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UNLOCKING PUBLIC LANDS

12.2.601 PUBLIC LAND ACCESS TAX CREDIT

(1) Pursuant to [15-30-2380](#) and [87-1-294](#), MCA, landowners may apply for a contract with the department to become eligible to receive a \$750 tax credit for qualified access to public land, as defined in [87-1-294\(9\)\(b\)](#), MCA.

(2) Landowners wanting to be considered for a contract must submit a [complete](#) application [on or before a date set by the department by March 15](#) in the tax year for which credit will be claimed.

~~(3) The department will award contracts no later than May 15 of the tax year in which the credit is to be claimed.~~

~~(3)~~ (4) The application must state the following and failure to include any one portion may result in denial of the application:

(a) legal land description of parcel of public land to which access will be provided;

(b) legal land description of parcel of private land through which access will be provided;

(c) description of the road or travel route providing public access to the public land parcel;

(d) map depicting public land parcel, adjacent private land through which public access will be provided, access point where public access on private land begins, and travel route proposed for public access;

(e) description of method permitted to access public lands;

(f) indication as to whether or not the landowner is lessee of a state land parcel to which public access will be provided; and

(g) indication as to whether or not [outfitting or commercial hunting restricts public opportunities hunting](#) on the private land through which access will be provided ~~is managed through outfitting or commercial hunting~~.

~~(4)~~ (5) The department must consider the following when awarding contracts:

(a) verification that the public lands are not restricted or closed to general recreational use by the land management agency that owns or has legal control of the public land parcel;

(b) verification that the public land will be available for a majority of the year to all general recreational use including hunting, fishing, trapping, hiking, wildlife watching, and other uses compatible with the use of public lands;

(c) access routes restricted to foot travel only:

(i) must be capable of accommodating normal ambulatory travel; and

(ii) must not exceed one linear mile from the beginning to the end of the access route; and

(d) [access routes available to motorized vehicles must be safe and passable during dry conditions for two-wheel drive vehicles](#) ~~access routes available to vehicles must be capable of accommodating typical road use vehicles~~.

~~(5)~~ (6) A landowner may impose reasonable limitations through temporary closure of a public access route to address concerns related to high fire danger, weather-related

impact to travel route, safety, or agricultural production activities such as livestock handling or harvest and planting of crops, so long as:

(a) the landowner notifies department regional headquarters at least 24 hours prior to the closure;

(b) the landowner posts notice to the public on-site; and

(c) the closure:

(i) is in effect for no more than seven days without department review and approval; and

(ii) is removed within 24 hours after the natural environmental conditions no longer exist.

(67) Land enrolled in any other department program that secures public access to a public land parcel is not eligible for a contract through this program to provide access to that same public land parcel.

(78) To provide verification that the landowner is eligible to receive the tax credit pursuant to [15-30-2380](#) and [87-1-294](#), MCA, the department must provide:

(a) a copy of the contract to the landowner bearing a certification number that confirms the terms of the contract have been fulfilled no later than January 31 after the end of the tax year in which the credit is being claimed; and

(b) the contract certification number to the Department of Revenue no later than January 31 after the end of the tax year in which the credit is being claimed.

History: [87-1-294](#), MCA; [IMP](#), [15-30-2380](#), [87-1-294](#), MCA; [NEW](#), 2014 MAR p. 391, Eff. 2/28/14; [AMD](#), 2016 MAR p. 202, Eff. 2/6/16.

12.2.605 DEFINITIONS

(1) "Inaccessible public land" means public land wholly surrounded by private land by which there is no other legal access via public road, trail, right of way or easement; public waters; adjacent federal, state, county, or municipal land that is open to public use; or adjacent private land for which that landowner has not granted permission to cross.

(2) "Landowner" means an individual, association, organization, or business entity, that owns land in fee, or a tenant or contract for deed purchaser with written authority to enter a PALA and receive payments.

(3) "PALA" means public access land agreement. A PALA is an agreement between a private landowner and the department pursuant to [87-1-295](#), MCA, whereby the public is allowed access across private lands to inaccessible public lands or under accessible public lands.

(4) "PL/PW" means private land/public wildlife advisory committee provided for in [87-1-269](#), MCA.

(5) "Public land" means FWP lands, and state and school trust lands as defined in [77-1-101](#), MCA, or federal land managed by the U.S. Department of the Interior or the U.S. Department of Agriculture.

(6) "Public land that is leased by the landowner" means "Inaccessible public land" or "under accessible public land" for which a landowner has an agreement with a government agency authorizing the landowner to use the whole or part of the ~~inaccessible~~ public land for grazing or farming.

(7) "Under accessible public land" means public land for which there is no other legal access point within ~~two miles~~ one mile via public road, trail, right of way or easement; public waters; adjacent federal, state, county, or municipal land that is open to public use ~~or another lesser distance special considerations~~ as determined by the department which would improve as improving public access to public lands based on site specific considerations. Access via public waters may also be considered under accessible if there are safety concerns which limit access by boat (due to rapids, boulders, log jams) and/or by foot while remaining within the high water mark (due to swift currents, deep water along banks, slippery substrate).

History: [87-1-297](#), MCA; [IMP, 87-1-295](#), [87-1-296](#), MCA; [NEW](#), 2020 MAR p. 779, Eff. 5/1/20.

12.2.606 APPLICATION FOR PUBLIC ACCESS LAND AGREEMENT

(1) The PALA application must include the following information:

- (a) legal land description of public land to which access is being proposed;
- (b) description of the proposed road, travel route, or connecting private lands legal land description through which access is being proposed;
- (c) map depicting public land to be accessed, and public access route across private land;
- (d) transportation mode by which public access is to be allowed;
- (e) evidence, such as a copy of the lease or permit, as to whether the public land to be accessed is public land that is leased by the landowner; and
- (f) request for improvements, if applicable, to be conducted on private land to the land provided by the department to facilitate public access to the public land. Improvements are limited to and valued at \$1,000 per agreement year dependent upon available program funds.

- (2) If the property through which access is provided is owned in common by multiple owners, the PALA application must specify the share of the payment to which each owner is entitled, and each owner or agent of the owner must sign the application.
- (3) The department shall develop and maintain a PALA application form.
- (4) Failure to include any required information may result in denial of the application.

History: [87-1-297](#), MCA; [IMP, 87-1-295](#), [87-1-296](#), MCA; [NEW](#), 2020 MAR p. 779, Eff. 5/1/20.

12.2.607 PUBLIC ACCESS LAND AGREEMENTS

(1) Before approving a PALA the department must exercise due diligence to verify that:

- (a) the public lands are not restricted or closed to general recreational use by the land management agency that owns or has legal control of the public land;
- (b) the private lands, or any right of way, road, or trail to be utilized are wholly owned by the applicant(s) and there is open access across the designated access route;
- (c) the public has no existing right of access over the proposed route;

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- (d) access routes restricted to foot travel only:
- (i) must be capable of accommodating normal ambulatory travel; and
 - (ii) must not exceed one linear mile from the beginning to the end of the access route; and
- (e) access routes available to motorized vehicles must be safe and passable during dry conditions for two-wheel drive vehicles.
- (2) If access to inaccessible public land or under accessible public land can only or most effectively be provided through separate properties owned by different landowners, an agreement may be issued with each landowner provided each landowner holds the lease or permit on the public land or the public land does not have an existing lease or permit.
- (3) Contingent on the annual availability of funds to operate the PALA program, landowners may elect to participate in a PALA for up to 10 years with the agreement being renewed annually.
- (4) Applications must be received ~~by a date set by the department at least 6 weeks prior to the next upcoming PL/PW meeting~~ to allow for time for adequate department ~~and PL/PW~~ review.
- (5) A PALA shall not be construed to support, establish or preclude, limit or diminish any claim for the right to public use.
- (6) The department may not enter a PALA where there is an existing right of public access over the proposed access route. If the department is uncertain whether the proposed access route is public or private, or if a controversy exists over whether the proposed access route is public or private, the department shall present its findings to the PL/PW for its consideration in its recommendation.
- (7) Consideration for PALA enrollment will be given to those sites that are open during commission-established hunting or fishing seasons, or both.
- (8) A PALA may be terminated by the department or the landowner if the terms of the agreement are violated. An agreement may be canceled, and a landowner's property withdrawn from the program at any time due to circumstances beyond the control of the landowner or the department, such as death, illness, natural disaster, or acts of nature. In the event of termination, payment will be reduced and correlated to the time frame and access provided.
- (9) The landowner and the department may deny access to an individual(s) for violation of PALA rules.
- (10) A PALA does not convey to the public any right to hunt or otherwise recreate on the private land through which they can travel to reach public land.
- (11) The department shall maintain and make available to the public a list of current PALA locations and rules.
- (12) With department approval, a landowner may impose reasonable limitations through temporary closure of a PALA to address concerns related to high fire danger, weather-related impact to travel route, safety, or agricultural production activities such as livestock handling or harvest and planting of crops, so long as:
- (a) the landowner notifies department regional headquarters at least 24 hours prior to the closure;
 - (b) the landowner posts notice to the public on-site; ~~and~~

(c) the closure is removed within 24 hours after the conditions causing the closure no longer to exist; ~~and-~~

(d) is in effect for no more than seven days without additional department review and approval.

History: 87-1-297, MCA; IMP, 87-1-295, 87-1-296, MCA; NEW, 2020 MAR p. 779, Eff. 5/1/20.

12.9.901 CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENT

DEFINITIONS

The following definitions apply to this subchapter:

(1) "Contractual public elk hunting access agreement" means a negotiated agreement between the department and a landowner which defines how free public elk hunting may occur on land enrolled under the agreement.

(2) "Agreement" means a contractual public elk hunting access agreement described in 87-2-513.

~~(3) "Regular hunting season" means the general season established by the commission for the hunting of elk with firearms as set forth in the current elk hunting regulations, in a hunting district which contains land enrolled in a contractual public elk hunting access agreement.~~

(4) "Commission" means the Montana Fish and Wildlife Commission.

(5) "Department" means the Montana Department of Fish, Wildlife and Parks.

(6) "Landowner's property" means the landowner's private land which is the land opened to free public access under the terms of an agreement.

History: 87-1-201, 87-1-301, 87-2-513, MCA; IMP, 87-2-513, MCA; NEW, 2002 MAR p. 1977, Eff. 7/26/02.

12.9.902 ELIGIBILITY OCCUPIED ELK HABITAT ELIGIBILITY (PROPOSE TO REPEAL)

~~(1) In order to be eligible for a permit under 87-2-513, MCA, a landowner must own and enroll a minimum of 2500 acres experiencing sufficient elk use during the regular hunting season to provide hunting opportunity consistent with the terms of a contractual public elk hunting access agreement. The department may consider enrollment of less than 2500 acres, as long as all other eligibility criteria are met.~~

History: 87-1-201, 87-1-301, 87-2-513, MCA; IMP, 87-2-513, MCA; NEW, 2002 MAR p. 1977, Eff. 7/26/02.

12.9.905 CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENTS

(1) Upon approval of the commission, the department may enter into an contractual public elk hunting access agreement provided that the landowner

and the department agree to terms specified in the agreement. An contractual public hunting agreement must include but is not limited to the following terms:

(a) license and/or permit type and quantity issued to a landowner or landowner's designee in exchange for free public hunting access as established in 87-2-513, MCA;

(b) area open to free public elk hunting, including:

(i) specific land area with identified boundaries;

(ii) times and dates area is open;

(iii) methods for obtaining landowner permission;

(iv) area use rules which address travel methods, game retrieval, etc.;

(bc) number and distribution of public hunting days description of harvest opportunity for antlerless and/or either-sex elk for public hunters that will be allowed on the property from the following categories:

(i) hunters with permits valid for the hunting district landowner selected public hunters, if applicable;

(ii) public hunters with permits identified by the department

(iii) additional public hunters that may be allowed to harvest elk under terms of the agreement; and issued under 87-2-513 , MCA;

(iii) landowners with permits issued under 87-2-513 , MCA; and

(c) methods for collecting evaluation data, including:

(i) all free public hunter use data;

(ii) landowner and public elk harvest data; and

(iii) hunter and/ landowner/department satisfaction data.

(2) Landowners or their designee must document all free public hunting opportunity provided during the regular hunting season under the terms of this agreement and submit public hunter contact information by a date set by the department to allow for a post-season harvest and satisfaction evaluation to be conducted by the department.

History: 87-1-201, 87-1-301, 87-2-513, MCA; IMP, 87-2-513, MCA; NEW, 2002 MAR p. 1977, Eff. 7/26/02.

12.9.908 PROCESS FOR COMMISSION CONSIDERATION OF CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENT APPLICATIONS PERMITS

~~(1) In order for the commission to determine the number of hunting permits to issue under 87-2-513 , MCA, the department shall complete negotiations for contractual public elk hunting access agreements prior to the commission meeting at which the commission makes final permit quota decisions.~~

~~(2) The department shall place proposals to grant permits under 87-2-513 , MCA, on the commission agenda as part of the commission meeting when final permit quota decisions are made.~~

(1) Agreement applications must be submitted on a form prescribed by the department.

(2) Only complete applications will be accepted.

(3) Applications must be postmarked on or before a date set by the department.

(4) All complete applications will be presented to the commission for a decision. Landowner contact information and other sensitive personally identifiable information will be redacted.

(5) The commission reserves the right to reject any and all applications or deny the issuance of permits and or licenses or both under this program.

History: 87-1-201, 87-1-301, 87-2-513, MCA; IMP, 87-2-513, MCA; NEW, 2002 MAR p. 1977, Eff. 7/26/02.

NEW RULE 1: PROCESS FOR SELECTING LANDOWNERS WHERE LICENSES AND/OR PERMITS ARE LIMITED

(1) If the department receives license and/or permit requests from landowners in a hunting district with limited permit and/or license quotas and the number of applications exceeds 10 percent of the permit quota as set by the commission during the biennial season setting process, a randomized drawing of approved applications will take place after commission approval to select the successful landowner applicant(s) to be issued an agreement under this program.

(a). The department shall issue a license and/or permit under this program to one landowner or landowner designee. If enough licenses and/or permits remain for a second landowner or landowner designee, the department shall issue a license and/or permit to the second and subsequent landowner or landowner's designee.

(b) If 10 percent of the quota is not a whole number, the department shall round down when determining how many total permits/licenses should be issued.

(2) For districts with general license either-sex harvest opportunity, all commission approved applications will be awarded the general licenses per the terms of the agreement as requested.

(3) Landowners or their designees participating in this program in a will be issued the commission approved permit(s) if applicable, the general elk license(s) or elk B license(s) and necessary prerequisite licenses to utilize the elk license.

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12.9.911 PROCESS FOR SELECTING LICENSE AND/OR PERMIT HOLDERS FOR CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENTS

(1) The department shall randomly select hunters from a randomized list the list of successful permit or elk B license applicants who were unsuccessful in drawing permits valid in a the applicable hunting district affected by an approved contractual public elk hunting access agreement, and offer the selected hunters an opportunity to contact the landowner to ask for access to the landowner's private lands. receive a permit issued under 87-2-513, MCA.

(2) If an agreement encompasses an area where no either-sex permits or elk B licenses are allocated through a randomized drawing, if there were no unsuccessful permit applicants in an affected district, the department shall give public notice of the available permits and distribute them to hunters on a first come, first served basis for interested hunters to sign up to be placed on a randomized list for an opportunity described under an agreement. Selected applicants will be contacted by the department with landowner contact information related to the opportunity hunt lands enrolled in an agreement.

History: 87-1-201, 87-1-301, 87-2-513, MCA; IMP, 87-2-513, MCA; NEW, 2002 MAR p. 1977, Eff. 7/26/02.