



## INHOLDING ACCESS

### Inholding Access in Subsequent Legislation

The following comparison of the language used to delineate the parameters of access to inholdings in various laws is from “Inholdings within Wilderness: Legal Foundations, Problems, and Solutions” by Randy Tanner. It was printed in 2002 in the *International Journal of Wilderness*, v.8, n.3. The entire article can be found in this toolbox in the Resources and References section, or at: <http://www.wilderness.net/library/documents/Tanner1.pdf>.

<b>Table 2—U.S. Legislation Concerning Privately Owned and State-Owned Land Inholdings in NWPS Wilderness Areas.</b>	
Legislation (Public Law and Section Number)	Statutory Language
The Wilderness Act (P.L. 88-577 § 5[a])	“ In any case where State-owned or privately owned land is completely surrounded by national forest lands within areas designated by this Act as Wilderness such State or private owner shall be given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value...”
The Eastern Wilderness Act (P.L. 93-622 § 6 [b] [3])	“The Secretary of Agriculture may acquire such land or interest without consent of the owner or owners whenever he finds such use to be incompatible with the management of such area as wilderness and the owner or owners manifest unwillingness, and subsequently fail, to promptly discontinue such incompatible use.”
The Alaska National Interest Lands Conservation Act (P.L. 96-487 § 1110 [b])	“The State or private owner shall be given by the Secretary ... adequate and feasible access for economic and other purposes ... subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.”
The Alaska National Interest Lands Conservation Act (P.L. 96-487 § 1323)	(a) “... the Secretary of Agriculture ... shall grant access to non-federally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof...” (b) “...the Secretary of the Interior ... shall provide such access to non-federally owned lands surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof ...”
The California Desert Protection Act (P.L. 104-433 § 708)	“the Secretary shall provide adequate access ... which will provide the owner of such land or interest the reasonable use and enjoyment thereof.”

Note that the degree to which access is granted may vary depending upon the specific language of the law under which your wilderness was designated. In addition, the degree to which the language in ANILCA applies outside Alaska is a subject of varying interpretation between the two Departments which manage Wilderness. The Forest Service has interpreted Section 1323 as pertaining to all inholdings located within the National Forest System including Wilderness inholdings.

None of the laws, however, further define or differentiate between “adequate,” “reasonable,” and “feasible.” Some further clarification can be found in agency regulations and policy, as found elsewhere in this toolbox. Nevertheless, some courts have conflated these distinctions, and your solicitor or general counsel will have to help interpret the sideboards for your wilderness.