United States Department of the Interior

BUREAU OF LAND MANAGEMENT
California State Office
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MAY 18 1995

Instruction Memorandum No. CA-95-137
Expires: 09/30/96

To: District Managers and Deputy State Directors

From: State Director, California

Subject: Guidance for Authorizing Access to Non-Federal Inholdings within BLM Wilderness Areas established by the California Desert Protection Act of 1994.

Section 708 of the California Desert Protection Act (CDPA) requires, subject to valid existing rights, that the Secretary of the Interior "provide adequate access to nonfederally owned land or interests in land within the boundaries of the ... wilderness areas designated by this Act which will provide the owner of such land or interest the reasonable use and enjoyment thereof." Section 103(a) of the CDPA also provides that the BLM wilderness areas will be administered in accordance with the 1964 Wilderness Act. Section 5(a) of the Wilderness Act of 1964 requires that: "such State or private owner shall be given such rights as may be necessary to assure adequate access..".

Where the 1964 Wilderness Act provided for adequate access to land, the CDPA provides for adequate access to land and interests in land. For this Instruction Memorandum (IM), non-federally owned lands or interests in land will be referred to as non-Federal inholdings.

43 Code of Federal Regulations 8560.0-5(a) defines adequate access as "...the combination of routes and modes of travel to non-Federal inholdings that will, as determined by the authorized officer, serve the reasonable purposes for which the non-Federal lands are held or used , and at the same time, cause impacts of least duration and degree on their wilderness character." Adequate access will be determined on a case by case basis based on analysis of the purpose and need for access as well as reasonable alternatives, in the environmental document for the action. We should encourage non-motorized and non-mechanical access whenever practical, allowing motorized and mechanical transport only if we determine it to be necessary for reasonable use and enjoyment of property.

Reasonable use and enjoyment need not necessarily require the highest degree of access, but rather, could be some lesser degree of access. However, BLM must provide a degree of access that is commensurate with the reasonable use and enjoyment of the non-Federal land. BLM must also consider such things as a landowner's options to develop new access across other non-Federal land or the use of existing access over non-Federal or public lands.

Based on availability of funding and acquisition priorities, the Bureau of Land Management may acquire non-Federal inholdings. If we are unable to acquire non-Federal inholdings, we will allow adequate access across wilderness lands, if the inholding is completely surrounded by wilderness. The owner of the non-Federal inholding must obtain written authorization from BLM if routes or modes of travel, not available to the general public, are necessary to provide adequate access.

Normally, BLM authorizes access by right of way (R/W) grants issued under the authority of Title V of the Federal Land Management and Policy Act of 1976. However, since section 501 of FLPMA specifically excludes Title V R/Ws in wilderness areas, we expect to issue access authorizations for motorized or mechanical transport consistent with 43 CFR 2920. Generally, we expect to provide adequate access by means of short-term permits, but in some cases it may be necessary to authorize access under a longer term lease authorization. Long-term access will be addressed only after the pertinent wilderness management plans have been completed.

Until additional guidance is provided, process access authorizations in accordance with the BLM manual 2920 manual and 43 CFR 2920. This includes the collection of rental, processing, and monitoring fees, as appropriate. Each applicant must be advised of their appeal rights pursuant to 43 CFR Part 4.

Currently, Section 1203 of the BLM Manual requires the State Director to approve all authorizations granting motorized/mechanical access in wilderness areas. The authority to approve authorizations granting access to inholdings in wilderness areas is delegated to District Managers by this IM. The appropriate changes will be made to Section 1203..

Attached is procedural guidance for authorizing adequate access. Questions regarding this guidance should be directed to David McIlnay at (916) 979-2858 or Paul Brink at (916) 979-2840.

Ed Hastey

Attachment:

Procedures to Grant Access by Motorized and Mechanical Transport to Non-Federal Inholdings in BLM Wilderness (6 pp.)

Distribution w/o attachment
WO-270, 350 (204 L St)
CA-930, Paul Brink
AZ-930, Ken Mahoney
Yuma DO, Applegate

PROCEDURES TO GRANT ACCESS BY MOTORIZED AND MECHANICAL TRANSPORT TO NON-FEDERAL INHOLDINGS IN BLM WILDERNESS

A. Authorization Required

Written authorization is required for access across designated wilderness to reach any non-Federal inholding by methods or routes not available to the general public. No authorization is needed for governmental agency personnel or landowners to access an inholding if the mode of travel is by foot, horseback, or other means available to the public.

B. Applicant Qualifications

Applicants must be the governmental agency with management responsibility or the actual owner of the non-Federal inholding.

Access need not be granted to anyone other than the owner. However, the applicant may request that others be allowed access to the inholding under the conditions of the permit.

C. Application Requirements

1. Initial Consultations. Preliminary discussions should occur with the appropriate Resource Area Office. Applicants should be furnished information for applying for an access permit. Applicants should be made aware of the rental fees involved, wilderness management objectives, required elements in the written proposal, and other federal, state or local laws.

2. Federal Acquisition of Inholding. The possibility of BLM acquiring the inholding as an alternative to granting access should be discussed. This discussion can center upon whether the landowner is interested in land exchange, fee simple purchase or donation.

   Even if the landowner indicates that federal acquisition may be acceptable, the intended use of the inholding by the landowner should be explored. If the proposed uses of the inholding and access needs are consistent with wilderness management, processing of the access permit may begin.

   If the proposed use of the inholding is inconsistent with wilderness management, the applicant should be advised that development inconsistent with wilderness management could eliminate the parcel from being considered for federal acquisition.

   If the landowner is not interested in pursuing federal acquisition, the permit process may continue.

3. Written Proposal. After informal discussion, the applicants must submit a written proposal, using form 2920-1. Written proposals should to be submitted to the Resource Area Office with jurisdiction over the affected wilderness. The

following items should be addressed in an application for an access permit:

(a) A description of the mode of travel, location map of travel route, frequency of use, and dimensions of travel route (width and length).

(b) A description of the historic access to the inholding along with any rights of access that may exist over non-Federal or non-wilderness lands.

(c) A list of the owners and other persons who may reasonably need access to the inholding under the provisions of a permit. The owner may request to add to or delete from this list at a later date.

(d) Justification why the proposed mode of travel and travel route are needed.

(e) An estimate of surface disturbance necessary to construct, improve, or reconstruct an access route.

(f) After reviewing the application, the authorized officer may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the requested access.

A lands case file number will be assigned and the case entered into case recordation (ORCA), using case type 292020. Any permit or lease issued should be noted to the MTP and historical index. A copy of the applicant's proposal and any authorization should be put in the permanent case file of the wilderness area.

D. Analysis and Approval

Basis for Analysis. An environmental document will be prepared, meeting the requirements of the National Environmental Policy Act. Only those alternatives that allow for the intended reasonable use of the inholding need be considered. You should consider the relative level of environmental impact from the mode of travel and the route, the development of the route, the frequency and timing of use, and the availability and feasibility of using primitive transport. Careful analysis must be made in concluding that a Finding of No Significant Impact (FONSI) is appropriate and an Environmental Impact Statement is not required. If the EA determines that significant impacts to wilderness resources would result from the proposed action, an EIS may be prepared.

Authorized Officer. The current 1203 Delegation of Authority manual maintains approval authority with the State Director for use of motorized and mechanical transport in wilderness, uses similar to granting access to non-Federal inholdings in wilderness. The authority to approve authorizations granting

access to inholdings in wilderness areas is delegated to District Managers by this IM. The appropriate changes will be made to Section 1203.

Decision Record. The decision record will document the approved access to the inholding, the required mitigation measures (see Exhibit B of Illustration 1 for examples of stipulations), and should be consistent with the policy outlined above. It should include a clear and complete rationale for the decision. The selected alternative must cause the least lasting impact on the wilderness and at the same time allow reasonable use and enjoyment of the inholding.

The authorized officer need not choose the access as desired by the applicant; rather, the decision record may modify the proposal in terms of mode of travel, route of travel, and so forth. The applicant and any adversely affected interests have the right of appeal under 43 CFR part 4. An appeal would be processed under the procedures described in the California Appeals Guidebook, which was promulgated by IB No. CA-93-143.

E. Authorization

Authorization shall be in a form of a 2920 Permit. Illustration 1 provides the format to use for an access permit. The permit will prepared as follows:

1. Permittee: The permit will be issued in the name of the governmental agency, person(s), or corporation, as the owner of a certain described non-Federal inholding. Other persons allowed access under the permit will be listed separately by name.

2. Term: Consistent with the definition of permits in 43 CFR 2920.1-1(b), the access permit shall be for no longer than 3 years in duration.

3. Assignment: If ownership of the inholding changes, the new owner should either apply for assignment of the permit or apply for access based on his or her needs. Upon application for assignment, the permit shall be assigned to the permittee successors in interest.

4. Rental: An applicant for an access permit shall, prior to issuance, pay the fair market rental value as determined by the authorized officer. Field offices should use the current linear rental schedule at 43 CFR 2803.1-2. Rental should be collected in advance for all three years.

   If the permit contains restrictive terms and conditions (see Section G(2) below), BLM may reduce the fair market value rental to reflect the reduced value of the access. IBLA determined in ***Mathilda B. Williams and Jack F. Brown (124 IBLA 7)***, that such a reduction would be appropriate.

5. Cost Reimbursement: Consistent with 43 CFR 2803 and 2920.6(b), application or monitoring fees will be charged if the annual rental exceeds $250.

6. Bonding: The authorized officer may require the permittee to furnish a bond following the standards outlined in 43 CFR 2803.1-4. A bond may be required when the approved access would result in significant impacts to the wilderness and the cost of reclaiming the access route would be high.

F. Rejection of Proposal or Modified Approval

A written proposal can be rejected or modified for three reasons.

1. An applicant is unable to prove ownership of the inholding.

2. The access requested exceeds the definition of "adequate access" contained in 43 CFR 8560.0-5(a) (see page one of this IM for that definition).

3. Construction of the access route would result in significant impacts to wilderness.

BLM must analyze the proposal and approve some level of access that will allow adequate use of the inholding and will cause the least lasting impact on the wilderness. If a proposal is rejected, the applicant should be given the right to resubmit or amend the proposal. The applicant has the right of appeal under 43 CFR part 4. An appeal would be processed under the procedures described in the California Appeals Guidebook, which was promulgated by IB No. CA-93-143.

G. Use of the Access Route

1. Nonexclusive: The access permit is a nonexclusive permit and does not allow general public use of the access route by modes of travel inconsistent with wilderness management. Unless specifically closed to public use under a wilderness management plan, the route will be available to the public travelling by foot, horseback or other means consistent with wilderness management.

2. Terms and Conditions. In determining adequate access, BLM has discretion to evaluate such things as proposed construction methods and location, to consider reasonable alternatives (e.g., trails, alternative routes, including aerial access, and degree of development) and to establish such reasonable terms and conditions as are necessary to protect the public interest. Examples of reasonable terms and conditions include, but not limited to: (a) access used only by the lessees or their designates, (b) lessees responsible for all maintenance made necessary by their use of the roads, (c) no mechanized equipment could be used for maintenance without prior written approval by BLM, and (d) BLM could close the road based on seasonal restrictions,

adverse weather conditions, or erosional problems. In ***Mathilda B. Williams and Jack F. Brown (124 IBLA 7)***, IBLA affirmed BLM's right to impose terms and conditions which strike a balance between competing land uses, allowing BLM to permit access while fulfilling its other function of protecting the wilderness character of the land.

Another condition of the permit may be to require the inholding owner to install a locked gate across the access route where it enters the wilderness. If a person other than the owner or those authorized by the permit is found within the wilderness with a motorized vehicle, he or she is in violation of the Wilderness Act and may be cited.

3. Commercial Activities: Commercial activities may occur on an inholding without review by BLM. If a proposed commercial activity or other change in use requires improvement of the access route or a significant change in the mode or amount of travel, an amendment to the environmental analysis must document the new access conditions that would be required. Following the 30-day comment period, a decision record would be prepared and a new permit could be issued.

H. Multiple Owners

1. Joint Ventures: When more than one person apply together, the access needs of all parties must be reasonable for the purposes for which the lands are held or used.

2. Subsequent Requests: Once an access route has been approved to a contiguous block of non-Federal inholdings, BLM is under no further obligation to provide less costly or more economical access if another landowner requests a different route. The only exception is when an applicant can demonstrate that legal recourse to obtain reasonable access through the inholding has little chance of success.

I. Permit Renewal

The Access Permit shall be renewed for additional terms not to exceed 3 years, if the permit continues to be necessary for adequate access. Access permits may be amended. Proposals not considered in the original environmental analysis require preparation of an amendment and public review before a decision may be made to renew the permit.

Permission is hereby granted to John and Mary Smith

of San Francisco, California

to use the following-described lands:

Permit Number CACA xxxxx

TOWNSHIP	RANGE	SECTION	SUBDIVISION
8N	3E	29	NW¼SW¼ [Be as specific as possible]
		30	N½S½

Within & as shown on the attached Exhibit A map and Stipulations

Meridian	State	County	Acres (number)
SBM	California	San Bernardino	1.75

for the purpose of using and maintaining an existing access route consistent with the stipulations attached to this permit.

and subject to the following conditions:

1. This permit is issued for the period specified below. It is revocable at the discretion of the authorized officer of the Bureau of Land Management, at any time upon notice. This permit is subject to valid adverse claims heretofore or hereafter acquired.

2. This permit is subject to all applicable provisions of the regulations (43 CFR 2920) which are made a part hereof.

3. This permit may not be assigned without prior approval of the authorized officer of the Bureau of Land Management.

4. Permittee shall not enclose roads or trails commonly in public use.

5. Authorized representatives of the Department of the Interior, other Federal agencies, and State and local law officials shall at all times have the right to enter the premises on official business.

6. Permittee shall pay the United States for any damage to its property resulting from the use.

7. Permittee shall notify the authorized officer of address change immediately.

8. Permittee shall observe all Federal, State, and local laws and regulations applicable to the premises and to erection or maintenance of signs or advertising displays including the regulations for the protection of game birds and game animals, and shall keep the premises in a neat, orderly, and sanitary condition.

9. Permittee shall pay the authorized officer, in advance, the lump sum of $ XXXXXX for the period of use authorized by this permit or $ XXXXX dollars, annually, as rental or such other sum as may be required if a rental adjustment is made.

10. Use or occupancy of land under this permit shall commence within N/A months from date hereof and shall be exercised at least N/A days each year.

11. Permittee shall take all reasonable precautions to prevent and suppress forest, brush, and grass fires and prevent pollution of waters on or in the vicinity of the lands.

12. Permittee shall not cut any timber on the lands or remove other resources from the land without prior written permission from the authorized officer. Such permission may be conditioned by a requirement to pay fair market value for the timber or other resources.

13. Permittee agrees to have the serial number of the permit marked or painted on each advertising display or other structure erected or maintained under the authority of such permit.

14. This permit is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the Equal Opportunity clauses. A copy of this order may be obtained from the signing officer.

15. Permittee acknowledges, by signing below, that he/she knows, understands and accepts the terms and conditions under which this permit is issued.

16. Special conditions *(attach additional sheets, if necessary)*

Exhibits A and B attached

Permit issued for period [Maximum of 3 years]

From_____

To_____

_____ (Permittee)

_____ (Authorized Officer)

_____ (Title) (Date)

INSTRUCTIONS

1. Submit, in *duplicate*, to any local office of the Bureau of Land Management having jurisdiction of the lands.

2. Applications for Land Use Permits will not be accepted unless a notification of the availability of the land for non-BLM use *(Notice of Realty Action)* has been published in the Federal Register and for 3 weeks thereafter in a newspaper of general circulation. This provision does not apply in those situations where the publication of a *(Notice of Realty Action)* has been waived by the authorized officer.

3. If the annual rental exceeds $250 dollars per year, costs of processing the application *must* be paid by the applicant in advance.

4. The authorized officer may require additional information to process an application. Processing will be deferred until required information is furnished by the applicant.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.) requires us to inform you that:
Information is needed to process application for land use authorizations, pursuant to 43 CFR Section 2920.
Information shows if the applicant and proposed use meet the requirements of 43 CFR Section 2920.1.
Applicant *must* respond before he/she can be granted an authorization to use public lands.

ILLUSTRATION 1

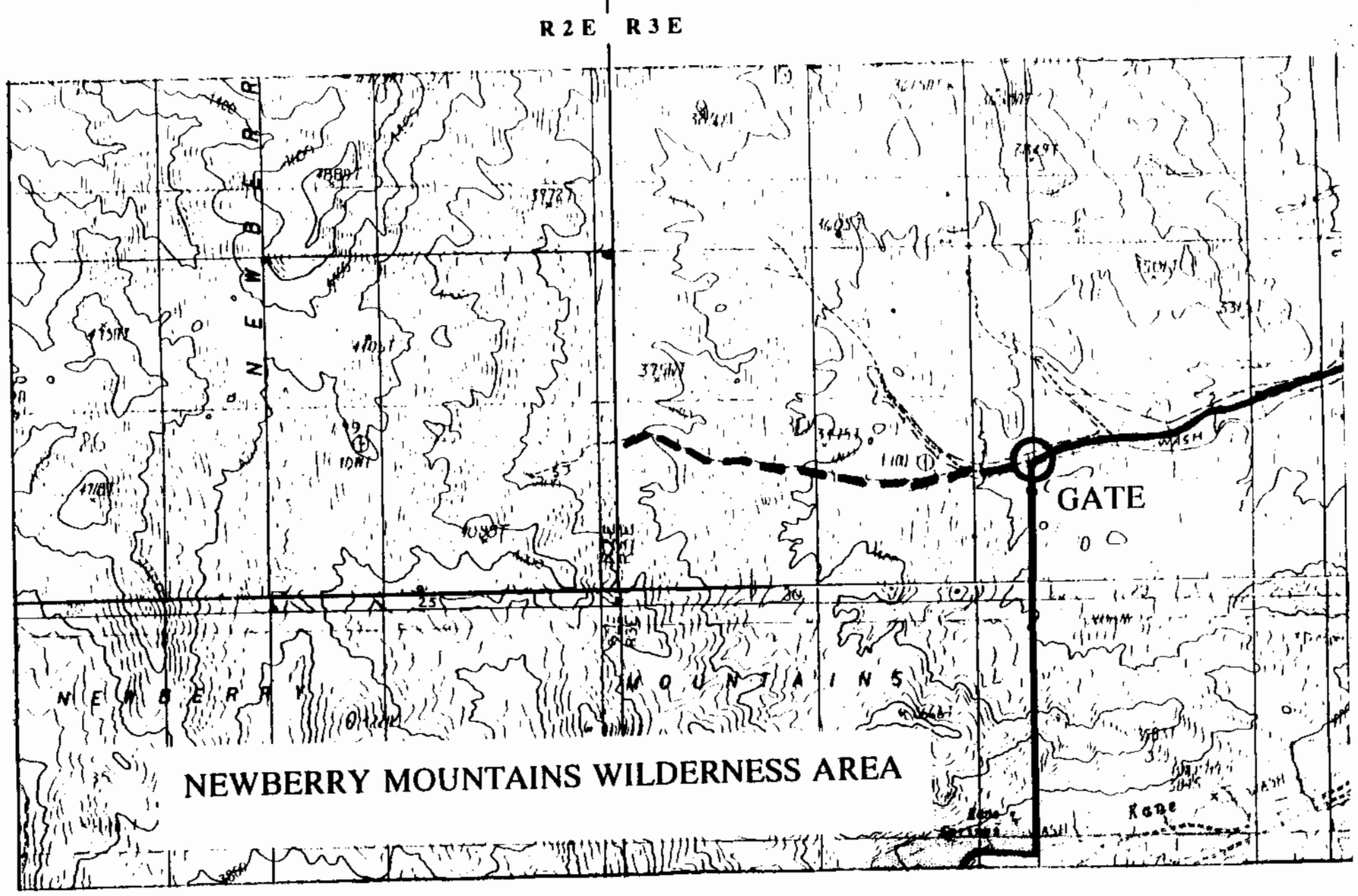

EXHIBIT A

MAP: **Access route to John and Mary Smith's Non-federal Inholding in the Newberry Mountains Wilderness Area.**

LEGEND: --------- **APPROVED ACCESS ROUTE**

Special Stipulations

1. The permittees are John and Mary Smith, as the owners of the following described non-Federal inholding. Other persons allowed access to the inholding under the provisions of this permit include: (list names).

2. The non-Federal inholding, located within the Newberry Mountains Wilderness Area, is described as:
T8N, R2E, Section 25, SBM, totalling 640 acres.

3. The permitted access route is an existing 2-track trail within an unnamed wash, beginning in the NW¼SW¼ of Section 29, T8N, R3E, and continuing through the N½S½ of Section 30, until it enters the private land, as generally depicted on the exhibit A map. The length of the access route is approximately 1.2 miles and the width is approximately 12 feet.

4. The permitted mode of travel is by motorized vehicle no larger than a standard 4-wheel drive passenger vehicle or stock truck, including stock trailer. Tracked vehicles or heavy equipment are expressly not allowed.

5. The permit may be renewed for an additional term upon review and approval of the authorized officer.

6. In response to an application, the authorized officer may approve the assignment of this permit to the permittees successors in interest.

7. The Permittee shall install a locked gate to a standard and at a location specified by BLM. The gate location is shown on the attached exhibit A map. The permittee shall keep the gate locked when not in actual use.

8. No utility construction across wilderness lands is authorized under this permit.

9. The Permittee(s) shall not travel off the approved route and shall make every effort to avoid travelling along the route during periods of inclement weather, when such travel could cause ruts in the route.

10. (Stipulation specifying the type, level and frequency of maintenance that will be allowed for the type of access authorized.)

11. (Other stipulations as necessary for site-specific conditions.)

Exhibit B

Instructions to fill out:

LAND USE APPLICATION AND PERMIT

(Form 2920-1)

FOR ACCESS TO PRIVATE LANDS
ACROSS PUBLIC LANDS IN
DESIGNATED WILDERNESS AREAS

ITEM 1:

This must be the actual owner of the property. You should attach documentation showing "ownership or interest in the property"

ITEM 2:

Draw or mark on a map the route(s) from the wilderness boundary to the private land. We prefer that you use either portions U.S.G.S. 7.5 minute topographic map quads, or 1:100,000 BLM Desert Access Guides. If you do not have a map to use, contact this office and we will provide a base map to work with.

ITEM 3:

In general terms, when do you want to use this access?
Example : December 1995 to December 1999

ITEM 4:

Fill in the blank with state of CALIFORNIA, check box for [] OTHER and enter something like the following line:

"Owner of private inholding within _____ Wilderness Area."

ITEM 5:

If access is on an existing road mark YES and give a general description of the road.
If a new access is being request or if you are traveling up an undeveloped wash mark NO.

ITEM 6:

Unless you need to build road outside of the wilderness boundary answer NO.
(Note "the Land" in this item refers to public land)

ITEM 7a:

Enter something to like the following line:

I require "adequate access" across public lands designated part of the National Wilderness Preservation System to the following private lands :

Then list private lands by Township, Range ,Section and/or quarter section .

Then describe in detail what you consider "adequate access". (you can attach additional sheets).

(ITEM 7a - continued)
'ry to include the following type of information in your narrative:

- List who you wish this permit to cover (include names and address if possible).

- When and how will you be traveling to your property; daily, weekly, monthly, once a quarter, once a year or 1-5 times a year. Note if there is a specific time of the year that you plan to access your property.

- List the number and type of vehicles you will be using.

- Describe in detail, why you require this access. Include descriptions of any type improvements on the property (cabins, fences etc) currently in use. or any plans for improvements or developments in the near future. Will your activities directly or indirectly affect the public lands, an example: operating a commercial hunting camp on your land, where the campers would be using the wilderness area for hunting.

ITEM 7b:

Describe the current condition of proposed access route(s).

- Is the route existing as a clearly defined route, a two track trail or do you need to travel cross country?

- Was this the route(s) & method used to access the property prior to October 31, 1994? (If not, how did people access this property prior to the California Desert Protection Act)

- Describe what level, if any, of development or maintenance to the access route is needed, in your opinion, to maintain the "adequate" access?

- List any type of equipment visioned to upgrade or maintain said route(s). Include dimensions and methods of construction for any new road or upgrade proposals.

ITEM 7c:

Ignore - not applicable.

ITEM 7d:

Ignore - not applicable.