

IMPROVING PUBLIC ACCESS: UNLOCKING PUBLIC LANDS

DEPARTMENT OF FISH, WILDLIFE & PARKS

NOVEMBER 2024

24P-04

Focused Evaluation



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§5-13-202(2), MCA

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PERFORMANCE AUDITS

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are conducted at the request of the Legislative Audit Committee, which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

This report is distributed as required under §5-13-304 (3), MCA, to members of the Legislative Audit Committee and other interested parties. This report contains a written response from the Department of Fish, Wildlife & Parks and we wish to express our appreciation to department staff for their cooperation and assistance during our audit.

Respectfully submitted,

/s/ Angus Maciver

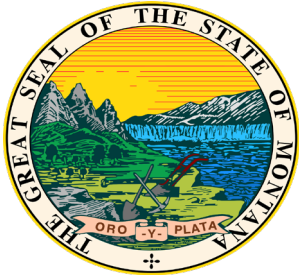
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MONTANA LEGISLATIVE AUDIT DIVISION

FOCUSED EVALUATION

A report to the Montana Legislature
Angus Maciver, Legislative Auditor

Background

Unlocking Public Lands (UPL) is one of several Montana programs designed to enhance public land access. Through UPL, property owners agree to provide a designated access route across their private land to help the public reach otherwise inaccessible public land. In return, participants can receive up to four state tax credits of \$750, provided the access is available for at least six months and one day.

When UPL was established in 2013, it lacked dedicated staff and funding for administration and was incorporated into the existing Department of Fish, Wildlife & Parks Hunter Access Program. This program includes a program manager, seven regional access managers, and seasonal staff who handle public relations, applications, contracts, mapping, enforcement, site maintenance, and signage. The tax credits offered to landowners result in reduced tax revenue for the state's General Fund.

Improving Public Access: Unlocking Public Land

Since its establishment in 2013, the Unlocking Public Lands program has made little progress in expanding public access to public lands. To enhance access, the state should streamline and consolidate its public land access programs, allocate resources for operations, and improve the availability and quality of spatial data for the public. These steps would boost the state's ability to open up public lands.

What We Did

We assessed whether barriers limited the success of the Unlocking Public Lands (UPL) to increase public land access. We interviewed staff from the Department of Fish, Wildlife, & Parks (FWP), Department of Revenue, and Department of Natural Resources and Conservation, representatives of both recreation and landowner organizations, an employee of a private navigation company, and landowners who participated in the program. We reviewed applications and contracts for projects active in 2023 for compliance with state laws and rules. We also traveled to all of the 2024 active projects and traversed one of the access routes. We studied other Montana and other state public access programs to provide a comparison to Unlocking Public Lands. Lastly, we reviewed how FWP and private navigation companies display information about access programs online.

What We Found

In both 2023 and 2024, we found UPL only had four projects unlocking 846 acres of an estimated 3 million acres of locked public land. This is down from a high of 15 projects in 2019. We reviewed each of the four active projects. We found projects met the inaccessibility requirement for inclusion in the program, though project documentation did include some inconsistencies and errors. We also visited and attempted to access public land through all four projects. Two had clear access routes but outdated signage posted at the access points. We did not cross the private land because there was no updated signage confirming the projects' active status. The access routes for the other two projects were either physically inaccessible or difficult to navigate. Figure 1 (page 2) and Figure 2 (page 3) are two examples of UPL projects that were difficult to access.

Based on the number of projects and perceived lack of use of most of the existing projects, we determined the program is not substantially meeting the legislative intent to increase public access to publicly owned lands. Two main barriers hinder UPL's efforts to enhance public access to public land: low appeal and comprehension challenges for program participants (landowners) and ineffective outreach to potential users.

Figure 1



One project access route disappeared from view at times.
All Images Sourced by Legislative Audit Division.

Confusing Landscape of Public Land Access Programs

Montana is a national leader in providing public access to both private and public lands, both in program size and number. However, we found that the abundance of public and private land access programs contributed to low participation in UPL. UPL is only one of six public land access-specific programs in Montana. Each program aims to provide public access to public land, but the means and restrictions of each vary. All but one of these programs are administered by FWP. Key differences among these programs include:

- Accessibility of eligible public land (inaccessible or under-accessible)
- Method and amount of compensation (direct payment or tax credit)
- Funding sources and stipulations
- Types of recreation allowed
- Length of contracts
- Dates and amount of time access is provided
- Application and award dates
- Ability to restrict or limit access
- Review or approval requirement by a commission

Figure 2



Auditor attempting to pass through dense vegetation and a full drainage ditch to reach a UPL access point. Access point (denoted by sign) was difficult to see from the road and attached to a fence with no gate.

The following table lists all public land access programs in Montana, with differences in program structure and requirements. Some of these programs require access only for hunting, while others require access for all recreation allowed on public land. One of these programs, the unnamed 2021 HB 637 easement program, is technically a funding source without a program. Still, because the stipulations for the use of the money do not line up with any of the other access programs, it is listed separately in this table as part of the access program landscape.

Table 1
Each Public Access Program Follows Different Criteria and Restrictions

Program	Legally Inaccessible	Contract Terms	Access Time Frame	Lease Required	Annual Compensation Amount/ Contract
Unlocking Public Land	Yes	1 year	≥6 months + 1 day	State: Yes Federal: No	\$750 tax credit, Max 4
Access Public Lands	No	1 year - perpetuity	Flexible	No	Negotiable payment
Block Management (Public Access Corridors Only)	No	1 - 5 years	Sept. 1 - Jan. 1 OR any hunting season	No	Max \$6.80 per hunter up to \$50,000, complimentary license, weed control support, max \$1,000 enrollment payment*
HB 637 Easements	Yes	Perpetuity	Year-round	Yes	Negotiable payment
MT-PLAN (DNRC)	No	3 years - perpetuity	Unknown	Yes	Appraised value
Public Access Land Agreements	No	1 - 10 years	Flexible	Yes	≤\$15,000 & ≤\$1,000 cost reimbursement

*One time only.

Source: Compiled by the Legislative Audit Division.

UPL Is One of Several Access Programs With Very Few Projects

Based on these restrictions and the comparative appeal of other programs, UPL is one of the least-used public land access programs in the state. Table 2 to the right shows participation in each program, by number of projects and number of estimated acres either unlocked or made more accessible.

While the two longer-term easement programs do not yet have any projects, UPL provides significantly less access to public land than the remaining options.

Table 2
Some Public Access Programs Do Not Successfully Increase Public Land Access

Program	# of Projects (Active 2024)	Public Acres Accessed	Year Created
Unlocking Public Land	4	864	2013
Access Public Lands	20	154,619+	2009
Block Management (Public Access Corridors Only)	3	61,236	1995
HB 637 Easements	0	0	2022
MT-PLAN (DNRC)	0	0	2017
Public Access Land Agreements	69	317,024+	2019

Source: Compiled by the Legislative Audit Division from FWP records.

Promotion and Recruitment Efforts Hindered by Number and Variety of Programs

FWP staff found it challenging to keep track of all the different programs and their nuances. Regional staff described difficulty promoting programs to landowners due to the large number of options. They thought other regional staff who help with recruitment, such as wardens and biologists, also found it difficult to understand program differences. We learned in interviews that even landowners who participated in UPL were unfamiliar with the program name or restrictions. Additionally, staff described most of their time as taken up by numerous Block Management Area private land access projects. This makes it difficult for them to promote or maintain other public access projects, including UPL.

Other States Tend To Consolidate Access Projects Under Fewer Programs

Other states with substantial acreage of locked public land and public access programs (Wyoming, Idaho, and New Mexico) have fewer programs than Montana. These states' programs also do not focus on access routes to public land. We noted other state programs tend to have one flagship program that provides public access in multiple ways. Each of these programs was branded for easy public recognition. Though these programs focus on obtaining public access to private lands (and only sometimes include projects to reach inaccessible public lands), they also tend to be flexible and include a wide range of different access projects to broadly improve public access.

Structure of UPL Is Counterproductive

UPL is relatively unappealing to landowners compared to some of the other public land access programs due to statutory and agency restrictions on its use. The UPL tax credit is both flat and relatively modest at \$750 per year. This encourages submission of smaller and less appealing projects that would receive higher compensation or not qualify in other programs. Participants providing access also may not lease to outfitters on land that is intersected by the access route and must hold the lease on any accessed state land, limiting the pool of eligible access opportunities.

UPL Projects Are Small

UPL requirements discourage larger areas of contiguous public access. Participants in UPL are not permitted to enroll neighboring land in any other access program. Public land in UPL must be otherwise entirely legally inaccessible. Additionally, in 2019 FWP staff interpreted statute in a way that disqualified UPL projects that connect to each other. After we discussed this interpretation with current legal staff, they determined connected projects can be permitted. Though UPL lost some projects due to past disqualifications, there was never a high volume of projects.

UPL Projects Are Not Vetted for Value

Currently the program also does not allow for the relative value of projects to be assessed against the resources required for management and landowner compensation. Some other Montana programs, such as Public Land Access Agreements, include an assessment and recommendation by the

“...UPL is one of the least-used public land access programs in the state.”

- Legislative Audit Division

agency or regional committees regarding the value of access through a project relative to the needed resources. Before committing resources for a project, they can consider features such as the size of a project, distance of nonmotorized access, or quality of hunting in an area. Agency rules can help guide project approval based on the value of access provided. The FWP Director then approves the use of resources on these projects.

Program Landscape and Structure Limit the Realized Benefits of Public Access

The current structure of the UPL and the confusing and crowded public land access program environment have created challenges to the success of the UPL and public access programs. Each program increases the administrative burden on the agency to successfully manage these programs. Limited staff resources are diverted from more successful access programs. The state then misses out on the potential benefits of increasing public access to public lands to improve wildlife management, economic value of public lands, and public health benefits.

Recommendation #1

We recommend the Department of Fish, Wildlife & Parks review the state's array of public access programs to develop and present a comprehensive recommendation to the legislature prior to the 2027 Legislative Session to consolidate public land access programs as appropriate, including:

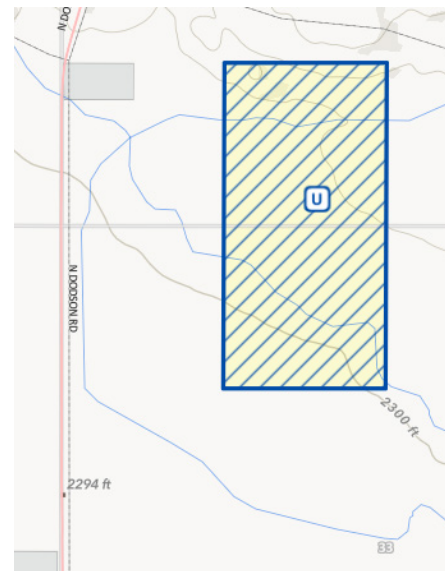
- A. Generalized, high-level program requirements that encourage improving meaningful access to public lands, such as the level of access restrictions required for participation and the ability to develop larger areas of public access in conjunction with other public and private land access programs,
 - B. Identified optimal landowner incentive methods for participation, such as direct payment, tax credit, compensation for damages or improvements relating to access,
 - C. Required funding needed to meaningfully administer the program, including personnel requirements, operations, outreach, and landowner incentives, and
 - D. Retention of rule and policy-making capabilities with FWP or the Private Land Public Wildlife Advisory Committee to develop prescriptive program criteria and streamlined processes relating to access time frame, length, access type, lease requirements, and other specific eligibility requirements.
-

Outreach to Recreationists About Public Access Programs Is Limited

We observed FWP does limited outreach to potential users about UPL and other public land access programs. Representatives of recreation groups did not know enough about the program to provide comments or could only discuss public access generally. Staff and a landowner noted that some of the projects were rarely used by recreationists. FWP's main method of communication and outreach to the public about public access opportunities is through its website and open data portal. However, we found the type and format of information available online makes it less likely potential users could discover access opportunities or successfully stay on designated routes.

FWP's website includes lists of different types of projects with links to georeferenced PDFs that include detailed maps and rules for each project. FWP's interactive web-based map, Hunt Planner, includes location data on public land access programs.

Figure 3



UPL Project on FWP's Hunt Planner map outlines the public land, but does not include the designated access point or route to reach it from the public road through private land.

This map's usefulness to the public was somewhat limited. While the location of public land accessible by UPL projects was viewable, the access points and access routes were not. The map and associated list of projects were not always up to date with newly opened projects. The underlying spatial data was also not shared publicly on FWP's open data portal, unlike similar programs like block management areas (BMA). This means the public cannot use common private navigation applications to scout potential access opportunities or track their location to stay on designated routes.

Figure 4



Auditors successfully reach public land on one of the UPL access routes.

During our site visits, we experienced difficulty successfully navigating projects as a result of sparse spatial data, outdated signage, and physical barriers. Out of the four active projects, we only successfully reached public land through one of the routes.

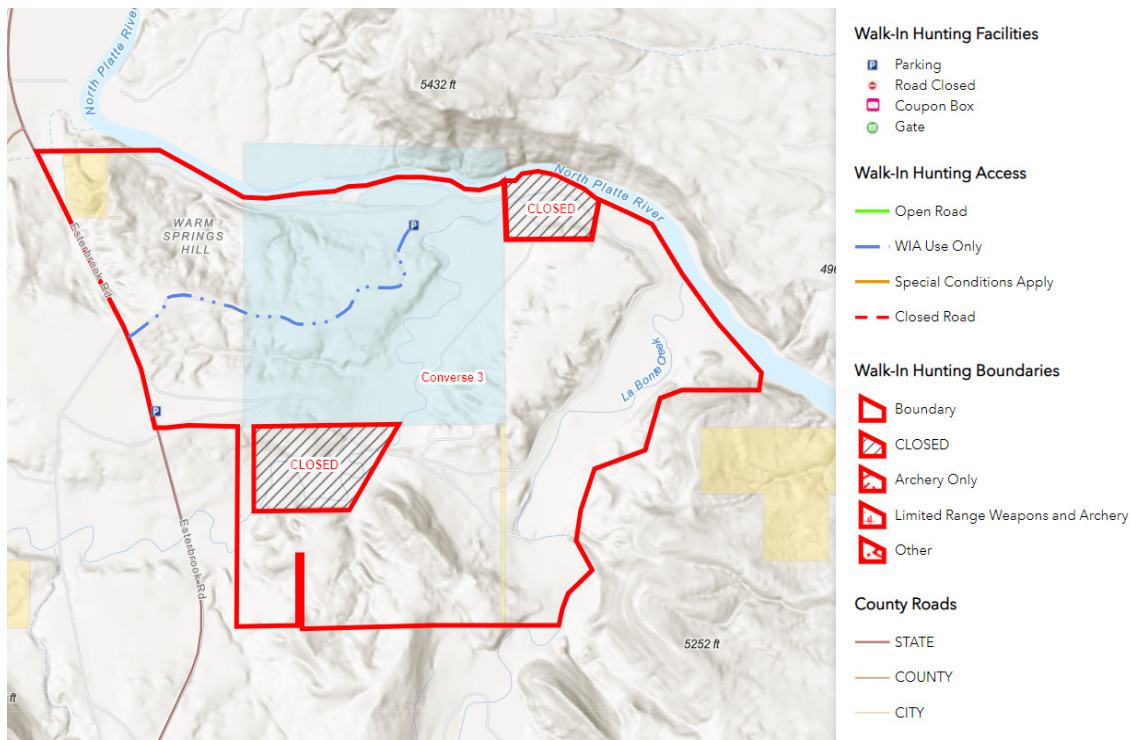
[FWP Provides More Data Access for Other Access Programs](#)

Other Montana access programs focused on private land access, such as Block Management Access (BMA), provide more access to program spatial data to the public. BMA program spatial data is shared on the FWP public data portal. It also includes the location of access points. This data is presented in a format allowing third parties, including private navigation companies, to pull the information for republication on their own platform.

[Other States Provide More Detailed Project Information](#)

Other states' programs provided more publicly available data than FWP provided for UPL. All three other states reviewed provided more guidance in the project pop-ups on their maps than Montana, including detailed information such as access points, access route and mode of transportation restrictions, project start and end date, and hunting restrictions. Wyoming's Access Yes program provided the most detailed information and also shared their data directly with third parties to republish on private navigation platforms.

Figure 5



This example of a land access project in Wyoming that includes an access route and restrictions. The blue route and blue parking areas show the available motorized routes and access points to reach opened private land and unlocked public land (light blue area).

FWP Has Reservations About Sharing Access Data

FWP staff were concerned that providing public land access project data in a format that allowed third parties to use it in other applications increased the risk of project overuse or misuse. They stressed the importance of balancing data availability with landowner needs to avoid alienating landowners. However, staff admit that hunter behavior was not typically a problem for landowners in BMAs despite this data being more widely shared. Staff were also concerned individuals using these applications would not see more detailed rules and restrictions for each project currently provided in FWP's online PDFs. As a result, they fear users are more likely to drive roads on private property that were only open for walk-in access.

Navigation Applications Can Provide More Detail Regarding Project Restrictions

We reviewed how two different private navigation applications presented access project data in applications for BMAs and other state programs. We found one application included what appeared to be up-to-date project sites, access points, and links to the website where the more detailed rules existed. The application did not include project start dates, but FWP also did not provide this information in the Hunt Planner or in shared data. We also observed that in Wyoming, the same application included significantly more detail.

Access points and routes were included, and routes included information about allowed transportation methods. A representative from the company that administers this application shared that they can update as frequently as FWP needs and could also add additional information in Montana if FWP included it in the public data. Based on this information, we determined that navigation applications could provide information useful to avoid trespassing. The availability of access points and routes in applications would also help guide users to project rules posted at access points and keep them on designated routes, as we experienced attempting to access UPL projects.

While one application appeared capable of providing accurate and useful information, we reviewed another application that was not up to date. This application had BMA project locations with links to FWP's website and project PDFs, but most links were broken. We learned from this company that they only update land access data once every three years. As a result, FWP may consider whether access to easily republishable FWP spatial data should require users to make more frequent updates, mandatory inclusion of key rules, and operable links back to each project's FWP page.

Lack of Information Regarding Project Existence and Safe Use Inhibits Program Success

Our work identified a need for FWP to improve outreach and communication of access opportunities by providing more useful data on UPL and other public access program projects. The state risks paying for underutilized land access projects when projects are not posted online or are not available for reference on the tools that the public uses to identify recreation activities. It is also more likely the public will unintentionally violate project rules without available and navigable spatial data. We found that the same data limitations also exist in other FWP public land access programs reviewed for comparison to UPL. Staff indicated providing access points and routes would be possible for active UPL projects. However, the additional work required by regional staff would be unsustainable if UPL grew significantly or if they provided similar data for other public land access programs. The need to provide more comprehensive, available, and timely data regarding public land access projects should be considered as part of agency efforts to address the previous recommendation.

Recommendation #2

We recommend Fish, Wildlife & Parks improve access to public land access projects by:

- A. Adding access points, routes, and restrictions to the FWP Hunt Planner map, and
 - B. Providing access to spatial datasets of access points, routes, and restrictions for public use outside FWP's website.
-

DEPARTMENT RESPONSE
DEPARTMENT OF FISH, WILDLIFE & PARKS

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November 22, 2024

Angus Maciver
Legislative Auditor
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RECEIVED
November 22, 2024
LEGISLATIVE AUDIT DIV.

Dear Mr. Maciver:

Please see below for the Department response regarding the Unlocking Public Lands (UPL) program audit.

Recommendation #1

Response: Concur

Corrective Action: The Department is evaluating all access program options available to landowners to identify ways to create efficiencies for staff and landowners. The Department expects to have the internal review and recommendations completed in 2026 and prior to the 2027 legislative session. The Department will be conducting a survey of landowners who do and do not participate in access programs to better identify optimal landowner incentive methods for participation in 2025.

The Private Land Public Wildlife Advisory Committee (PL/PW) does not have rule or policy making authority. The Department will work with the Governor to identify how best PL/PW can best continue to support the agency. In accordance with 87-1-269, MCA, the PL/PW reviews and provides recommendations to the Department regarding one access program. The Department can develop and propose a new administrative rule package providing the specificity this recommendation suggests.

Recommendation #2

Response: Concur

The Department will ensure all access points, routes, and restrictions are available through FWP's Hunt Planner.

The Department will review options for posting points, routes and restrictions as well as the underlying spatial datasets for use outside of FWP's website. The Department will complete this review and post available program and spatial data for the 2025 hunting season.

Thank you for you and your staff's time and dedication to this work.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Marina Yoshioka', with a long horizontal flourish extending to the right.

Marina Yoshioka
Director (Acting)
Fish, Wildlife and Parks

