

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

**Rulemaking related to wildlife habitat promotion**

The Natural Resource Commission (Commission) hereby rescinds Chapter 23, “Wildlife Habitat Promotion With Local Entities Program,” Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 455A.5(6)“a.”

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 483A.3.

*Purpose and Summary*

Chapter 23 establishes the procedures to provide local entities with their share of wildlife habitat stamp revenues. The wildlife habitat stamp is a required purchase in conjunction with most hunting and trapping licenses. By law, the stamp dollars are to be spent, in part, via an allotment to local entities. The rules set forth a grant program to distribute these funds and specify application procedures, eligible projects, grant award criteria, payment terms, and other general grant administration terms.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), this chapter was edited for length and clarity.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7235C**. Public hearings were held on January 16 and 18, 2024, at 1 p.m. at Wallace State Office Building, Conference Room 4E, 502 East 9th Street, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Commission on April 11, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

This rulemaking is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on June 5, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 571—Chapter 23 and adopt the following new chapter in lieu thereof:

CHAPTER 23

WILDLIFE HABITAT PROMOTION WITH LOCAL ENTITIES PROGRAM

**571—23.1(483A) Purpose and definition.** The purpose of this chapter is to designate procedures for allotments of wildlife habitat stamp revenues to local entities. These funds must be used specifically for the acquisition of whole or partial interests in land from willing sellers for use as wildlife habitats, and the development and enhancement of wildlife lands and habitat areas. The department will administer the stamp funds for the purposes as stated in the law at both the state and local levels. The following definition applies in these rules:

*“Waiver of retroactivity”* means approval by the department for an applicant to purchase land prior to the next round of wildlife habitat fund application reviews. The waiver allows the applicant to remain eligible for the next round of wildlife habitat funds when extenuating circumstances exist that require an immediate purchase of the subject property by the applicant or a third party that will hold the property until funds become available to the applicant.

**571—23.2(483A) Availability of funds.** Habitat stamp funds are dependent on stamp sales. The amount of moneys available at any time will be determined by revenues received by the department. Final stamp sales for each calendar year will be determined by July 1 of the following year.

**23.2(1) Local share.** Funds available for local entities shall be specified in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

**23.2(2) Distribution.** After deducting 5 percent to be held for contingencies, the remaining local share will be available on a semiannual basis each year.

**571—23.3(483A) Project limitations.** Because of administrative costs, no application for assistance totaling less than \$3,000 (total project cost—\$4,000) will be considered.

**571—23.4(483A) Eligibility for cost-sharing assistance.** No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the director, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, such as waterfowl refuges. Fees charged for recreational purposes will not be allowed on land purchased or developed with wildlife habitat funds. Wildlife habitat promotion funds shall not be used to fund mitigation lands or banks, or other lands, to satisfy mitigation requirements. Only the following types of project expenditures will be eligible for cost-sharing assistance:

**23.4(1) Acquisition projects.** Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the department staff. Applicants whose applications have been approved for funding must submit an appraisal that meets the Uniform Appraisal Standards for Federal Land Acquisitions “Yellow Book” (2016). The appraisal requirements may be waived when the staff determines that they are impractical for a specific project. Cost sharing will not be approved for more than 75 percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.10(3) or by

reimbursement to local entities. When a county receives or will receive financial income directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action, 75 percent of that income will be transferred to the department unless the grantee has demonstrated and committed to habitat development projects or additional acquisitions on the project site to be funded from the income received. The project review and selection committee must recommend, and the director and commission must approve, plans for the expenditure of income. In the absence of acceptable wildlife habitat development or acquisition plans, the county will transfer 75 percent of income received to the department as it is received. The department will credit that income to the county apportionment of the wildlife habitat stamp fund as described in subrule 23.2(1). The schedule of those reimbursements from a county to the state will be included in the project agreement.

**23.4(2) *Development and enhancement projects.*** Equipment purchases are not eligible. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. Force account means the agency’s own labor and equipment use. Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

**571—23.5(483A) Application for assistance.**

**23.5(1) *Form.*** Applications shall be submitted on forms provided by the department.

**23.5(2) *Time of submission.*** The department shall publish on its website the date and time for submitting a funding proposal, providing at least 90 days’ notice. Applications must be submitted to the department as described on the website. Local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

**23.5(3) *Local funding.*** By signing the application, the applicant agency is certifying that all required match has been identified and is committed and available for the project. An applicant shall certify in writing that it has the 25 percent match committed and available, by signing on the signature block provided on the application, and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application. All financial income received directly or indirectly from sources that would have been paid to the previous landowner as a result of a purchase agreement or other title transfer action will be completely documented in the application.

**571—23.6(483A) Project review and selection.**

**23.6(1) *Review and selection committee.***

*a.* A review and selection committee, hereinafter referred to as the committee, composed of one person appointed by the director to represent the department and designated by the director as chairperson and four persons appointed by the director to represent county conservation boards shall recommend grant applications and amendments for funding. Additionally, there shall be at least two alternates designated by the director to represent the county conservation boards in the event of a conflict of interest.

*b.* Conflict of interest. An individual who is a member, volunteer, or employee of a county conservation board that has submitted a project shall not serve on the scoring committee during that award cycle. Instead, one of the alternates shall review and score in the individual’s place.

**23.6(2) *Application rating system.*** The committee will apply a numerical rating system to each grant application that is considered for fund assistance that will be posted on the department’s website, providing at least 90 days’ notice. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3
Species diversity	1

Each criterion will be given a score of from 0 to 10 that is then multiplied by the weight factor. Four additional criteria will be considered in the rating system:

*a. Prior assistance.* Any applicant who has never received a prior grant for acquisition of land will be given a bonus of five points.

*b. Active projects.* Any applicant who has one or more active projects at the time of application rating will be assessed five penalty points for each project that has not been completed. A project is deemed closed after the project has had a final inspection, all funds have been paid and, in the case of acquisition, the title has been transferred from the seller.

*c. Urgency.* Projects may be given one or two bonus points if there is a strong urgency to acquire lands that might otherwise be lost.

*d. Cost-effectiveness.* Projects will be given one point if the grant amount requested is at least 35 percent less than the appraised amount or two points if at least 45 percent less than the appraised amount.

All points will be totaled for each application, and those applications receiving the highest scores will be recommended for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than 45 points will not be funded.

**23.6(3) Applications not selected for fund assistance.** All applications not selected for fund assistance will be retained on file for consideration and possible funding for three consecutive review periods or until a request for withdrawal is received from the applicant.

**23.6(4) Rating system not used.** The rating system will not be applied during any semiannual period in which the total grant request, including backlogged applications, is less than the allotment. Applications will be reviewed only to determine eligibility and overall desirability, and to ascertain that they meet minimum scoring requirements.

**23.6(5) Rating of scores for tiebreakers.** If two or more projects receive the same score, the committee shall use the points awarded to the highest weighted factor and so forth, beginning with existing or potential habitat quality, to determine which project has a higher rank. If after considering the existing or potential habitat quality points the project scores remain tied, the committee will then consider the points awarded for species diversity. If after considering the species diversity points the project scores remain tied, the committee will then consider the points awarded for wildlife habitat needs.

**571—23.7(483A) Commission review.** The commission will review committee recommendations semiannually at the next following commission meeting. The commission may accept or reject any application recommended for funding.

**571—23.8(483A) Grant amendments.** Projects for which grants have been approved may be amended, if funds are available, to increase or decrease project scope or to increase or decrease project costs and fund assistance. Project changes must be approved by the selection committee and then by the director prior to their inception. Amendments to increase project costs and fund assistance due to cost overruns will not be approved if the work has already been performed.

**571—23.9(483A) Timely commencement of projects.** Projects for which grants are approved shall be commenced within six months of the date upon which the grantee is notified that the project is approved, or at another date agreed upon by both parties. Failure to do so may be cause for termination of the project and cancellation of the grant by the commission. Each project will be assigned a project period. Extensions will only be granted in case of extenuating circumstances.

**571—23.10(483A) Payments.**

**23.10(1) Grant amount.** Grant recipients will be paid 75 percent of all eligible costs incurred on a project up to the amount of the grant unless otherwise specified in the project agreement.

**23.10(2) Project billings.** Grant recipients shall submit billings for reimbursements or cost sharing on forms provided by the department.

**23.10(3) Acquisition projects.** If clearly requested in the project application and the applicant has shown good cause for such procedure, the department may approve direct payment to the seller of the state's share provided that marketable fee simple title, free and clear of all liens and encumbrances or material objections, is obtained by the local entity at the time of payments and state funds are then available.

**23.10(4) Development projects.** On approved development projects, payment will be made by the department only as reimbursement for funds already expended by the local entity.

**571—23.11(483A) Recordkeeping and retention.** A grant recipient shall keep adequate records relating to its administration of a project, particularly relating to all incurred costs and direct or indirect income from other sources that normally would have been paid to the previous landowner resulting from a purchase agreement or other title transfer action. A copy of the county's audits particularly showing such income and disbursements for the grant period will be submitted to the department's budget and grants bureau. These records shall be available for audit by appropriate personnel of the department and the state auditor's office. All records shall be retained in accordance with state laws.

**571—23.12(483A) Penalties.** Whenever any property, real or personal, acquired or developed with habitat stamp fund assistance passes from the control of the grantee or is used for other purposes that conflict with the project purpose, it will be considered an unlawful use of the funds. The department shall notify the local entity of any such violation.

**23.12(1) Remedy.** Funds used unlawfully must be returned to the department for inclusion in the wildlife habitat stamp fund, or a property of equal value at current market prices and with commensurate benefits to wildlife must be acquired with local, non-cost-shared funds to replace it. Such replacement must be approved by the commission. The local entity shall have a period of two years after notification by the department in which to correct the unlawful use of funds. The remedies provided by this rule are in addition to others provided by law.

**23.12(2) Land disposal.** Whenever it has been determined and agreed upon by the grantee and the commission that land acquired or developed with habitat stamp fund assistance is no longer of value for the project purpose, or that the local entity has other good cause, the land, with the approval of the commission, may be disposed of and the proceeds thereof used to acquire or develop an area of equal value, or 75 percent of the proceeds shall be returned to the state for inclusion in the wildlife habitat stamp fund.

**23.12(3) Ineligibility.** Whenever a local agency is in violation of this rule or the grant agreement, it shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the commission.

These rules are intended to implement Iowa Code section 483A.3.

[Filed 4/11/24, effective 6/5/24]

[Published 5/1/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/1/24.