

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 34 WILDLIFE HABITAT AND LANDS**  
**PART 7 OPEN GATE: HUNTING AND FISHING ACCESS PROGRAM**

**19.34.7.1 ISSUING AGENCY:** New Mexico Department of Game and Fish.  
[19.34.7.1 NMAC - N, 10-31-2005]

**19.34.7.2 SCOPE:** General public.  
[19.34.7.2 NMAC - N, 10-31-2005]

**19.34.7.3 STATUTORY AUTHORITY:** Sections 17-1-1, 17-1-2, 17-1-5.1, 17-1-14, 17-1-26, 17-2-6 and 17-4-1 NMSA 1978, provide the New Mexico state game commission with the authority to lease lands for game management and wildlife habitat as well as acquire properties for hunting grounds. Also, to provide for use of game and fish for use and development for public recreation, and to establish rules and regulations that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.  
[19.34.7.3 NMAC -N, 10-31-2005; A, 9-30-2010]

**19.34.7.4 DURATION:** Permanent.  
[19.34.7.4 NMAC - N, 10-31-2005]

**19.34.7.5 EFFECTIVE DATE:** October 31, 2005, unless a later date is cited at the end of a section.  
[19.34.7.5 NMAC - N, 10-31-2005]

**19.34.7.6 OBJECTIVE:** To establish fees, and other rules for accessing private lands, state lands (including lands of counties and other instrumentalities of the state), tribal lands and federal lands for recreational uses like hunting, fishing, trapping and other endeavors.  
[19.34.7.6 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010]

**19.34.7.7 DEFINITIONS:**

- A. "Commission"** shall mean the New Mexico state game commission.
  - B. "Director"** shall mean the director of the New Mexico department of game and fish.
  - C. "Department"** shall mean the New Mexico department of game and fish.
  - D. "Open gate"** shall mean a program of the department to provide hunters, anglers, and trappers with wildlife associated activities as determined by the department with the purpose to increase access on private lands, state lands (including lands of counties and other instrumentalities of the state), federal lands or tribal lands.
  - E. "Landowner"** shall mean a private landowner, lessee, tribal entity, or local, state, or federal entity authorized to manage property with whom the department enters into an open gate access agreement.
  - F. "Open gate property"** shall mean lands enrolled in the open gate program recognized as a game and fish management area for the purposes designated.
- [19.34.7.7 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

**19.34.7.8 HABITAT MANAGEMENT AND ACCESS VALIDATION FEE:** On or after April 1, 2006 no resident or nonresident license or permit shall be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check-off or other official mark, that a \$4.00 fee for habitat management and access validation has been paid, provided that an individual purchaser shall be required to pay for only one habitat management and access validation fee each license year, regardless of the number of licenses or permits purchased by the licensee. Exceptions: no person under the age of 18, no resident angler age 70 and older and no person designated by the department as a 100% disabled resident veteran is required to purchase the habitat management and access validation.  
[19.34.7.8 NMAC - N, 10-31-2005; A, 3-31-2006; A, 10-31-2006; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

**19.34.7.9 PROHIBITION OF DISCRIMINATION:** If otherwise qualified as stated above, no one shall be denied use of leased private lands, state lands (including lands of counties and other instrumentalities of the state), tribal lands and federal lands on the basis of race, color, religion, gender, sexual orientation or national origin.  
[19.34.7.9 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010]

**19.34.7.10 ACCESS AGREEMENTS FOR THE OPEN GATE PROGRAM:**

**A.** The director may enter into open gate access agreements for hunting, fishing, trapping or other recreational endeavors to take place on private land with suitable habitat to support the recreational uses, or to provide a right-of-way corridor through private land or tribal land to large, inaccessible blocks of public lands meeting the conditions of 19.34.7.11 NMAC.

(1) Such access agreements shall include the name of the landowner, map of the property, the permitted uses, property rules, responsibilities of the landowner and department, term, amount of compensation, the liability clauses for the department and landowner, with signatures of the director and landowner.

(2) Landowners shall agree participation is voluntary and enrollment is contingent on the annual availability of funds.

(3) All renewals of open gate access agreements shall be subject to annual review per the requirements found in 19.34.7.11 NMAC.

**B.** Subject to consideration for access rights granted by the landowner, the landowner shall be paid a fee pursuant to commission approved fee schedule or as otherwise approved by the director for unique circumstances.

**C.** To enhance wildlife habitat and provide a more quality hunting, fishing and trapping experience on participating properties, the department may provide additional financial and technical incentives for wildlife habitat improvements undertaken by the landowner. The terms and conditions of such improvements and incentives shall be negotiated between the landowner, the department and local, state, or federal partners as appropriate.

**D.** Amendments of an existing open gate access agreement may only be done by mutual consent of the department and landowner, in writing.

**E.** False representation of a property's rightful ownership is grounds for legal action and will result in immediate termination of the access agreement.

[19.34.7.10 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

**19.34.7.11 PARTICIPATION REQUIREMENTS:**

**A. Minimum qualifications:** Lands or waters eligible for enrollment in the open gate program must provide suitable fish or wildlife habitat or access to said habitat to support the recreational uses designated through an open gate agreement, and meet, at minimum, one of the following conditions:

(1) enrollment will result in increased hunting, fishing or trapping access on private land; or

(2) enrollment will provide a meaningful access corridor to large or exceptional, inaccessible blocks of state lands, federal lands or tribal lands for hunting, fishing or trapping; or

(3) enrollment may improve regional wildlife or fisheries management goals of the department which may include, but are not limited to, supplying quality or extraordinary hunting, fishing or trapping opportunities and enhancing fish or wildlife habitat conditions.

**B. Enrollment process:**

(1) Persons interested in enrolling in the open gate program must submit a completed application and provide proof of ownership, or if leasing the property, a copy of the lease with a notarized and signed statement from the landowner authorizing program participation.

(2) All applications are subject to a department evaluation to determine if the lands or waters proposed for enrollment satisfy the requirements found in 19.34.7.11 NMAC.

(3) If the lands or waters do not meet the requirements, the applicant will be notified that the application does not qualify for participation in the open gate program.

(4) If the department determines the lands or waters meet the requirements, the department and landowner may negotiate an open gate access agreement.

[19.34.7.11 NMAC - N, 9-30-2010; A, 7-31-2012]

**19.34.7.12 USE OF OPEN GATE AREAS:**

**A.** Any person accessing land enrolled in the open gate program to hunt, fish or trap must:

(1) obtain and possess a valid hunting, fishing or trappers license when required unless otherwise provided in the access agreement; and

(2) comply with enrolled property rules as described on the access agreement and as posted at access points or parking areas to include manner and method of take or other special use restrictions as posted.

**B.** It shall be unlawful for any person to violate any provisions posted on an open gate property.

[19.34.7.12 NMAC - N, 9-30-2010; A, 7-31-2012]

**HISTORY OF 19.34.7 NMAC: [RESERVED]**