

BEFORE THE FISH AND WILDLIFE COMMISSION, THE STATE PARKS AND RECREATION BOARD, and the DEPARTMENT OF FISH, WILDLIFE and PARKS OF THE STATE OF MONTANA

In the matter of the ADOPTION OF	)	NOTICE OF ADOPTION AND
New Rules I through XXIV; the repeal	)	REPEAL
of ARM <u>12.8.201</u> , <u>12.8.202</u> , <u>12.8.203</u> ,	)	
<u>12.8.204</u> , <u>12.8.205</u> , <u>12.8.206</u> ,	)	
<u>12.8.207</u> , <u>12.8.208</u> , <u>12.8.209</u> ,	)	
<u>12.8.210</u> , <u>12.8.212</u> , <u>12.8.213</u> ,	)	
<u>12.8.217</u> , <u>12.8.218</u> , <u>12.8.219</u> ,	)	
<u>12.8.801</u> , <u>12.8.802</u> , <u>12.8.803</u> ,	)	
<u>12.8.804</u> , <u>12.8.805</u> , <u>12.8.806</u> ,	)	
<u>12.8.807</u> , <u>12.8.808</u> , <u>12.8.809</u> ,	)	
<u>12.8.810</u> , <u>12.8.811</u> , <u>12.8.812</u> ,	)	
<u>12.8.813</u> , <u>12.8.814</u> , <u>12.8.815</u> ,	)	
<u>12.8.816</u> , <u>12.8.817</u> , <u>12.8.818</u> ,	)	
<u>12.8.819</u> , <u>12.8.820</u> , <u>12.8.821</u> ,	)	
<u>12.8.822</u> , <u>12.8.823</u> and <u>12.8.824</u> ;	)	
pertaining to the public use rules of	)	
FWP public lands.	)	

TO: All Concerned Persons

1. On September 8, 2023, the Department of Fish, Wildlife and Parks (FWP), the State Parks and Recreation Board (Board), and the Fish and Wildlife Commission (Commission) published MAR Notice No. 12-603 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rule[s] at page 952 of the 2023 Montana Administrative Register, Issue Number 17.

2. On October 2, 2023, a public hearing was held on the proposed adoption and repeal of the above-stated rules via Zoom. The department, commission and board received both written and oral testimony comments by October 10, 2023.

3. The purpose of the proposed consolidated rules is to provide for consistent management of public uses across all lands while maintaining the purpose of different site types, protecting fish, wildlife, habitat, cultural, and recreational resources, as well as improving customer service and understanding of expectation for public use. The Department, Commission and Board will continue to use seasonal (biennial or annual) rules to address site-specific and date-specific rulemaking needs such as exceptions to seasonal closures on wildlife management areas.

4. FWP has repealed ARM 12.8.201, 12.8.202, 12.8.203, 12.8.204, 12.8.205, 12.8.206, 12.8.207, 12.8.208, 12.8.209, 12.8.210, 12.8.212, 12.8.213, 12.8.217, 12.8.218, 12.8.219, 12.8.801, 12.8.802, 12.8.803, 12.8.804, 12.8.805, 12.8.806, 12.8.807, 12.8.808, 12.8.809, 12.8.810, 12.8.811, 12.8.812, 12.8.813, 12.8.814,

12.8.815, 12.8.816, 12.8.817, 12.8.818, 12.8.819, 12.8.820, 12.8.821, 12.8.822, 12.8.823, and 12.8.824 as proposed.

5. FWP has adopted the following rules exactly as proposed: New Rule I (12.12.101), II (12.12.102), IX (12.12.109), XI (12.12.111), XV (12.12.115), XVI (12.12.116), XVII (12.12.117), and XXI (12.12.121).

6. FWP has adopted and amended the following rules from the proposal notice with the following changes, based on the comments received and after further review. New matter underlined, deleted matter interlined: New Rule III (12.12.103), IV (12.12.104), V (12.12.105), VI (12.12.106), VII (12.12.107), VIII (12.12.108), X (12.12.110), XII (12.12.112), XIII (12.12.113), XIV (12.12.114), XVIII (12.12.118), XIX (12.12.119), XX (12.12.120), XXII (12.12.122), XXIII (12.12.123), and XXIV (12.12.140).

NEW RULE III (ARM 12.12.103) RULES POSTED BY THE DEPARTMENT

(1) is adopted as proposed.

(2) While in a public use site a person is prohibited to fail required to comply with the rules set out in this chapter, or site-specific rules posted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE IV (ARM 12.12.104) PROHIBITED CONDUCT (1)(a) through (1)(d) are adopted as proposed.

(e) operating sound-emitting electronic devices, such as speakers, radios, televisions, or other equipment at a volume which projects sound ~~beyond the person's immediate vicinity~~ in a manner that disturbs others; or

(1)(f) and (2) are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE V (ARM 12.12.105) FEE COMPLIANCE AND CLOSURE (1) through (2) are adopted as proposed.

(3) While in a public use site, payment is required for day use, camping, group use, or any other required fee. ~~it is prohibited to:~~

(a) ~~fail to pay any required day use, camping, group use, or any other required fee;~~ or

(b) ~~enter or remain in a public use site when closed.~~

(4) When a public use site is closed, a person may not enter or remain in the site.

(4) through (6) are renumbered (5) through (7) and are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VI (ARM 12.12.106) PROPERTY DISTURBANCE (1) While in a public use site it is prohibited to:

(a) damage, ~~deface~~, destroy or possess any natural features, developed features, or vegetation;

(b) damage, ~~deface~~, destroy, possess, or permit the disturbance or removal of topsoil or subsoil, nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof;

(c) is adopted as proposed.

(d) design, develop, construct, place, or occupy any ~~structure, such as development or placement of~~ structure, roads, trails, signs, ~~and~~ or landscape features;

(1)(e) through (2) are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VII (ARM 12.12.107) DESIGNATED AND DISPERSED CAMPING SITES (1) through (1)(d) are adopted as proposed.

(e) exceed the designated occupancy limit of a campsite; or

~~(f) fail to comply with the terms of a special use permit;~~

~~(g) fail to vacate campsite by posted check out time; or~~

~~(h)~~ (f) travel more than 50 yards with a motorized vehicle from a designated road in areas designated for dispersed camping.

(2) Unless otherwise posted by the department, within a public use site, it is required to:

(a) comply with the terms of a special use permit; and

(b) vacate a campsite by the posted check-out time.

(2) through (5) are renumbered (3) through (6) and are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VIII (ARM 12.12.108) FIRES AND FIREWORKS (1) Unless otherwise posted by the department in a public use site a person may not ~~it is prohibited to:~~

(a) light or maintain a fire at state parks or fishing access sites except in a designated fire ring;

(b) and (c) remain the same and are adopted as proposed;

(d) light or maintain a fire or burning materials, that causes damage or threatens to cause damage to property or recreation site resources, creates litter, or otherwise creates a public safety hazard;

(1)(e) through (g) are adopted as proposed.

(2) Smoking in a public use site is allowed in outdoor areas unless prohibitions are posted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE X (ARM 12.12.110) SANITATION AND WASTE DISPOSAL (1) Unless otherwise posted by the department in a public use site, it is prohibited to a person may not:

(1)(a) through (1)(g) are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XII (ARM 12.12.112) LIVESTOCK (1) remains the same and is adopted as proposed.

(2) ~~Unless otherwise posted by the department, the following are prohibited in public use sites: and except where specifically permitted or authorized by a lease, license, or other written agreement with the department, a person may not range, graze, water, or allow cattle or other livestock in public use sites.~~

~~(a) failure to clean up animal feces, feed, or bedding materials in a developed area; or~~

~~(b) to range, graze, water, or allow cattle or other livestock in public use sites except where specifically permitted or authorized by a lease, license, or other written agreement with the department.~~

(3) A person is required to clean up animal feces, feed or bedding materials in the developed area of a public use site.

(3) and (4) are renumbered (4) and (5) and are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XIII (ARM 12.12.113 WEAPONS (1) ~~Except as posted by the department, discharge of any weapon as defined in 45-2-101, MCA, such as firearms, explosives, air or gas weapons, paintball guns, arrows from a bow, spears or spear guns on or over either land or water is prohibited in public use sites.~~

~~(2) The possession, display, carrying, discharge, or use of a weapon firearm in public use sites must be in compliance with Titles 23, 45, and 87, MCA. Title 45, chapter 8, part 3, MCA.~~

(2) Public use sites, or portions thereof, may be closed to the discharge of weapons as defined in 45-2-101, MCA, when the director determines there is an undue hazard to human safety, or to protect property and public resources. The closure does not apply to lawful discharges in cases of self-defense.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XIV (ARM 12.12.114) HUNTING AND TRAPPING (1) When open to public use, wildlife management areas and fishing access sites are open to all commission-established hunting and trapping seasons unless otherwise prohibited and posted. ~~Written authorization by the department is required prior to trapping on a wildlife management area or fishing access site.~~ The commission

authorizes the department to issue specific restrictions on hunting and trapping at a wildlife management area or fishing access site.

(2) State parks are open to all commission-established hunting seasons unless prohibited by the board. The board authorizes the department to issue specific restrictions on hunting at a state park where hunting is allowed. ~~Trapping is prohibited in state parks.~~

(3) and (4) remain the same and are adopted as proposed.

(5) Trapping is prohibited in state parks unless authorized by the board. The board authorizes the department to issue specific restrictions on trapping at a state park where trapping is allowed.

(6) Written authorization by the department is required prior to trapping on department lands.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XVIII (ARM 12.12.118) ABANDONED PROPERTY (1) remains the same and is adopted as proposed.

(2) Unattended property that interferes with public safety, orderly management of the ~~recreation~~ public use site or presents a significant threat to department resources may be impounded immediately.

(3) remains the same and is adopted as proposed.

(4) Property left unclaimed pursuant to (3) will be disposed of in accordance with state Montana Operations Manual surplus property policy authorized by 18-6-101, MCA.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XIX (ARM 12.12.119) DAY USE, GROUP USE, AND SPECIAL USE PERMIT (1) Special use permits must be obtained when required. ~~Failure to obtain a special use permit when required is prohibited.~~

(2) through (6) remain the same and are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XX (ARM 12.12.120) SOLICITING AND PUBLIC ASSEMBLY (1) Soliciting or demanding gifts, money, goods, or services is prohibited at public use sites, except pursuant to the terms and conditions of a special use permit, or commercial use permit, or other contract issued by the department for such activity.

(2) Public assembly ~~of one or more individuals~~, including demonstrations, picketing, speechmaking, marching, holding vigils or services, dissemination or sharing of other information, and similar forms of conduct that involve the communication or expression of views or grievances, or are reasonably likely to attract a crowd or onlookers, are allowed at public use sites when a permit has been issued.

(3) through (9) remain the same and are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XXII (ARM 12.12.122) EMERGENCY CLOSURE CRITERIA

(1) through (1)(a) remain the same and are adopted as proposed.

(b) the department determines that firefighting efforts on or near the public use site creates imminent peril to the public health, safety, or welfare; or

(c) the department determines that dangerous conditions exist on or near the public use site that creates imminent peril to public health, safety, or welfare.

(2) The department may reopen the public use site by repealing a temporary emergency rule when it determines that firefighting efforts or dangerous conditions on or near the area have subsided to the extent that and imminent peril to the public health, safety, and welfare no longer exists.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XXIII (ARM 12.12.123) NOTIFICATION OF EMERGENCY CLOSURE AREAS

(1) Prior to, or simultaneously with, the effective date of the closure of a public use site, the department shall:

(1)(a) through (1)(d) remain the same and are adopted as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XXIV (ARM 12.12.140) PENALTIES AND APPEAL (1) remains the same and is adopted as proposed.

(2) Individuals violating these rules may also be expelled immediately from the a public use site for up to 48 hours. Failure to comply with the expulsion may constitute criminal trespass.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

7. FWP has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT 1: A commenter said that, regarding NEW RULE VII (ARM 12.12.107), the Department could not adequately inform the public about all the places where camping is allowed. The commenter also suggested that allowing camping, unless posted as prohibited, would be more effective.

RESPONSE 1: The proposed rule is consistent with the current Board and Commission rules prohibiting camping outside places designated or marked for that purpose. The public is familiar with these rules and where camping is allowed. The

language also allows the Department to designate dispersed camping opportunities, whether signing an individual dispersed site or a general area. The proposed language helps prevent resource impacts from camping outside designated areas. The Department routinely works to communicate use rules to the public. The Department will continue to do so through many avenues, including signs and maps at sites, information on FWP's website, social media, and other public awareness campaigns.

COMMENT 2: Commenters said that the Commission, Board, and Department do not have the authority to adopt NEW RULE XIII (ARM 12.12.113), affecting the right to keep or bear arms.

RESPONSE 2: The Commission, Board, and Department have amended the rule as set out above to clarify that using a weapon on public lands must follow our state's laws and emphasize that a plea of self-defense is always allowed in response to an alleged violation of the law. The decision to prohibit weapons discharge in certain places or areas shall be based on concern for human safety and protecting property and public resources. Please note that the rule does not prevent the discharge of weapons associated with hunting where authorized.

The Legislature can direct the Board, Commission, and Department to establish rules to implement statutory programs. The commentators favor a broad reading of the U.S. Supreme Court's (SCOTUS) holding in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). In that case, SCOTUS found that a state would only issue a public-carry permit for a handgun when the individual demonstrated a 'special need' to carry one for self-defense. SCOTUS held that the state's licensing regime violated constitutional rights under the Second and Fourteenth Amendments. SCOTUS held that for a law to be constitutional, the government must be able to show that current gun regulation is "consistent with this Nation's historical tradition of firearm regulation" *id.* at 2126.

Historically, including at the time of the ratification of the U.S. Constitution, government regulations reasonably restricted individuals' right to keep or bear arms in certain places or areas to protect the public's safety. The proposed rule does not limit the right to bear arms; instead, the rule restricts the right to discharge weapons in certain places or areas to protect public peace and public site users' safety.

COMMENT 3: Some commenters alleged that the proposed rule excludes weapons discharge for self-defense.

RESPONSE 3: Please see the response to comment number 2. The Department, Board, and Commission edited the rule to make it clear that self-defense with a weapon is allowed.

COMMENT 4: A prohibition on the discharge of weapons conflicts with hunting in wildlife management areas.

RESPONSE 4: The proposed rule does not prevent the discharge of weapons associated with hunting where hunting is allowed. Restricting hunting in some areas is necessary for public safety and resource management.

COMMENT 5: One commenter opposed the comments submitted by the other commentors concerning NEW RULE XIII (ARM 12.12.113).

RESPONSE 5: Please see the response to comment numbers 2 and 3.

COMMENT 6: Some commenters opposed NEW RULE XIV (ARM 12.12.114), making state parks open to all Commission-established hunting seasons unless prohibited by the board, and proposed that the rule should prohibit hunting in state parks unless expressly permitted by the Board.

RESPONSE 6: The Department receives federal aid derived from excise taxes on bows, arrows, archery equipment, sporting firearms, ammunition, handguns, pistols, and revolvers. Some of this federal aid is expended at state parks that have wildlife habitat value or provide shooting opportunities. There are some parks where hunting can occur safely and without diminishing the experience of other visitors. The State Parks and Recreation Board will consider these factors, along with public safety, and identify those parks where hunting would not be allowed at its December 19, 2023, meeting.

COMMENT 7: Commenters stated that the rules would reduce or restrict use and access on public lands and conflict with the 2020-2024 Statewide Comprehensive Outdoor Recreation Plan (SCORP).

RESPONSE 7: The proposal seeks to consolidate existing rules into one set for all lands for clarity and consistency. While some of the wording in the original rules was changed to propose consistent rules, care was taken to ensure that the changes do not diminish existing recreation opportunities. In a couple of instances, an additional review of the regulations as proposed revealed language was lost in the consolidation process, and the rules were amended as stated above to maintain current multi-use activities. Specific to motorized vehicles, the language in the proposed ARM rule is the same as in the current ARM rules that prohibit operating a motorized vehicle off authorized routes or on any road, trail, or area specifically posted against such use.

For awareness, two types of rules currently apply to motorized use in Wildlife Management Areas (WMA): the general ARM rule and the Commission biennially (or annually) adopted site-specific rules. Under the general proposed consolidated public use ARM rules, operating snowmobiles would be prohibited on FWP lands except in designated areas. FWP would continue to offer Commission biennial use rules for WMAs to identify the designated areas where snowmobiles are generally allowed on groomed trails (subject to site opening and closure dates). These



biennial rules also note exceptions for snowmobiles on designated open roads and for specified times during the year. The proposed regulations and the opportunities they provide align with the goals of multiple-use recreation opportunities outlined in the 2020-2024 SCORP.

COMMENT 8: Commentators stated that the rules would change access status to department lands from open unless posted closed to closed unless posted open, and that this change must be considered a significant action under the Montana Environmental Policy Act (MEPA).

RESPONSE 8: The Department, Commission, and Board's proposed rules contained some grammatical choices that resulted in language that arguably could be understood as a change in use from open unless posted closed. That change was not intended; the language has been amended above to clarify that intent.

COMMENT 9: Commenters stated that the rules would significantly affect the human environment and should comply with the MEPA requirements.

RESPONSE 9: Under MEPA, an action that is a change in use or condition that significantly impacts the quality of the human environment triggers the MEPA process. The Department, Board, and Commission thought through whether the administrative rules would be considered a significant action under MEPA. It was determined that because the rules themselves do not change the current use or the condition of public lands, the MEPA process and further analysis were not required. The Montana Administrative Procedures Act (MAPA) also does not require a MEPA analysis when conducting rulemaking. When the Department acts on a public use site that will significantly impact the quality of the human environment, the Department will engage in the MEPA process.

COMMENT 10: Commentators stated that the Department must adequately consider all the management trends that have restricted and impacted public use of public lands as part of the rule process.

RESPONSE 10: The Commission, Board and Department are responsible for enhancing Montana's outdoor recreation legacy on FWP-administered lands. Management trends for public lands administered by other agencies are outside this proposal's scope and the department's authority. The Board, Commission and Department disagree with the contention that the administrative rules result in a change or impact on FWP lands' public use and recreation.

COMMENT 11: Commentators stated that the Department should consider how the public is affected when signage at state parks, fishing access sites, wildlife management areas, wildlife habitat protection areas, and fisheries conservation areas is missing, stolen, or damaged.

RESPONSE 11: The Board, Department, and Commission posts site-specific rules onsite and online for easy access to the recreating public. Staff regularly checks the status of physical signs and performs maintenance or replaces damaged or missing signs. This practice would continue under the proposed rules. The Parks and Outdoor Recreation Division is also upgrading physical signs across all site types using an appropriation from the 2021 and 2023 Legislatures to improve customer service and awareness while on FWP public lands.

COMMENT 12: Commentators stated that the proposed rules do not include an adequate public education program to accompany the rule changes.

RESPONSE 12: The proposed rules focus on consolidating existing rules into one set for all lands for clarity and consistency. While some of the wording in the original rules was changed, care was taken to ensure that the changes do not generally change existing recreation opportunities. The Department routinely works to communicate use rules to the public. The Department will continue to do so through many avenues, including signs and maps at sites, information on FWP's website, social media, and other public awareness campaigns.

COMMENT 13: Commentators asked who is responsible for replacing signs or ensuring all sites are signed.

RESPONSE 13: The Department's maintenance staff are primarily responsible for replacing signs. Both maintenance and recreation staff are responsible for ensuring that sites are appropriately signed. The new signs will include the changes made by these rules to improve customer service and awareness.

COMMENT 14: Commentators said that "immediate vicinity" in NEW RULE IV must be reasonably defined.

RESPONSE 14: The language in the proposed rule "prohibiting the operation of sound-emitting electronic devices, such as speakers, radios, televisions, or other equipment at a volume which projects sound beyond the person's immediate vicinity in a manner that disturbs others" is the same as the language in the current rules and thus far this language has proven effective without of further definition. However, because the words "beyond the person's immediate vicinity" can vary across public use sites and is not operative to how the rule is enforced, the language has been amended above.

COMMENT 15: Commentators said that NEW RULE V allows the Department to increase or set fees without public comment, which is unreasonable for a public agency.

RESPONSE 15: The Legislature specifically exempted seasonal regulations from the MAPA rulemaking process, 2-4-102(11)(b)(iv), MCA. This rule echoes that language and notifies the public that site use fees are set through a seasonal

biennial or annual public process separate from this rulemaking. Those processes include formal public comment periods.

COMMENT 16: Commentators said that the Department should be required to solicit public input on any time-special regulations for wildlife management areas.

RESPONSE 16: FWP and the Commission use biennial or annual rules, not ARM, to adopt site-specific regulations for wildlife management areas (WMA). The Department and Commission know that site-specific annual or biennial rules for WMAs will still be needed after adopting the consolidated public use rules to address such circumstances. Adoption of those rules will go through a public comment period and be considered in a publicly held Commission meeting.

COMMENT 17: Commentators recommended that the word “permanent” should be inserted between the words “any” and “structure” in the first line of NEW RULE VI, subsection (d).

RESPONSE 17: The Department, Commission, and Board amended the final rule to include language clarifying that the prohibition on the placement of structures does not apply to the temporary placement of structures for legal hunting where allowed. Examples include tree stands, goose pits, and temporary blinds. Regarding other structures, they need not be permanent to damage a site or interfere with the public’s use of a site.

COMMENT 18: Commentators said that using a mineral detection device to explore for recreation is a pastime for many and should not be restricted if the person is not mining or digging.

RESPONSE 18: The public use rules require written permission to use a mineral or metal detector, magnetometer, or other metal detecting device at public use sites. This requirement ensures that these activities are not conducted in locations that could damage sensitive cultural, heritage, or natural resources.

COMMENT 19: Commentators said that NEW RULE VII and NEW RULE IX include different references to distances and confuse the public.

RESPONSE 19: The two rules and different distances serve different purposes. NEW RULE VII pertains to designated and dispersed camping sites and prohibits traveling more than 50 yards with a motorized vehicle from a designated road. The distance referred to in this rule is to allow a vehicular camping opportunity within a reasonable distance from an established road while minimizing vegetative or other resource impacts. NEW RULE IX pertains to food storage, and the distances referred to in this rule all pertain to public safety. The difference between the distances is appropriate given the differing purposes. The rule is also consistent with Forest Service food storage rules, which often adjoin FWP lands.

COMMENT 20: Commentators stated that it is unnecessary to say what is allowed in a rule listing prohibited uses in NEW RULE VIII.

RESPONSE 20: Subsection 1 outlines what is prohibited in public use sites, and Subsection 2 states what is permitted. The language is amended above to remove potentially misleading or confusing meanings.

COMMENT 21: Commentators recommended that the language in NEW RULE X be changed to allow for burning paper products and other items in a fire pit and that people clean all trash from the firepit before leaving the site.

RESPONSE 21: The language in this rule is to protect the public and FWP staff who frequently encounter unsafe conditions and public health concerns from refuse left behind in campfire rings, such as used diapers, broken glass, and molten aluminum. Requiring the public to remove all trash from a fire ring before leaving the site would likely result in a situation where it would be necessary to enforce a stricter standard than is currently in place. Further, the rule was reviewed and approved by Department of Public Health and Human Services prior to the proposal of the rule to ensure compliance with public health and human sanitation laws, §§ 23-1-111(1)(c) and 87-1-303(2), MCA.

COMMENT 22: Commentators said that NEW RULE XIII referenced the definition of “weapon” provided in 45-2-101, MCA. They recommended that the rule only list those specifically prohibited items rather than use the statutory definition that could be interpreted more broadly.

RESPONSE 22: Please see response to comment number 2. The language has been amended above and includes the statutory weapon definition. The Legislature defines weapons and regulates what may be used at certain times and places on FWP-controlled public land. The Commission sets specific seasonal rules regarding the discharge of certain hunting arms. The Board will identify at its December 19, 2023, meeting those parks where hunting would not be allowed. Only when none of the above restrictions apply does the Director then determine that an occurrence creates an undue hazard to human safety, public property, or public resources, and in that instance, the Board and Commission authorize the Director to close all or a portion of a public use site to the discharge of weapons. The language as proposed is consistent with SCORP. The rule has been amended to clarify that when sites are closed to discharge weapons, the closure will be properly noticed through signs and maps at sites, information on the Department’s website, social media, and other public awareness campaigns.

COMMENT 23: Commentators stated that NEW RULE XVII should not restrict “unmanned” vehicle operation except where required on a site-specific basis.

RESPONSE 23: Current administrative rules regulate unmanned vehicles in FWP sites, consistent with SCORP and the availability of multi-use recreational opportunities. Some sites, but not all, are appropriate for the operation of unmanned

vehicles. As written, the rules allow the Department to permit this activity. By requiring a permit, the Department can consider the circumstances, including the type of unmanned vehicle, where the use would occur, and how that use might affect other visitors or wildlife at a site.

COMMENT 24: Commentators stated NEW RULE XIX subsection (4)(b) that it is not reasonable for the public to be significantly impacted because the Department does not have the capacity to manage an event or activity.

RESPONSE 24: The Commission, Board and Department manages and protects the sites they oversee. The Department also works to ensure that all visitors have the opportunity to enjoy their experience. The Department frequently authorizes special events and groups. There are some requests, however, for events or groups of a size that exceed the site's capacity, that conflict with the reason the site was acquired, that would unreasonably infringe on the experience of other visitors, or that could potentially jeopardize funding for future sites if the uses are not managed consistently for the protection and preservation of the natural environment. In some instances, the presence of staff can help to mitigate these impacts. Other times, the Department must deny the request for the reasons mentioned above.

COMMENT 25: Commentators stated that the rules should be modified to provide significant consideration of the purpose and needs of the FWP Parks and Outdoor Recreation Division and the programs it offers, including the Off-Highway Vehicle and Snowmobile programs.

RESPONSE 25: This comment is outside the scope of this rulemaking proposal.

COMMENT 26: Commentators pointed out that in NEW RULE XX it is unreasonable to define "public assembly" as one or more individuals.

RESPONSE 26: The Board, Commission, and Department amended the final rule to remove the language from the old public assembly rules.

COMMENT 27: Commentators recommended that NEW RULE XXI should include a definition for "temporary" and that there should be a time frame for when a temporary rule must be reviewed and steps to be taken by the department to mitigate the dangerous situation.

RESPONSE 27: Emergency closures of a public use site are done through the Secretary of State's emergency rule process, § 2-4-303, MCA. All emergencies are communicated to the Board and Commission and the public as soon as practicable. If the emergency is still occurring at the next Commission or Board meeting, then the Department updates the members on the current status and any actions taken by the Department to mitigate the dangers. Once the imminent peril subsides, NEW RULE XXII gives the Department the authority to reopen the site.

COMMENT 28: One commenter requested that the Department prepare a fiscal note for the cost of implementing rules that close a site unless posted open.

RESPONSE 28: The rule proposal restates existing rules, and the Department does not expect a change in cost in implementing them to be beyond already expected costs to update signs.

COMMENT 29: One commenter asked how NEW RULE XIII applies to hunting on state forest lands and state school lands.

RESPONSE 29: NEW RULE XIII does not apply to hunting on land that is managed by the Montana Department of Natural Recourses and Conservation or lands managed by the federal government.

COMMENT 30: Commentators said that not all public use sites will work with one set of rules.

RESPONSE 30: The Commission, Board, and Department agree and have amended NEW RULE XIII to include reference to the laws that govern multiple land uses that FWP is charged with. The public use administrative rules are intended to work together with the seasonal rules adopted by the Commission and the Board.

COMMENT 31: A commenter opposed the portion of NEW RULE IV (ARM 12.12.104) that prohibited “arguing with” any state official as a suppression of his First Amendment right to free speech.

RESPONSE 31: The rule must be read as a whole, and states that a person may be expelled from a public use site for “threatening, resisting, intimidating, arguing with, or intentionally interfering with any official, employee or agent of the department while engaged in the performance of his or her official duties or on account of the performance of his or her official duties.” Circumstances rarely require FWP to remove a person from a site, but it is an appropriate management tool that protects all users, wildlife, and public property.

COMMENT 32: One commenter asked how many pages are in Montana Code Annotated, the size of the pages, and the font size.

RESPONSE 32: This comment is outside the scope of this rulemaking proposal, but the legislature might be able to answer the inquiry.

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/s/  
Jaime MacNaughton  
Rule Reviewer

/s/  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

/s/  
Dustin Temple  
Director  
Fish, Wildlife and Parks

/s/  
Russ Kipp  
Chair  
State Parks and Recreation Board

Certified to the Secretary of State December XX, 2023.