

43 CFR 36.10 - ACCESS TO INHOLDINGS.

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§ 36.10 Access to inholdings.

(a) This section sets forth the procedures to provide adequate and feasible access to inholdings within areas in accordance with section 1110(b) of ANILCA. As used in this section, the term:

- (1) *Adequate and feasible access* means a route and method of access that is shown to be reasonably necessary and economically practicable but not necessarily the least costly alternative for achieving the use and development by the applicant on the applicant's nonfederal land or occupancy interest.
- (2) *Area* also includes public lands administered by the BLM designated as wilderness study areas.
- (3) *Effectively surrounded by* means that physical barriers prevent adequate and feasible access to State or private lands or valid interests in lands except across an area(s). Physical barriers include but are not limited to rugged mountain terrain, extensive marsh areas, shallow water depths and the presence of ice for large periods of the year.
- (4) *Inholding* means State-owned or privately owned land, including subsurface rights of such owners underlying public lands or a valid mining claim or other valid occupancy that is within or is effectively surrounded by one or more areas.

(b) It is the purpose of this section to ensure adequate and feasible access across areas for any person who has a valid inholding. A right-of-way permit for access to an inholding pursuant to this section is required only when this part does not provide for adequate and feasible access without a right-of-way permit.

(c) Applications for a right-of-way permit for access to an inholding shall be filed with the appropriate Federal agency on a SF 299. Mining claimants who have acquired their rights under the General Mining Law of 1872 may file their request for access as a part of their plan of operations. The appropriate Federal agency may require the mining claimant applicant to file a SF 299, if in its discretion, it determines that more complete information is needed. Applicants should ensure that the following information is provided:

- (1) Documentation of the property interest held by the applicant including, for claimants under the General Mining Law of 1872, as amended ([30 U.S.C. 21-54](#)), a copy of the location notice and recordations required by [43 U.S.C. 1744](#);
- (2) A detailed description of the use of the inholding for which the applied for right-of-way permit is to serve; and
- (3) If applicable, rationale demonstrating that the inholding is effectively surrounded by an area(s).

(d) The application shall be filed in the same manner as under § [36.4](#) and shall be reviewed and

processed in accordance with §§ [36.5](#) and [36.6](#).

(e)

(1) For any applicant who meets the criteria of paragraph (b) of this section, the appropriate Federal agency shall specify in a right-of-way permit the route(s) and method(s) of access across the area(s) desired by the applicant, unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the area and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety and adequate and feasible access otherwise exists; or

(iii) The route or method is inconsistent with the management plan(s) for the area or purposes for which the area was established and adequate and feasible access otherwise exists; or

(iv) The method is unnecessary to accomplish the applicant's land use objective.

(2) If the appropriate Federal agency makes one of the findings described in paragraph (e)(1) of this section, another alternate route(s) and/or method(s) of access that will provide the applicant adequate and feasible access shall be specified by that Federal agency in the right-of-way permit after consultation with the applicant.

(f) All right-of-way permits issued pursuant to this section shall be subject to terms and conditions in the same manner as right-of-way permits issued pursuant to § [36.9](#).

(g) The decision by the appropriate Federal agency under this section is the final administrative decision.