

MONTANA ADMINISTRATIVE RULES PERTAINING TO RECREATIONAL USE OF TRUST LANDS

36.25.143 OVERVIEW OF RECREATIONAL USE RULES (1) ARM 36.25.146 through 36.25.162 regulate the recreational use of state lands administered by the department of natural resources and conservation. These lands are commonly referred to as "trust lands" and appear in light blue on most land status maps.

(2) Recreational use is divided into two categories as follows:

(a) General recreational use - This use is generally defined as any type of non-concentrated, non-commercial outdoor recreational activity except disturbance of archeological, historical, or paleontological sites (which is prohibited by the Montana Antiquities Act and subjects the violator to criminal penalties), wood gathering, tree cutting, commercial rock or mineral collecting, and trapping. This is more specifically defined in ARM 36.25.145(11). It requires purchase of a recreational use license. Detailed procedures and restrictions are contained in ARM 36.25.146 through ARM 36.25.161.

(b) Special recreational use - This use is defined in ARM 36.25.145 and requires a special recreational use license. These kinds of uses include commercial or concentrated use as defined in 77-1-101(5), MCA. Detailed provisions are contained in ARM 36.25.162.

(3) The purpose of ARM 36.25.144 through ARM 36.25.162 is to provide reasonable recreational use of legally accessible state lands within the bona fide management constraints of state land lessees. These rules should be interpreted to accomplish this purpose. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-801 through 77-1-810, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1993 MAR p. 2536, Eff. 10/29/93; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.144 ADMINISTRATION OF RECREATION ON STATE LANDS ADMINISTERED BY THE DEPARTMENT

(1) Under Article X, section 4 of the Montana Constitution, the board of land commissioners has the duty and authority to manage state trust lands under regulations provided in law. Under 77-1-301, MCA, the department of natural resources and conservation manages state lands under the direction of the board. Section 77-1-203(3), MCA, opens state lands administered by the board to general recreational use subject to legal access and to closures and restrictions.

(2) Lands owned by the state that are not subject to ARM 36.25.143 through ARM 36.25.162 are:

(a) lands owned by the department of fish, wildlife and parks, including:

(i) those portions of game ranges and wildlife management areas that are owned by the department of fish, wildlife and parks;

(ii) state parks;

(iii) fishing access sites; and

(iv) lands leased by the department of fish, wildlife and parks to private individuals as cabinsites;

(b) lands subject to lease, license, or easement from the department to the department of fish, wildlife and parks or a city, county, or consolidated city-county government for the following purposes:

(i) public parks; and

(ii) fishing access sites;

(c) the surface, beds and banks of rivers, streams, and lakes that are open to the general public for recreational purposes under the stream access law;

(d) highways and highway rights-of-way, except that the prohibition against open fires in ARM 36.25.149(1)(d) applies where a highway crosses state lands administered by the department;

(e) lands administered by the department of corrections;

(f) campus grounds, experiment station grounds, and other lands owned by the university system;

(g) department of natural resources and conservation administrative sites;

(h) lands in which the department of natural resources and conservation does not own the surface, including lands where the department owns the mineral estate only and private lands over which the department has acquired an easement; and

(i) other lands owned by any other state agency.

(3) The main office of the department of natural resources and conservation is located in Helena. To administer its field functions, the department has divided the state into 6 geographic "areas," each administered by an "area land office," the head of which is the "area manager." Areas are further divided into units, each administered by a "unit office." A listing of those offices is:

<u>Area</u>	<u>Office Location</u>
<u>Central Area</u>	
Central Land Office	Helena
Helena Unit Office	Helena
Bozeman Unit Office	Bozeman
Conrad Unit Office	Conrad
Dillon Unit Office	Dillon
<u>Eastern Area</u>	
Eastern Land Office	Miles City
<u>Northeastern Area</u>	
Northeastern Land Office	Lewistown
Glasgow Unit Office	Glasgow
Lewistown Unit Office	Lewistown
<u>Northwestern Area</u>	
Northwestern Land Office	Kalispell
Kalispell Unit Office	Kalispell
Libby Unit Office	Libby
Plains Unit Office	Plains
Stillwater Unit Office	Olney
Swan River Unit Office	Swan Lake
<u>Southern Area</u>	
Southern Land Office	Billings
<u>Southwestern Area</u>	
Southwestern Land Office	Missoula
Missoula Unit Office	Missoula
Hamilton Unit Office	Hamilton
Clearwater Unit Office	Greenough
Anaconda Unit Office	Anaconda

(4) Whenever in ARM 36.25.143 through ARM 36.25.162, the submission of a document, such as a petition, is required to be filed at an area or unit office, the document must be submitted to the area or unit office listed above that administers the state land to which the document pertains. Persons may contact any department office to determine the appropriate office for any tract of land.

(5) Whenever in ARM 36.25.143 through ARM 36.25.162, a formal or informal hearing is required to be held in an "area," the term "area" refers to the department area in which the land to which the hearing pertains is located. The hearing may be held, at the department's discretion, at any location within that area. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-801 through 77-1-810, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384, Eff. 9/6/96.)

36.25.145 DEFINITIONS Wherever used in ARM 36.25.143 through ARM 36.25.162, unless a different meaning clearly appears from the context:

(1) "Affidavit" means a signed statement, the truth of which has been sworn to or affirmed before a notary public, as evidenced by the signature and seal of the notary public.

(2) "Board" means the board of land commissioners provided for in Article X, section 4 of the Montana

Constitution.

(3) "Closure" means prohibition of all general recreational use.

(4) "Customary access point" means, with regard to state land, each outer gate and each normal point of access to the land, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(5) "Dedicated county road" means a county road that has been created by means of donation of a landowner and acceptance by a county under statutory or common law dedication procedures.

(6) "Dedicated public road" means a road useable by the public under state or federal law. The term includes dedicated county roads.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 32, MCA.

(8) "Director" means the director of natural resources and conservation, provided for in 2-15-3202, MCA. The director is the chief administrative officer of the department of natural resources and conservation.

(9) "Drop box" means a receptacle in which a person making general recreational use of state lands may leave notice required pursuant to ARM 36.25.155 or ARM 36.25.156.

(10) "Emergency" means, for the purposes of ARM 36.25.152, a situation that:

(a) creates an imminent threat to personal safety or of significant property damage or significant environmental harm; (b) would be substantially lessened or alleviated by closure to general recreational access of a state tract; and (c) requires closure more expeditiously than could be implemented through the normal closure procedure.

(11) "General recreational use" means non-concentrated, non-commercial recreational activity, except:

(a) collection, disturbance, alteration, or removal of archeological, historical, or paleontological sites or specimens (e.g., fossils, dinosaur bones, arrowheads, old buildings, including siding) (which requires an antiquities permit pursuant to 22-3-432, MCA);

(b) mineral exploration, development, or mining (which requires a lease or license pursuant to Title 77, chapter 3, MCA);

(c) collection of valuable rocks or minerals (which requires a lease or license pursuant to Title 77, chapter 3, MCA);

(d) cutting or gathering of standing or downed trees (for which the department conducts sales pursuant to Title 77, chapter 5, MCA, and issues licenses pursuant to ARM 36.25.136); and

(e) trapping.

(12) "Growing crop" means a crop, as defined below, between the time of planting and harvest. "Crop" means such products harvest, including but not limited to cereals and vegetables and including grass and alfalfa that are intended for harvest for hay or seed production. The term does not include grass used for pasturage or trees.

(13) "Lease" means a lease or land use license, other than a recreational use or special recreational use license, issued by the department for use of the surface of the land. The term does not include a mineral lease unless it is preceded by the word "mineral."

(14) "Lessee" means a person who holds a lease as that term is defined in (13).

(15) "Legally accessible state lands" means state lands that can be accessed by dedicated public road, public right-of-way, or public easement; by public waters such as lakes, rivers, and streams that are recreationally navigable under 23-2-302, MCA; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the land has been secured from the landowner. Accessibility by aircraft does not render lands legally accessible under this definition. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

(16) "Livestock" means cattle, sheep, swine, goats, privately owned bison and elk, horses, llamas, mules, donkeys, and other animals used for the protection of these animals.

(17) "Motorized vehicle" means a vehicle propelled by motor power, including, but not limited to, an automobile, truck, motorcycle, moped, and an all terrain vehicle but excluding a snowmobile.

(18) "Recreational use account" means the account established by 77-1-808, MCA, in which revenues generated from general recreational use of state lands are deposited and from which expenses of the general recreational use program are paid.

(19) "Recreational use license" means the license issued pursuant to ARM 36.25.146 that authorizes a person to engage in general recreational use as defined in (11).

(20) "Recreational use advisory council" means the advisory council created pursuant to ARM 36.25.154.

(21) "Restriction" means a limitation on the manner in which recreational use may be conducted.

(22) "Special recreational use" means:

- (a) commercial recreational activities, such as outfitting, in which a private person, corporation, group, or other entity charges a fee or obtains other consideration;
- (b) non-commercial recreational activities conducted by an organization, such as a lodge, business, church, union, or club;
- (c) overnight recreational use on leased or licensed lands by one or more persons outside a designated campground and more than 200 feet from a customary and legal access point or water body; and
- (d) overnight horse use. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-101, 77-1-801 through 77-1-806, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1993 MAR p. 2536, Eff. 10/29/93; AMD, 1994 MAR p. 2539, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.146 GENERAL RECREATIONAL USE OF STATE LANDS: LICENSE REQUIREMENT (1) Subject to restrictions imposed pursuant to ARM 36.25.149 and ARM 36.25.153 and closures imposed pursuant to ARM 36.25.150, ARM 36.25.152, and ARM 36.25.153, state lands administered by the department, except those lands described in ARM 36.25.144, are open to general recreational use to a person under the age of 12 years or a person 12 years old or older who obtains a recreational use license, signs that license, and has a valid signed license in his or her possession. Under 77-1-801, MCA, general recreational use without a license is a misdemeanor.

(2) A general recreational use license is issued for a 12-month period beginning on March 1 of each year and expiring on the last day of February of the next year. The cost of a general recreational use license is \$5 before March 1, 1996. After February 29, 1996, the cost of the license is \$5 for persons 17 years of age or younger or 60 years of age or older. The cost of the license for persons who are older than 17 and younger than 60 is \$10. Family members living within the same household may obtain recreational use licenses by paying a family fee of \$20. The license is personal and non-transferable. It may be purchased at any authorized license agent of the department of fish, wildlife and parks. Any person may purchase a recreational use license for a spouse, parent, child, brother, or sister, but the license is not valid until signed by the person in whose name it is issued.

(3) A person who uses state lands for general recreational use shall abide by the restrictions imposed pursuant to ARM 36.25.149 and may not use for general recreational purposes state lands that have been closed pursuant to ARM 36.25.150, ARM 36.25.152, or ARM 36.25.153. Violation of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157.

(4) No lessee or other person may interfere with a person who is making lawful general recreational use of state lands in accordance with this rule. Violation of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157. The lessee may, without such interference, make inquiry concerning the status of those using state lands.

(5) Under 77-1-801(2) and (3), MCA, a person must, upon request of a fish and game warden, present for inspection his or her recreational use license. Failure to present the license is a misdemeanor.

(6) A person who is engaging in general recreational use on state land shall, upon request of a department employee, present his or her recreational use license for inspection. Failure to present the license subjects the recreationist to a civil penalty pursuant to ARM 36.25.157.

(7) A person who is engaging in general recreational use on private land that has been opened pursuant to an exchange under ARM 36.25.152 shall, upon request of a department employee or a fish and game warden, present his or her recreational use license for inspection. Failure to present the license subjects the recreationist to a civil penalty pursuant to ARM 36.25.157. (History: 77-1-106, 77-1-209, 77-1-802, and 77-1-804, MCA; IMP, 77-1-106, 77-1-801, 77-1-802, 77-1-804, and 77-6-210, MCA; NEW, 1992 MAR p. 568, Eff. 3/28/92; AMD, 1994 MAR p. 2539, Eff. 9/9/94; AMD, 1995 MAR p. 1047, Eff. 6/16/95; TRANS, 1996 MAR p. 2384.)

Rules 36.25.147 and 36.25.148 reserved

36.25.149 GENERAL RECREATIONAL USE OF STATE LANDS: RESTRICTIONS (1) The following restrictions apply to persons engaging in general recreational use of state lands except for general recreational use subject to block management restrictions pursuant to ARM 36.25.163:

(a)(i) Except as provided in (ii) and (iii), motorized vehicle use on state lands by recreationists is restricted to federal roads, state roads, dedicated county roads, other county roads that are regularly maintained by the county and those roads on state lands that are designated by the department as open for motor vehicle use.

(ii) A person who has in his or her possession a "permit to hunt from vehicle" issued by the department of fish, wildlife and parks is authorized to drive on any road except a road that is closed by the department by sign or barrier.

(iii) A recreationist may park on state land within 50 feet of a customary access point; on federal roads and highways, state highways, and county roads in accordance with applicable traffic laws and regulations; and within 50 feet of any other road designated by the department for public access across the state land. The recreationist may not park so as

to block vehicle access to the tract. Parking of vehicles must be accomplished in a manner that does not produce injury to the land or the lessee's improvements.

(b) Snowmobile use on the roads referenced in (1)(a)(i) is allowed only if permitted by applicable traffic laws and regulations. Snowmobile use on leased land is restricted to those department roads that have been designated as open to motorized vehicle use. Snowmobile use on unleased land is allowed except in areas where it is prohibited by the department.

(c) A recreationist shall use firearms in a careful and prudent manner. A recreationist may not negligently, as defined in 45-2-101(37), MCA, discharge a firearm on state lands or discharge a firearm within 1/4 mile of an inhabited dwelling or of an outbuilding in close proximity to an inhabited dwelling without permission of an inhabitant. Temporary absences of inhabitants do not render a dwelling uninhabited.

(d) Open fires on leased or licensed land are restricted to campgrounds designated by the department for public camping. No fireworks may be discharged on state land.

(e) Overnight recreational use on leased or licensed land must take place within 200 feet of a legal and customary access point or water body that is navigable for recreational purposes under 23-2-302, MCA. The person may not drive or park a vehicle more than 50 feet from the access point. A recreationist's overnight use of state lands must not exceed the following time limits:

(i) for any site on leased or licensed land outside a designated campground - 2 consecutive days;

(ii) for a designated campground - 14 consecutive days;

(iii) for unleased, unlicensed lands outside a campground -14 days per calendar year, unless permission for a longer period is obtained from the department.

(f) A recreationist may not keep horses on state land overnight.

(g) A recreationist shall keep pets on a leash or otherwise in control. A recreationist may not allow the pet to harass livestock.

(h) A recreationist may not interfere with legitimate activities of the lessees or their agents conducted pursuant to the lease. For example, the discharge of firearms that would interfere with the authorized use of a tract for livestock operations is prohibited.

(i) For state lands included within a wildlife management or block management area administered by the department of fish, wildlife and parks, recreational use and activities must be conducted in accordance with rules, regulations, and procedures specific to that management area.

(j) Littering on state lands is prohibited. Recreation-ists shall pack out their litter.

(2) The department may, after notice to the lessee, impose additional site specific restrictions on general recreational use to protect public safety, property, or the environment. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; AMD, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.150 GENERAL RECREATIONAL USE OF STATE LANDS: CATEGORICAL CLOSURES (1)

Except as provided in (2), the following state lands are closed to general recreational use by the public:

(a) all lands leased for cabinsites or homesites;

(b) all lands on which growing crops, as defined in ARM 36.25.145, are located;

(c) military leases while military activities are taking place;

(d) active commercial leases; and

(e) lands on which the department has proclaimed the threat of wildfire to be extreme pursuant to ARM 36.10.119 or for which the governor has made such a proclamation pursuant to ARM 36.10.120.

(2)(a) Any person, corporation, organization or agency of local, state, or federal government may petition to exclude a specific tract from a categorical closure imposed pursuant to (1).

(b) The petition must be submitted in writing to the area or unit office, must be signed by the petitioner, and must contain the following information:

(i) name, mailing address, and telephone number of petitioner;

(ii) description of lands to which the petition applies by legal description, lease number, or description of the location;

(iii) the reason that the categorical closure should be terminated for that tract and supporting documentation; and

(iv) duration of period for which termination is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reasons for dismissal whenever:

(i) the petition is unsupported by specific substantial factual allegations, data, or documentation; or

(ii) a petition requesting substantially the same exclusion has been denied within the preceding 365 days.

(d) To be considered during a particular calendar year, the petition must be submitted by April 1 of that year. Upon receipt of a valid petition, the department shall notify the lessee that a petition has been filed and he or she may submit an objection or have an informal hearing, or both, on the petition at the area or unit office on or before May 1. The petitioner may also request an informal hearing.

(e) If an informal hearing is requested, the department shall notify the petitioner and the lessee of the informal hearing and they may attend and participate. The informal hearing must be conducted by the area manager or his designee.

(f) The area manager or designee may conduct further investigation and shall, on or before July 1, make a written decision whether to grant the petition. The written decision must contain the reason for granting or denying the petition. Copies of the decision must be mailed to the petitioner and the lessee.

(g) The lessee or petitioner may appeal the decision to the director or his designee by filing a written notice of appeal with the area office within 15 days of receipt of the decision. The area office shall immediately forward the appeal to the department's main office in Helena. The appeal shall, in the discretion of the director, proceed by written argument, oral argument, or both at the main office of the department in Helena or other location designated by the director. The opposing party is entitled to notice of the appeal and the opportunity to respond, including the right to appear at any appellate hearing. Neither party may submit evidence or information that was not submitted at the informal hearing. The director or his designee shall issue a written decision affirming, reversing, or modifying the decision on or before September 1.

(3) Except for closure for fire danger pursuant to (1)(e), the lessee shall post categorically closed lands at all customary access points with signs provided by the department or duplicated from signs provided by the department. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

Rule 36.25.151 reserved

36.25.152 GENERAL RECREATIONAL USE OF STATE LANDS: PROCEDURE FOR SITE SPECIFIC CLOSURES AFTER SEPTEMBER 1, 1992 (1) The department may close specific tracts of state land pursuant to this rule after September 1, 1992, for any of the following reasons:

- (a) damage attributable to recreational use diminishes the income generating potential of the state lands;
- (b) damage to surface improvements of lessee or mineral lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;
- (d) the presence of unique or special natural or cultural features;
- (e) wildlife protection;
- (f) noxious weed control;
- (g) the presence of buildings, structures, or facilities;
- (h) protection of public safety;
- (i) prevention of significant environmental impact;
- (j) disruption of calving, lambing, or shipping activities or substantial disruption of livestock use;
- (k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land; or

(l) comparable public general recreational use has been made available pursuant to (13).

(2) Closures made pursuant to (1) may be of a seasonal, temporary, or permanent nature.

(3)(a) Any person, corporation, organization, or agency of local, state, or federal government may petition to close a specific tract of land for any reason listed in (1).

(b) The petition must be submitted to the area or unit office in which the state land is located and must be in writing. To be considered during a calendar year, the petition must be submitted by April 1 of that year, be signed by the petitioner, and must contain the following information:

- (i) name, mailing address, and telephone number of petitioner;
- (ii) description of lands to which the petition applies by legal description, lease number, or other description of the location;
- (iii) the reason that the land should be closed and supporting documentation; and
- (iv) period for which closure is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reason for the dismissal if:

- (i) the petition is not based on a reason for closure listed in (1);
- (ii) the petition is not supported by specific factual allegations, data, or documentation; or
- (iii) a petition requesting essentially the same closure has been rejected in the past 365 days unless changed conditions are alleged and documented.

(d) The department may also initiate a closure proceeding by preparing on or before April 1, a written statement containing the information described in (b)(ii), (iii), and (iv). The department shall follow the procedures contained in (4) through (9).

(4) The department shall by May 1 post public notice of the petition or statement at the county courthouse and the area and unit offices and by making a list of all petitions and statements filed statewide available at the department's main office in Helena.

(5) The public notice must give the public an opportunity to object to the petition or statement and the objector and the petitioner an opportunity to request, on or before May 20, a public hearing on the closure. The objection must be submitted to the office in the area or unit in which the land is located. The objection must contain the reasons why the petition should not be granted and supporting documentation. The objection may not be considered if it does not. If a hearing is requested, the department shall hold the hearing in the area of the proposed closure.

(6) Notice of hearing must be sent to the petitioner and the lessee. In addition, public notice must be given on or before June 5 in the same manner as provided in (4). The notice must contain the name of the petitioner, location of the land, reason for proposed closure and reasons that the hearing has been requested.

(7) The hearing must be held in the area of the proposed closure and be an open public hearing at which any interested party may give comments and submit information. The hearing must be held before June 20.

(8) The department may conduct further investigation and shall prepare a written decision to grant, grant with modifications, or deny the petition, stating its reasons for the decision. On or before July 1, it shall send a copy of the decision to the petitioner and any person who filed objections pursuant to (5).

(9) The objector or petitioner may appeal the decision to the director or his designee by filing a written appeal with the area office within 15 days of receipt of the decision. The department shall give the opposing party notice of the appeal and the opportunity to respond, including the right to appeal at any appellate hearing. The appeal shall, in the discretion of the director, proceed by written argument, oral argument, or both, at the main office of the department in Helena or other location designated by the director. No party may submit evidence or information that was not submitted at the hearing. The director shall convene the recreational use advisory council and request it to recommend a decision on the appeal. The director or his designee shall, after receiving the recommendation of the council, issue a written decision affirming, reversing, or modifying the decision. The director's decision must be made on or before September 1. If the advisory counsel does not make a recommendation on or before August 25, the director need not consider its recommendation in making his decision.

(10) If the petition is granted, the lessee shall post the closed lands at all customary access points with signs provided by the department or duplicated from signs provided by the department. For temporary closures, the lessee shall remove closure signs at the end of the closure period.

(11) In an emergency, as defined in ARM 36.25.145, any person or entity that is qualified to file a petition pursuant to (3)(a) may request an emergency closure by filing a written request with the area office or by making a telephone call and filing a written request within 24 hours. When possible, the area manager or his designee shall notify and consult with the lessee. The area manager or his designee shall grant or deny the petition as soon as possible, but in no case in more than 5 days. If the petition is granted, the closure must be for a specific period of time and may be extended for additional periods. The area manager or his designee shall terminate the closure as soon as the emergency ceases. Upon request of any person, the director or his designee shall review any emergency closure in effect for more than 5 days and shall approve, modify, or terminate the closure in writing.

(12) The department may also, on its own initiative, after consulting or attempting to consult with the lessee, close a tract of state land in an emergency.

(13)(a) The department may, after notice pursuant to (5) and opportunity for hearing and appeal pursuant to (5), (7), or (9), enter into an agreement with a landowner whereby a tract of state land is closed under the procedures in (3) through (9) in exchange for the landowner's agreement to open private land to general recreational use if the private land:

- (i) is in the same general area;
- (ii) is of equal or greater recreational value to the state tract;
- (iii) has equal or greater public access as the state tract; and
- (iv) is not generally available for general recreational use upon request by the public.

(b) Before a state tract is closed pursuant to this rule, the private landowner shall enter into an agreement with the department whereby the landowner agrees to:

(i) allow general recreational use on the tract under restrictions no more stringent than those contained in ARM 26.25.149 and ARM 36.25.155;

(ii) post signs meeting design and content specifications of the department at customary access points on the state tract. These signs must notify the public of the closure and give directions to the private tract;

- (iii) post signs on the private tract at customary access

points advising the public that the tract is open for general recreational use by the public subject to the recreational use license requirement;

(iv) mark or otherwise inform the recreationist of the boundaries of the area;

(v) allow employees of the department and department of fish, wildlife and parks access to the private property;

(vi) not claim funds pursuant to ARM 36.25.158 or ARM 36.25.159;

(vii) hold and save the department and the state of Montana harmless from all claims for property damage or personal injury resulting from the acts or omissions of the landowner; and

(viii) other requirements deemed necessary by the department.

(c) An agreement made pursuant to (b) must be cancelable by either party upon 60-day written notice.

(14) The department shall periodically review each closure made pursuant to this rule to determine whether the closure is still necessary. This review must occur at least at expiration or renewal of the lease for leased tracts and at least every 10 years for un-leased tracts. After public notice, notice to the lessee, and an opportunity for public comment and hearing, the department may terminate a closure it determines to no longer be necessary. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.153 MANAGEMENT CLOSURES AND RESTRICTIONS (1) Except as provided in (5), affected leased or licensed state land is closed to recreational use or subject to recreational use restrictions if the lessee complies with (2) and one of the following situations exists:

(a) Livestock is present or concentrated for purposes of calving, lambing, specialized or intensive breeding practices, or supplemental winter feeding.

(b) Livestock is concentrated for the purpose of weaning or shipping. If fewer than 200 animal units per section are concentrated, the closure or restriction may be imposed for no more than five days.

(c) Livestock is being gathered or moved.

(d) Weed control treatment is occurring or has recently occurred.

(e) The land is being irrigated; provided, however, that land may not be closed to foot traffic during a hunting season under this provision.

(f) The use would occur in close proximity to dwellings, structures, or facilities in use by the lessee; provided however, that ingress and egress to state land may not be prohibited under this provision.

(2) Closures and restrictions do not become effective until the lessee:

(a) notifies the appropriate area office that one of the situations described in (1) exists, and the area upon which it exists, the terms of the closure or restriction, and the duration of the closure or restriction. The closure or restriction is not effective until 24 hours after notice is given. Notice may be given in person, by mail, or by telephone;

(b) posts the state land near all customary and legal access points with signs that are provided by the department or duplicated from signs provided by the department. The sign must provide the lessee's name, address, telephone number, the closure or restriction imposed, the reason for the closure or restriction, the area to which it applies, and dates and the duration.

(3) Any person may object to a notice of management closure made pursuant to (1) on grounds that no basis for closure or restriction exists, that the area of closure or restriction in the notice is larger than necessary, or that the closure or restriction notice specifies a period that is longer than necessary. The objector shall notify the appropriate area office of the objection and the reason for it. The area manager or designee shall investigate the objection and within 2 working days of receipt of the objection shall determine whether the closure or restriction complies with this rule. An area manager may also conduct an investigation without receiving an objection. If he determines that the closure or restriction should be modified or terminated, he shall notify the lessee or his agent in writing. The lessee or agent shall immediately modify or terminate the closure or restriction to comply with the area office decision. Failure to comply with the area office directive subjects the violator to a civil penalty pursuant to ARM 36.25.157. If the investigation resulted from an objection, the area office shall also give written notice to the objector. The objector or the lessee may appeal the area office decision to the director by filing a written appeal with the area office within 5 working days of receipt of the notice. The area office shall forward the appeal to the director. The director shall convene the recreational use advisory council and, upon receipt of a recommendation of the council issue a written determination of the issue. The director's decision is binding on the parties. If the director's decision is to terminate or modify the closure or restriction, the lessee shall immediately remove or modify the closure or restriction signs. Failure to comply with the director's decision subjects the violator to civil penalty pursuant to ARM 36.25.157.

(4) The department shall maintain, by county, a master list of management closures and restrictions. The list must include the tract description, name, address, and phone number of the lessee, and the reason and period of closure or restriction. The list shall be available to the public by inspection or telephone inquiry at the department's main office in Helena,

or by mail upon payment of \$1.00 plus 15¢ for each page over 5 pages.

(5) General recreational use conducted in conjunction with a special recreational use license applied for prior to July 1, 1994, is exempt from closures or restrictions imposed pursuant to this rule. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.154 RECREATIONAL USE ADVISORY COUNCIL (1) The board shall, pursuant to 2-15-122, MCA, appoint from a list of persons nominated by recreationist and lessee groups a recreational use advisory council consisting of 3 recreationists and 3 lessees. The members shall serve without compensation, but they are entitled to reimbursement for travel expenses pursuant to 2-15-122, MCA.

(2) The advisory council shall gather information and advise the director on the validity of management closure or restriction appeals made pursuant to ARM 36.25.153, on appeals of area manager decisions regarding site-specific closure petitions pursuant to ARM 36.25.152, and on whether to subject renewal of a block management agreement pursuant to ARM 36.25.167 to public review. In advising the director, the council shall attempt to provide reasonable recreational use of state lands within the bona fide management constraints of lessees.

(3) The following are general guidelines for the council's use in determining whether the term of a management closure or restriction is reasonable: for calving or lambing, 60 days; for breeding, 30 days; for gathering or moving, 1 day; for weed treatment, 5 days; and for concentration of 200 or more animal units per section for weaning and shipping, 30 days. The council may deviate from these guidelines as management circumstances dictate. (History: 77-1-804, MCA; IMP, 77-1-804 and 2-15-122, MCA; NEW, 1994 MAR p. 1844, Eff. 7/8/94; AMD, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.155 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF ALL USES OTHER THAN HORSE USE NOT FOR THE PURPOSE OF LICENSED HUNTING, DISCHARGE OF FIREARMS NOT FOR THE PURPOSE OF LICENSED HUNTING, AND OVERNIGHT USE (1) If a lessee wishes to be notified

prior to anyone entering upon the leasehold for general recreational use other than discharge of firearms for any purpose other than licensed hunting, horse use for any purpose other than licensed hunting, or overnight use, the lessee shall post, at all customary access points, signs that are provided by the department or that are duplicated from signs provided by the department. The lessee must include on the sign the following information:

- (a) name of the lessee or lessee's agent who must be notified;
- (b) telephone number of the lessee or lessee's agent;
- (c) clear directions to the location at which the lessee or the lessee's agent may be contacted; and
- (d) clear directions to the location of the closest drop box. If the lessee does not wish to be notified in person or

by telephone, the sign must so indicate and need not contain the information required in (b) and (c). The information must be legible and legibility must be maintained.

(2) A lessee who posts land pursuant to (1) shall provide a clearly identified drop box for each single tract at a customary access point to the tract, except that a lessee of 2 or more contiguous tracts may provide 1 drop box for those tracts to which the access point provides convenient access. In cases in which a customary access point cannot be easily identified or a question of the convenience of an access point is raised by the public, the area manager shall make a determination and the lessee shall install drop boxes in accordance with that determination.

(3) If the lessee or agent wishes to be notified in person or by telephone, the lessee or his or her agent shall be available to receive notice from recreational users by telephone or in person from the hours of 7:00 a.m. until 9:00 p.m. A person wishing to make general recreational use of state lands posted pursuant to (1) shall contact the lessee or lessee's agent in person or by telephone during those hours if the recreationist's access point to the state land is 5 miles or less by the shortest road from the nearest public telephone or the location at which the lessee or lessee's agent is available unless the lessee or lessee's agent is not available. The recreationist may determine which method of contact to employ. If the recreationist contacts the lessee or agent in person or by telephone, the recreationist shall, upon request, provide his or her name, address, and recreational use license number, the name and recreational use license numbers of all recreationists in his or her party, and the dates of use. Notice is considered to have occurred if the recreationist is answered by a telephone answering machine and the recreationist leaves his or her name, address, and recreation use license number and the same information for each member of his or her party. Notice authorizes the recreationist to engage in general recreational use for 3 consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. If the recreationist attempts to contact the lessee by telephone or in person but the lessee or agent is not available, or if the shortest road distance from the recreationist's access point to the nearest public telephone or the location at which the lessee or lessee's agent is available is greater than 5 miles, the recreationist shall leave a notice in the drop box provided pursuant to (2). Notice by

drop box is effective for 3 consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical.

(4) If the lessee wishes to be notified by drop box only, the recreationist shall leave notice in the drop box provided pursuant to (2). The notice must provide the recreationist's name, address, and recreational use license number and the names, addresses, and recreational use license numbers of each person in his or her party, and the dates of use. The recreationist is responsible for providing paper and pencil or pen to prepare the notice. Notice by drop box is effective for 3 consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical, such as a back country hunting or fishing trip.

(5) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates (3) or (4). In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding 2 years from the effective date of the revoked license. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-804 and 77-1-806, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.156 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF OVERNIGHT USE, HORSEBACK USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, AND FOR DISCHARGE OF A FIREARM FOR ANY PURPOSE OTHER THAN LICENSED HUNTING

(1) If a lessee wishes to be notified prior to a recreationist entering upon the leasehold for overnight use not in conjunction with floating, horseback use for any purpose other than licensed hunting, or for discharge of a firearm for any purpose other than licensed hunting, the lessee shall post, at all customary access points, signs that are provided by the department or duplicated from signs provided by the department. The lessee must include on the sign the following information:

- (a) the name of the lessee or lessee's agent who must be notified;
- (b) the telephone number of the person designated pursuant to (a); and
- (c) clear directions to the residence of the person designated pursuant to (a).

(2) If a lessee wishes to be notified prior to a recreationist entering upon the leasehold for overnight use in conjunction with floating of a river or stream, the lessee shall post, at the customary access points, signs that are provided by the department or that are duplicated from signs provided by the department. The lessee must include on the signs the following information:

- (a) the name, address, and telephone number of the lessee or lessee's agent;
- (b) clear directions to the residence of the person designated pursuant to (a), if the residence is within 500 yards of the customary access point; and
- (c) directions to the location of the nearest drop box.

(3) A lessee who posts land pursuant to (1) or (2) shall provide a clearly identified drop box:

- (a) for posting pursuant to (1), at the residence of the person designated for notice pursuant to (1)(a); or
- (b) for posting pursuant to (2):

- (i) at the residence of the person designated for notice pursuant to (2)(a), if the residence is within 500 yards of the customary access point; or

- (ii) if the residence is not within 500 yards of the customary access point, at the point that is closest to the access point and reasonably accessible to floaters. A lessee of 2 or more contiguous state tracts along a stream may, if the lessee wishes, provide drop boxes for those tracts at the outer upstream and downstream boundaries only.

(4) If the person designated pursuant to (1)(a) wishes to be notified in person or by telephone, that person shall be available to receive notice by telephone or in person from the hours of 7:00 a.m. until 9:00 p.m. A person wishing to engage in overnight use not in conjunction with floating, horseback use for any purpose other than licensed hunting or discharge of a firearm for any purpose other than licensed hunting shall contact the person designated for notice pursuant to (1)(a) during those hours, unless the person is not available. A floater wishing to engage in overnight use shall contact a person designated for notice pursuant to (2)(a) between 7:00 a.m. and 9:00 p.m. unless the person is not available. The recreationist may determine which method of contact to employ. If the recreationist contacts the person in person or by telephone, the recreationist shall, upon request provide his or her name, address, recreational use license number, and the name and recreational use license number of each person in his or her party. Notice authorizes the recreationist to engage in firearm or horse use for 3 consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. Notice authorizes overnight use for 2 consecutive days only.

(5) If the recreationist attempts to contact the person designated for notice by telephone or in person but that person is not available, or if the recreationist is a floater who wishes to engage in overnight use and no person has been designated for personal or telephone notice pursuant to (2)(a), the recreationist shall leave notice in the drop box provided

pursuant to (3). The notice must provide the recreationist's name, address, and recreational use license number, and the same information for each person in the party, and the dates of use. Notice by drop box is effective for firearm or horse use for 3 consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical. Notice by drop box is effective for overnight use for 2 consecutive days.

(6) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates (4) or (5). In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding 2 years from the effective date of the revoked license. (History: 77-1-804, 77-1-806, MCA; IMP, 77-1-804 and 77-1-806, MCA; NEW, 1994 MAR p. 2539, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.157 GENERAL RECREATIONAL USE OF STATE LANDS: CIVIL PENALTIES (1) Pursuant to 77-1-804(8), MCA, the department may assess against a recreationist, lessee, or other person a civil penalty of up to \$1,000 for each day of violation of ARM 36.25.146, 36.25.149, 36.25.150, 36.25.152, 36.25.153, or 36.25.163. The department may waive the civil penalty for minor or technical violations and shall waive the civil penalty if a criminal penalty has been assessed for the violation.

(2) In determining the amount of civil penalty, the department shall consider the following factors:

- (a) number of previous violations;
- (b) severity of the infraction; and
- (c) whether the violation was intentional or unintentional.

(3) A person against whom the department proposes to assess a civil penalty is entitled to a contested case hearing in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, on the questions of whether a violation was committed and the amount of the penalty. The hearing must be conducted by a hearing officer appointed by the director. The department shall notify the individual of the violation, setting forth in the notice the specific facts which the department alleges to constitute the violation. The notice shall be served by certified mail or in person by a department employee, sheriff or deputy, fish and game warden, or registered process server. The notice must give the person at least 15 days to respond to the violation notice. Upon receipt of the response or expiration of the period allotted for response, the department shall either withdraw the notice of violation or provide its rationale for pursuing the violation and a proposed penalty. Service of the response and proposed penalty must be made in the same manner as the notice of violation. The person is entitled to a hearing on the existence of the violation, the amount of proposed penalty, or both, if he or she requests a hearing within 30 days of receipt of the department's response and proposed penalty. The request for hearing must set forth a statement of the reasons that the person is contesting assessment of the penalty.

(4) Upon conclusion of the hearing, the department shall, within 60 days, issue its findings of fact and conclusions of law and order dismissing the violation or assessing a penalty. If a civil penalty is assessed, the person shall pay the penalty within 30 days of receipt of the order or such additional time as is granted by the department.

(5) The assessment of the civil penalty is appealable to district court pursuant to Title 2, chapter 4, part 7, MCA. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; AMD, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.158 GENERAL RECREATIONAL USE OF STATE LANDS: DAMAGE REIMBURSEMENT (1) As provided in 77-1-809, MCA, a lessee or a mineral lessee may apply to the department for reimbursement of costs resulting from repair to or replacement of the lessee's improvements, growing crops, or livestock on state lands damaged by recreationists.

(2) The application must be submitted to the area or unit office within 30 days of the time that the lessee discovers the damage, must be in affidavit form, and must contain:

- (a) the date of discovery of the damage;
- (b) the nature of the damage;
- (c) reasonable proof that the loss was caused by a recreationist;
- (d) documentation of repair or replacement costs; and
- (e) whether the claimant has submitted a claim to his private insurance carrier and, if so, the status of the claim.

(3) No reimbursement may be paid to the extent the less-ee's costs have been reimbursed by the lessee's insurance carrier.

(4) Upon review of the application and, if necessary, additional investigation, the department shall grant the claim in whole or in part or deny the claim. The department shall issue its decision within 60 days of receipt of the application.

(5) Whenever the lessee has submitted an insurance claim, the department shall delay payment of the claim until the action on the claim is completed.

(6) The department shall, on or before July 1 of each fiscal year, designate a portion of the recreational use account for damage reimbursement. Claims that are granted may be paid only to the extent that funds are available for damage reimbursement in the recreational use account and must be paid in the order they have been filed with the department. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-809, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.159 GENERAL RECREATIONAL USE OF STATE LANDS: WEED CONTROL MANAGEMENT (1)

The lessee is responsible for weed control on leased state land. However, weed control cost share funds designated pursuant to (2) are available to lessees from the recreational use account for control of noxious weed infestations caused by general recreational use after February 29, 1992. "Noxious weeds" are those weeds designated as noxious weeds by the Montana department of agriculture.

(2) The department shall, on or before July 1 of each fiscal year, designate a portion of the general recreational use account for weed control.

(3) A lessee may apply in writing for weed control funds, equipment, assistance or supplies to treat a weed infestation caused by general recreational use. The application must:

(a) describe the location and size of the infestation and type of weed;

(b) demonstrate that the infestation was caused by general recreational use of the tract; and

(c) contain a weed management plan, including the cost of carrying out the plan. The plan may propose any combination of recognized weed management techniques which will deal effectively with the weed problem.

(4) The area land office shall process applications in the order received and shall approve an application if it finds that the application reasonably proves that the infestation was caused by general recreational use of state lands, that the plan provides an effective method of control, and that cost of the plan is reasonable. In its approval, the area office shall designate the amount of funding approved. That amount may be less than the amount applied for. Before providing funding, supplies, assistance, or materials, the department shall enter into a written agreement with the lessee specifying how the funding, supplies, assistance, or materials must be used. The assistance may be provided through the county weed board.

(5) Projects remain eligible for funding for the fiscal year in which the approval was granted and for 2 additional fiscal years. At the end of this period, the department may terminate the approval if it determines that the project no longer meets the criteria in (4). (History: 77-1-209 and 77-1-810, MCA; IMP, 77-1-810, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

Rule 36.25.160 reserved

36.25.161 GENERAL RECREATIONAL USE OF STATE LANDS: OTHER PROVISIONS (1)

Nothing in ARM 36.25.143 through 36.25.162 authorizes a recreationist to enter private land to reach state lands or to enter private land from state lands. A recreationist may not enter private land from adjacent state lands, regardless of the absence of fencing or failure of the owner to provide notice, without permission of the landowner or his agent.

(2) Under 77-1-806(2), MCA, entry onto private land from state land by a recreationist without permission of the landowner is a misdemeanor, whether or not the recreationist knows he or she is on private land.

(3) Recreationists are responsible for determining whether state lands are legally accessible. The recreationist is encouraged to contact landowners to determine boundaries and to use accurate maps.

(4) Before the department designates roads on state lands as open for public access pursuant to ARM 36.25.149, it shall mail notice of the proposed designation to the lessee.

(5) Any person may petition the board to include within the definition of general recreational use any type of recreation other than hunting and fishing. The petition must be in writing, be signed, and include a statement of the reasons why the use petitioned for should be included subject to the general recreational use license. It must be filed with the director, who shall bring the petition before the board. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804 and 77-1-806, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.162 SPECIAL RECREATIONAL USE OF STATE LANDS (1)

No special recreational use of state lands may occur without first obtaining a special recreational use license from the department. This requirement applies whether or not any or all of the persons involved in the special recreational use have obtained general recreational use licenses pursuant to ARM 36.25.146.

(2) To obtain a special recreational use license, a person must be at least 18 years of age or the head of a family and apply to the area or unit office on a form prescribed by the department. The applicant shall provide a description of or a map showing the area intended for use.

(3) Before granting a special recreational use license, the department shall make a bona fide attempt to notify the lessee of the application.

(4) To obtain a special recreational use license, a person must pay to the department the amount that the department determines to be the full market value of that use. A license granted pursuant to this rule may be subject to competitive bidding.

(5) A license granted pursuant to this rule may be exclusive, except the department shall reserve the right to grant other licenses for different uses on the same land. Issuance of an exclusive license does not prohibit general recreational use of state lands that have not been closed pursuant to ARM 36.25.150 or ARM 36.25.152.

(6) A license issued pursuant to this rule shall include provisions regulating motor vehicle use and requiring that only certified weed seed free hay be brought onto the state land. The license may include other restrictions on the activity.

(7) The holder of a special recreational use license shall comply with all provisions of that license.

(8) Pursuant to 77-1-804(8), MCA, the department may assess a civil penalty of up to \$1,000 for each day of violation of this rule. The department may waive the civil penalty for minor or technical violations. The penalty assessment standards and procedures contained in ARM 36.25.157 are applicable to civil penalty proceedings under this rule. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.163 BLOCK MANAGEMENT AREAS: GENERAL RULES FOR INCLUSION OF STATE LAND (1)

State lands may be enrolled in block management areas established by the department of fish, wildlife and parks under the procedures contained in ARM 36.25.164. For general recreational use on land so enrolled, a recreational use license is required and motorized vehicle use by a recreationist is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use. A recreationist shall obey all restrictions imposed pursuant to the block management agreement. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.164 BLOCK MANAGEMENT AREAS: PROCEDURES FOR INCLUSION OF STATE LAND (1)

The department shall commence review of a proposal to include state land within a block management agreement when the department receives from the department of fish, wildlife and parks a proposal that includes:

(a) a complete legal description of the state land affected by the proposal, with a description of the legal access status of each tract of land;

(b) a listing of all terms, conditions, and restrictions of the proposal; and

(c) a map that clearly identifies the boundaries of the proposed block management area, locations of state lands, adjoining public land, and public roads.

(2) The provisions of (3) apply to the review of a block management agreement that:

(a) would impose restrictions on recreational use that are

more stringent than those contained in ARM 36.25.149; and

(b) contain state land that is:

(i) contiguous at some point to land that is not within the proposed block management area;

(ii) accessible by dedicated public road, public right-of-way, or easement;

(iii) accessible by public waters; or

(iv) accessible from contiguous federal, state, county, or municipal land that is open for public use.

(3) Before land that meets the criteria in (2) may be included in a block management agreement, the department of fish, wildlife and parks and the department must have:

(a) given public notice of the proposal in a newspaper of general circulation in the area of the proposed block management area;

(b) provided a 21-day period for written public comment following the public notice; and

(c) if, during the public comment period, a request for public hearing was received that in the department's opinion raises a significant question as to whether the proposal is in the best interests of the public or the trust, held a public hearing in the area.

(4) After close of the public comment period, the department shall review and prepare written responses to all substantive comments. The department shall send copies of those responses to each person who submitted a substantive comment.

(5) No public review is required for proposals that do not meet the criteria contained in (2).

(6) The department shall notify the department of fish, wildlife and parks whether it will enter into the agreement. No block management agreement is effective as to state land until it is executed by the department. The department may not enter an agreement that does not meet the criteria contained in ARM 36.25.165. (History: 77-1-804, MCA; IMP, 77-1-

804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.165 BLOCK MANAGEMENT AREAS: CRITERIA FOR INCLUSION OF STATE LAND (1) The department may include state land in a block management area only if it finds that:

- (a) inclusion is in the best interests of the public and the trust;
- (b) the block management agreement does not conflict with rights of holders of leases, licenses, and easements;
- (c) inclusion would not result in damage to the land;
- (d) the block management area contains private land; and
- (e) the state land is contiguous to federal or private land that is within the block management area. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.166 BLOCK MANAGEMENT AREAS: TERMS OF AGREEMENT (1) A block management agreement that includes state lands must contain the following provisions:

- (a) Motorized vehicle use on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.
- (b) If the state land meets the criteria of ARM 36.25.164, or if the agreement includes hunter limits, requires permission, or contains other restrictions that are more stringent than the restrictions contained in ARM 36.25.149, the department of fish, wildlife and parks shall post the state land at customary access points with signs that include the period that the block management restrictions are effective and describe how access may be obtained.
- (c) If a complaint is not resolved to the satisfaction of the department, the department may withdraw the state land from the block management area. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.167 BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT (1) A block management agreement that contains state lands may be renewed.

(2) Subject to (b), renewal of a block management agreement that meets the criteria of ARM 36.25.164 may be subject to the review procedures contained in ARM 36.25.164 only if:

- (a) during the term of the agreement, the department or department of fish, wildlife and parks have received public comments or complaints tending to:
 - (i) raise significant concerns regarding compliance with the agreement;
 - (ii) indicate that continued enrollment in the block management program may not be in the best interests of the public or the trust; or
 - (iii) there will be changes in the agreement that impose more stringent restrictions than those contained in the existing agreement.

(b) If the department or department of fish, wildlife and parks has received complaints under the department of fish, wildlife and parks' complaint resolution system regarding a block management area that is being considered for renewal and those complaints have not been resolved, the director may not renew the agreement without public review until receiving a recommendation from the recreational use advisory council as to whether public review is appropriate.

(3) The renewal of a block management agreement that does not contain state land meeting the criteria in ARM 36.25.164 or does not meet the criteria of (2) above is not subject to public review under ARM 36.25.164.

(4) A block management agreement that was in effect on September 20, 1993, and was terminated in protest of the board's decision to expand the definition of "general recreational use" to include hiking and bird-watching may be renewed prior to October 1, 1994, under this rule.

(5) The department may renew a block management agreement that includes state land only if it meets the criteria for approval contained in ARM 36.25.165 and contains the provisions of ARM 36.25.166. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384; AMD, 1997 MAR p. 315, Eff. 2/11/97.)