Local area*—any site within 100 miles of the location within a CSU where any visitor services covered by a single solicitation by the Forest Service are to be authorized.

*Local resident:*

(1) *For individuals*—Alaska residents who have lived within the local area for 12 consecutive months prior to issuance of a solicitation of applications for a visitor services authorization for a CSU; who maintain their primary, permanent residence and business within the local area; and who, whenever absent from this primary, permanent residence, have the intention of returning to it.

(2) *For corporations, partnerships, limited partnerships, joint ventures, individual entrepreneurships, and other circumstances*—where the controlling interest is held by an individual or indi-

viduals who qualify as local residents within the meaning of this section.

(3) *For nonprofit entities*—where a majority of the board members and a majority of the officers qualify as local residents within the meaning of this section.

*Native Corporation* has the same meaning as under section 102(6) of ANILCA (16 U.S.C. 3197).

*Preferred operator*—a Native Corporation that is determined, pursuant to § 251.123, to be most directly affected by establishment or expansion of a CSU; or a local resident, as defined in this section, who competes for a visitor service special use authorization under § 251.124 of this subpart.

*Responsive application*—an application that is received in a timely manner and that meets the requirements stated in the prospectus.

*Visitor service*—any service or activity for which persons who visit a CSU pay a fee, commission, brokerage, or other compensation, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

#### **§ 251.122 Historical operator special use authorizations.**

(a) A historical operator has the right to continue to provide visitor services under appropriate terms and conditions contained in a special use authorization, as long as such services are determined by the authorized officer to be consistent with the purposes for which the CSU was established or expanded. A historical operator may not operate without such an authorization.

(b) Any person who qualifies as a historical operator under this subpart and who wishes to exercise the rights granted to historical operators under section 1307(a) of ANILCA (16 U.S.C. 1397(a)) must notify the authorized officer responsible for the CSU.

(c) A historical operator may apply for a special use authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979. The authorized officer shall grant the application if those visitor services are