

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.2.605, 12.2.606, 12.2.607,) PROPOSED AMENDMENT
and 12.2.608 pertaining to public)
access land agreements)

TO: All Concerned Persons

1. On December 9, 2022, the Department of Fish, Wildlife and Parks published a notice of public hearing on the proposed amendment of the above-stated rules on page 2230 of the 2022 Montana Administrative Register, Issue No. 23. The Department of Fish, Wildlife and Parks is refiling this proposed amendment due to our failure to send to the interested parties by deadline, which is required by statute.

2. On February 10, 2023, at 2:00 pm, the Department of Fish, Wildlife and Parks (department) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1-206-337-9723
Meeting ID: 857 9631 8398
Passcode: 777071

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department, no later than 5:00 p.m., on January 27, 2023, to advise us of the nature of the accommodation that you need. Please contact Crissy Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

4. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

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. A distance of less than one mile may be eligible if the department determines that it improves public access to 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).

AUTH: ~~87-1-297~~ 87-1-295, MCA

IMP: 87-1-295, ~~87-1-296~~, MCA

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 reimbursement of improvements, if applicable, 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.

AUTH: 87-1-297 87-1-295, MCA
IMP: 87-1-295, 87-1-296, MCA

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;

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

AUTH: ~~87-1-297~~ 87-1-295, MCA

IMP: 87-1-295, ~~87-1-296~~, MCA

12.2.608 LANDOWNER COMPENSATION (1) In negotiating for the annual payment to a landowner, the department shall consider:

(a) acres of public land accessed;

(b) the quality of fish or wildlife habitat that may be provided by the public land to be accessed;

(c) duration public access is allowed;

(d) mode of transportation allowed;

(e) whether closures can be expected; and

(f) other uses allowed.

(2) Landowners in the program may receive:

(a) monetary compensation not to exceed \$15,000 per annual agreement; and

(b) improvements provided by the department to the private land that facilitate public access.

AUTH: ~~87-1-297~~ 87-1-295, MCA

IMP: 87-1-295, ~~87-1-296~~, MCA

REASON: The department is proposing to amend the rules pertaining to public access land agreements to streamline administration of the program and better reflect existing practices as well as to increase the potential for additional applications that qualify by reducing the access point to public lands from two miles to one mile.

The rules are also being amended to update the references to statutes that were repealed in the 2021 legislative session.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: PALA Rules, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59601-0701; or e-mail Indsportrelations@mt.gov with the subject line "PALA Rules," and must be received no later than February 13, 2023.

6. Crissy Bell, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Deputy Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State January 3, 2023.