

# **Draft Programmatic Environmental Assessment Habitat Conservation Lease Agreements**



**June 13, 2022**



# **Habitat Conservation Lease Agreements Draft Programmatic Environmental Assessment**

## **PART I. PROPOSED ACTION DESCRIPTION**

### **1. Type of proposed state action:**

Montana Department of Fish, Wildlife and Parks (FWP) is proposing development and implementation of a habitat conservation leasing program across the state. Conservation leases are incentive-based, voluntary agreements that would be offered by FWP to help conserve priority wildlife habitats on private lands while also supporting public hunting and recreation opportunity and working lands. The program would offer two options, 30 and 40 years in length. This programmatic environmental assessment (EA) describes what this program and associated agreements would entail, habitat priorities, the processes involved for further analysis and enrollment, and how the program could affect the physical and human environments.

### **2. Agency authority for the Proposed Action:**

FWP has the authority under 87-1-201, MCA to protect, enhance, and regulate the use of Montana's fish and wildlife resources and to manage those species in a manner that prevents the need for federal listing, all for public benefit now and in the future. MCA 87-1-242 and 87-1-209 further authorize FWP to conserve wildlife habitat through landowner agreements funded by Habitat Montana and other funding sources. The proposed conservation lease program would operate consistent with Habitat Montana policies (ARM 12.8.508-512).

### **4. Anticipated Schedule (Tentative Dates):**

The following schedule and related actions are contingent on the outcome of this environmental assessment:

- Public comment period: June 13-July 13, 2022
- Decision Notice completed: July 25, 2022
- Initiate the conservation lease program with an initial 45-day application period focusing on prairie habitats through targeted outreach and advertising: August 1-September 15, 2022. These priority prairie habitats would include sagebrush grasslands, mixed grass prairie, wetland-grassland complexes of eastern and southwest Montana, involving habitats overlapping with parts of 45 counties.
- Seek Fish and Wildlife Commission programmatic approval to enroll up to 500,000 acres into conservation leases over the next five years, consistent with the details adopted through the Decision Notice. Alternatively, the Commission may choose a different approach for approving individual conservation leases: August 25, 2022

- Conduct application ranking, make initial funding determinations, and complete field reviews, lease agreements, due diligence, checklist environmental assessments and public review, and subsequent enrollments: October 2022-April 2023
- Conduct annual or twice annual application cycles focusing on priority habitats identified in this EA as available funding, landowner interest, and Commission authorizations dictate.

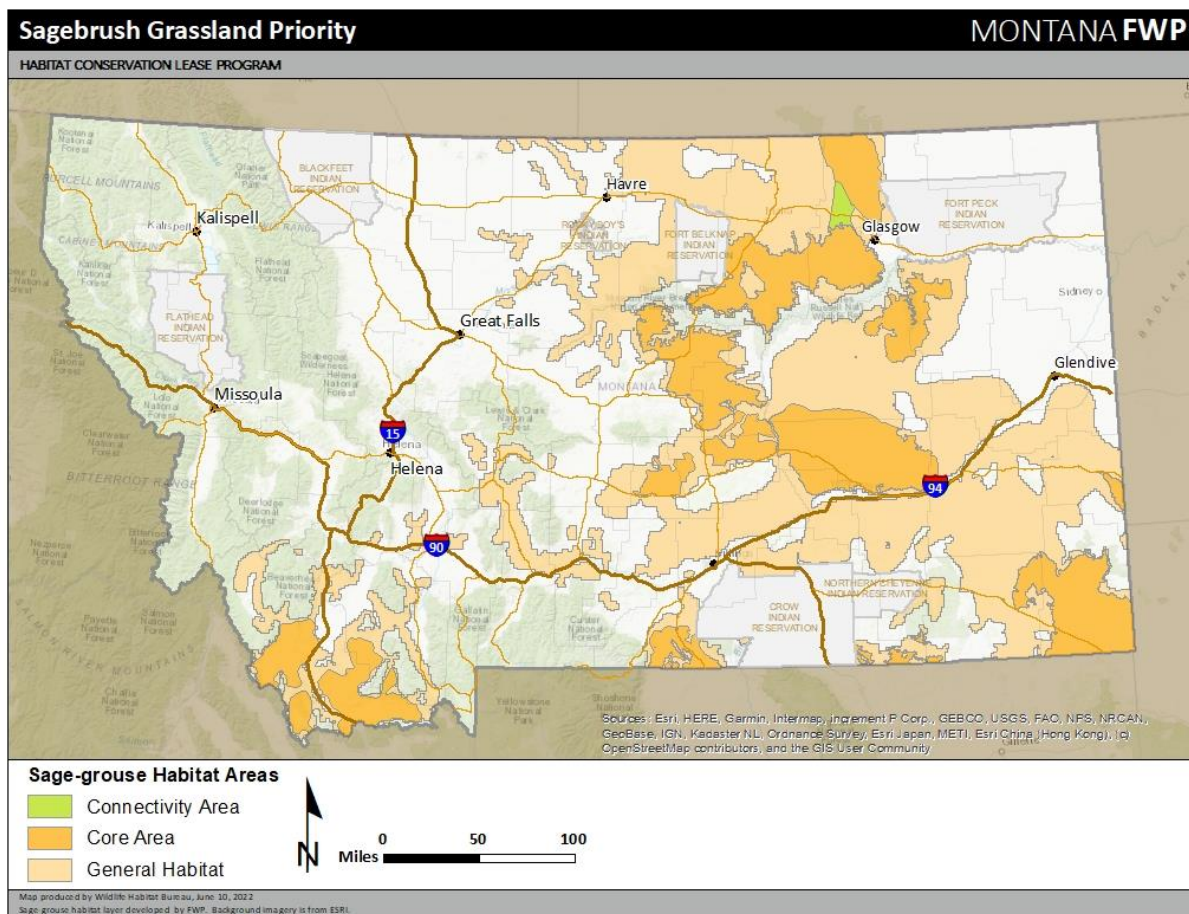
## 5. Location affected by Proposed Action:

FWP proposes to establish a conservation lease program focusing on priority wildlife habitats distributed across the state. The Habitat Montana Plan (FWP 1995) and the more recent habitat prioritization described in the State Wildlife Action Plan (2015) identify terrestrial habitats of highest conservation priority. Consistent with both plans, five habitats are recognized in this EA as key for supporting game species and Species of Concern and are subject to a variety of habitat fragmentation threats. These are shrub grasslands, mixed grass (lowland) prairie, wetland-grassland, intermountain shrub and grasslands, and riparian floodplain habitats. These are further described as follows and coarsely depicted in **Figures 1-6**:

### **Shrub Grasslands**

Shrub grasslands comprise primarily sagebrush grassland habitats extending across eastern and southwestern Montana, associated with the Missouri and Yellowstone River watersheds. These habitats are commonly dominated by big sagebrush (*Artemisia tridentata*). Wyoming big sagebrush (subspecies *wyomingensis*) is more common in the eastern plains and dryer areas of southwest Montana. Mountain big sagebrush (subspecies *vaseyana*) is more common in higher elevation areas associated with intermountain valleys and foothills. Basin big sagebrush (subspecies *tridentata*) is associated with deeper soil areas of southwest, southcentral, and southeastern Montana (Wambolt and Frisina 2002). Sagebrush grassland habitats also extend north of Highway 2 along the Montana hi-line but are more commonly dominated by plains silver sagebrush (*A. cana*). Across these habitats, common grasses would include western wheatgrass (*Pascopyrum smithii*), green needlegrass (*Nassella viridula*), bluebunch wheatgrass (*Pseudoroegneria spicata*), and blue grama (*Bouteloua gracilis*) (Hansen et al. 2008). Higher elevation areas would also commonly include Idaho fescue (*Festuca idahoensis*).

This habitat is particularly important for sage-grouse (*Centrocercus urophasianus*) and other sagebrush-associated and sagebrush obligate species, including pronghorn (*Antilocapra americana*), mule deer (*Odocoileus hemionus*), sage thrasher (*Oreoscoptes montanus*), Brewer's sparrow (*Spizella breweri*), sage sparrow (*Artemisiospiza nevadensis*), sagebrush lizard (*Sceloporus graciosus*), pygmy rabbit (*Brachylagus idahoensis*), sagebrush vole (*Lemmys curtatus*). Priorities within this habitat would include areas identified as sage-grouse core and, to a lesser extent, sage-grouse general and connectivity habitats (**Figure 1**).



**Figure 1.** Priority sagebrush grassland areas of Montana. Core sage-grouse areas are considered the highest conservation priority within this habitat type.

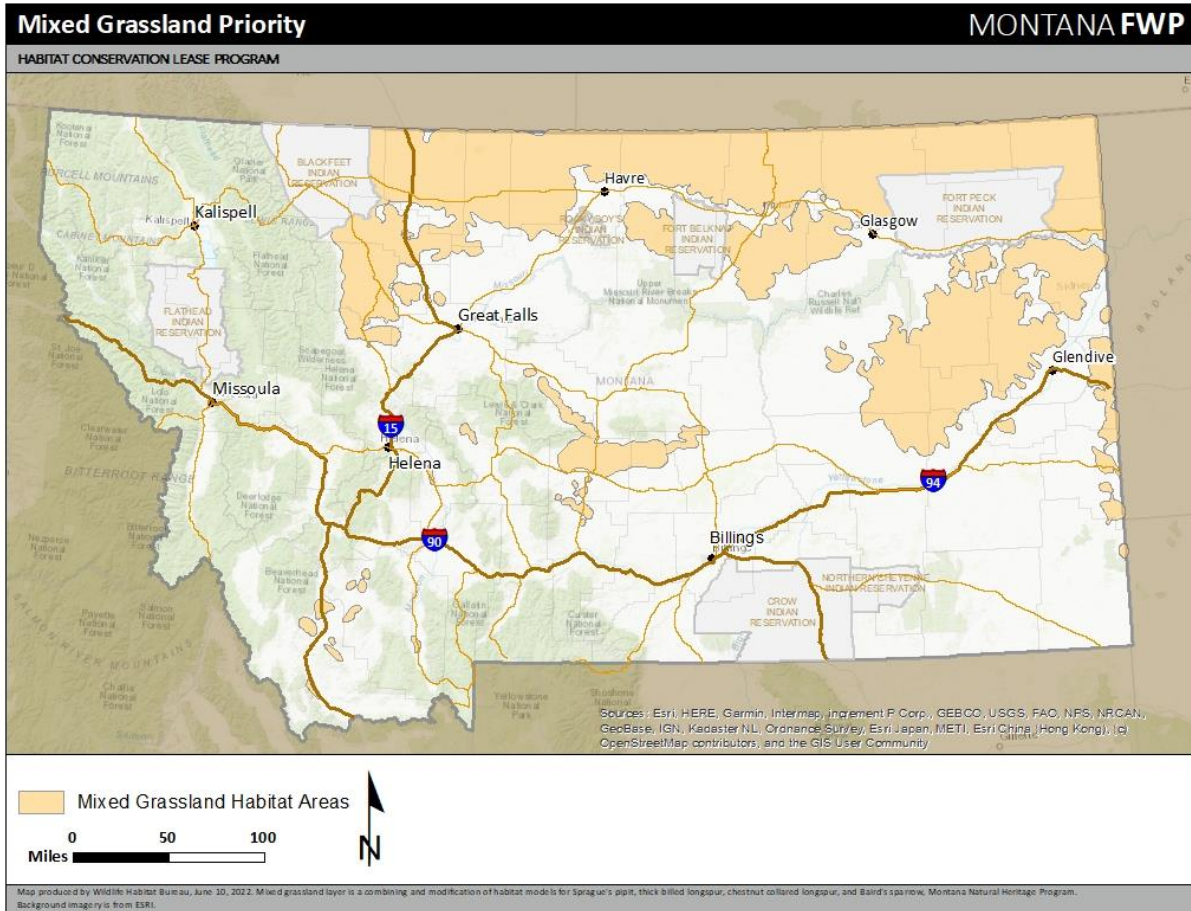
### Mixed Grass Prairie

This habitat in some areas is intermingled with sagebrush grasslands. Mixed grass prairie extends from the east slopes of the Rocky Mountains across the plains of eastern Montana. These grasslands commonly comprise combinations of western wheatgrass, green needlegrass, bluebunch wheatgrass, sedge species (*Carex* species), needle and thread (*Hesperostipa comata*), prairie junegrass (*Koeleria macrantha*), blue grama, Nuttall's alkaligrass (*Puccinellia nuttalliana*), saltgrass (*Distichlis spicata*), and others (Hansen et al. 2008).

These prairie habitats support many game and non-game species but are particularly recognized for their importance to grassland species that have experienced long-term population declines due to extensive habitat conversion across their range. These include Sprague's pipit (*Anthus spragueii*), thick-billed longspur (*Rhynchophanes mccownii*), chestnut collared longspur (*Calcarius ornatus*), Baird's sparrow (*Ammodramus bairdii*), long-billed curlew (*Numenius americanus*), and swift fox (*Vulpes*



velox). Larger blocks of native grasslands would be a priority for conservation, particularly where these grassland bird species are most abundant (**Figure 2**).

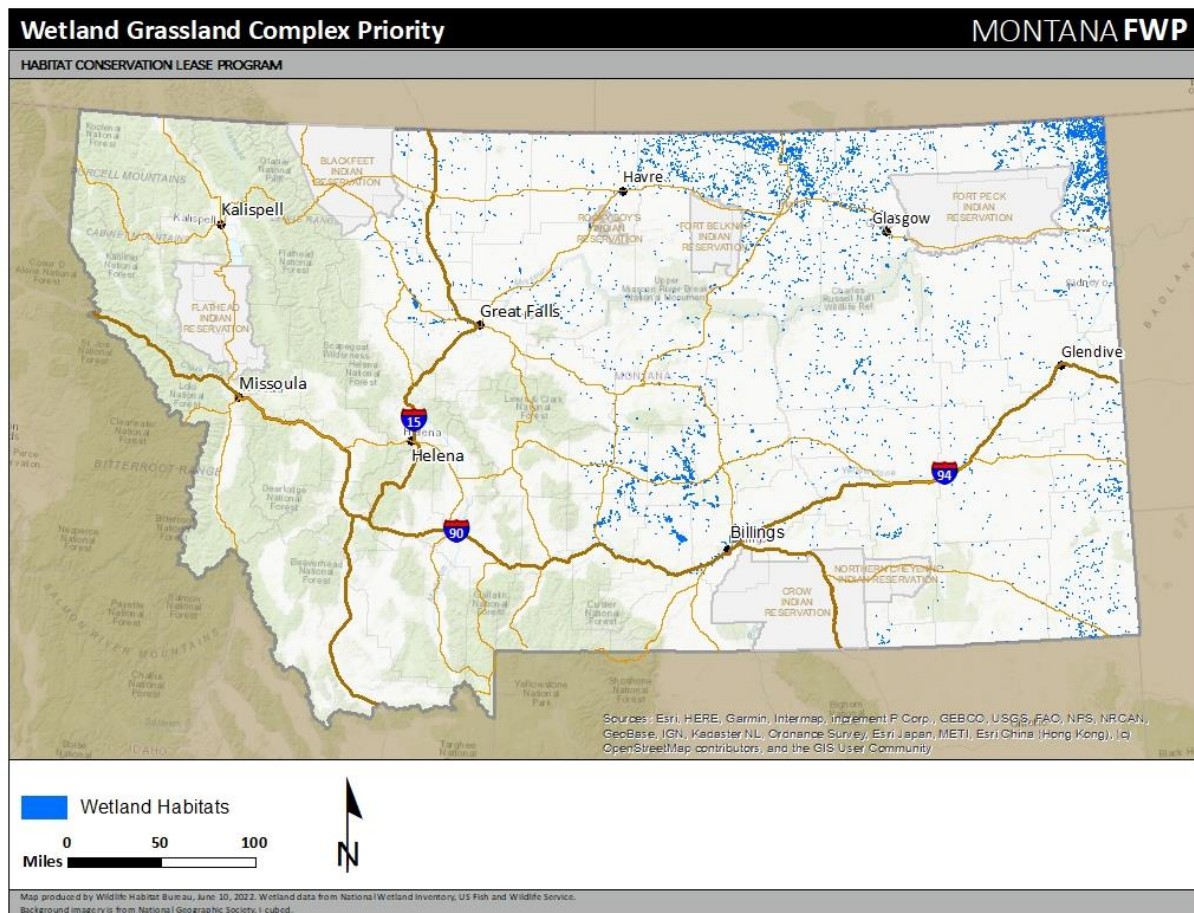


**Figure 2.** Priority areas for conserving mixed grass prairie habitats, based primarily on breeding habitats of four grassland bird species that have experienced long term population declines – Sprague’s pipit, thick-billed longspur, chestnut-collared longspur, and Baird’s sparrow.

### **Wetland Grassland**

This habitat refers to depressional wetland complexes in parts of the eastern plains of Montana. Today, these formerly glaciated areas comprise varying densities of wetland basins, ranging from one to more than one hundred “potholes” per square mile. Such wetland complexes occur within both mixed grass and sagebrush grassland habitats, mostly north of the Missouri River, but also occurring in other parts of eastern Montana (**Figure 3**). These wetland habitats commonly comprise emergent vegetation including bulrush (*Schoenoplectus spp.*), spikerush (*Elocharis spp.*), rush (*Juncus spp.*), and sedge species along the wetland margins (Lesica and Husby 2015) as well as partly or fully submerged plants including coontail (*Ceratophyllum demersum*), common elodea (*Elodea canadensis*), pondweed (*Potamogeton spp.*), and water milfoil (*Myriophyllum spp.*) (Carpenedo and Saul 2012).

These unique complexes provide a diversity of habitat features unlike any other areas of the state. In addition to the upland habitat values, these wetland complexes are highly valued as breeding and migration habitat for many species of waterfowl, shorebirds, and wading birds, as well as many species of amphibians and other wetland-associated wildlife.



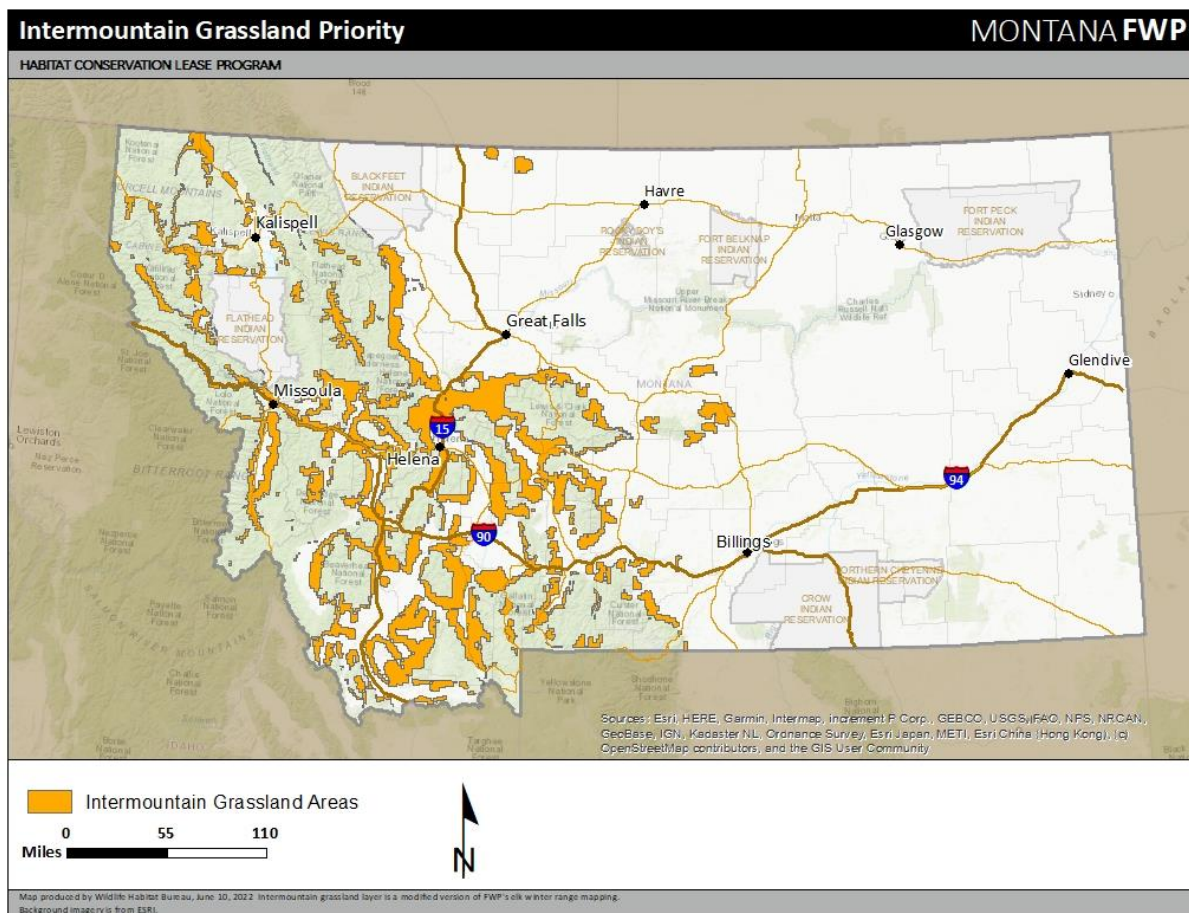
**Figure 3.** Areas of high wetland density and intact grasslands are a priority for conservation because of their unique habitat values, particularly for migrating waterfowl and shorebirds. This map depicts an assortment of wetland types, including depressional wetlands formed by glacial activity.

### Intermountain Shrub and Grassland

Grass and shrub habitats that interface with lower elevation montane forests and extend toward valley bottoms have been subject to extensive subdivision development (**Figure 4**). This intermountain habitat overlaps with some of the priority sagebrush grasslands described earlier. These habitats are commonly characterized by a mix of perennial grasses and shrubs (Mueggler and Stewart 1980), including Idaho fescue, rough fescue, bluebunch wheatgrass, needle and thread, tufted hairgrass (*Deschampsia cespitosa*), big sagebrush, antelope bitterbrush (*Purshia tridentata*), curl-leaf mountain

mahogany (*Cercocarpus ledifolius*), skunkbush sumac (*Rhus trilobata*), and shrubby cinquefoil (*Potentilla fruticosa*).

These habitats provide considerable seasonal and year-long habitat value for a mix of native wildlife. Elk (*Cervus canadensis*) and mule deer (*Odocoileus hemionus*) that spend their summers on higher elevation forest and parklands are forced by winter snow to these foothill habitats, particularly sites with south facing exposures where snow conditions tend to be more tolerable. These habitats also support nesting for many grassland birds, yearlong habitat for small mammals, and feeding areas for black (*Ursus americanus*) and grizzly (*U. arctos*) bears and mountain lions (*Puma concolor*). With considerable diversity of forb and shrub species, these areas also provide extensive pollinator habitat.

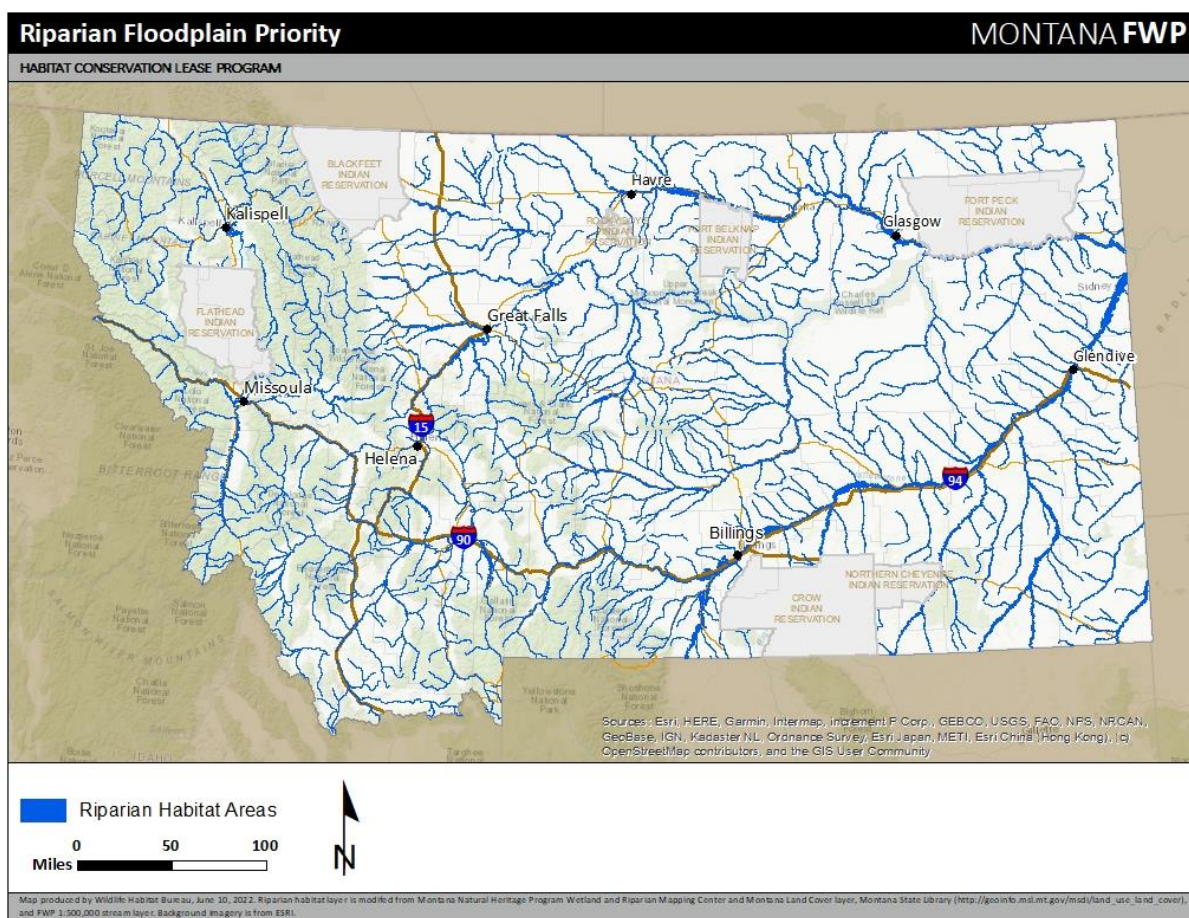


**Figure 4.** Grassland and shrubland habitats associated with mountain foothills provide critical big game wintering habitat and support many other wildlife species. These areas are also susceptible to building developments.



## Riparian Floodplain

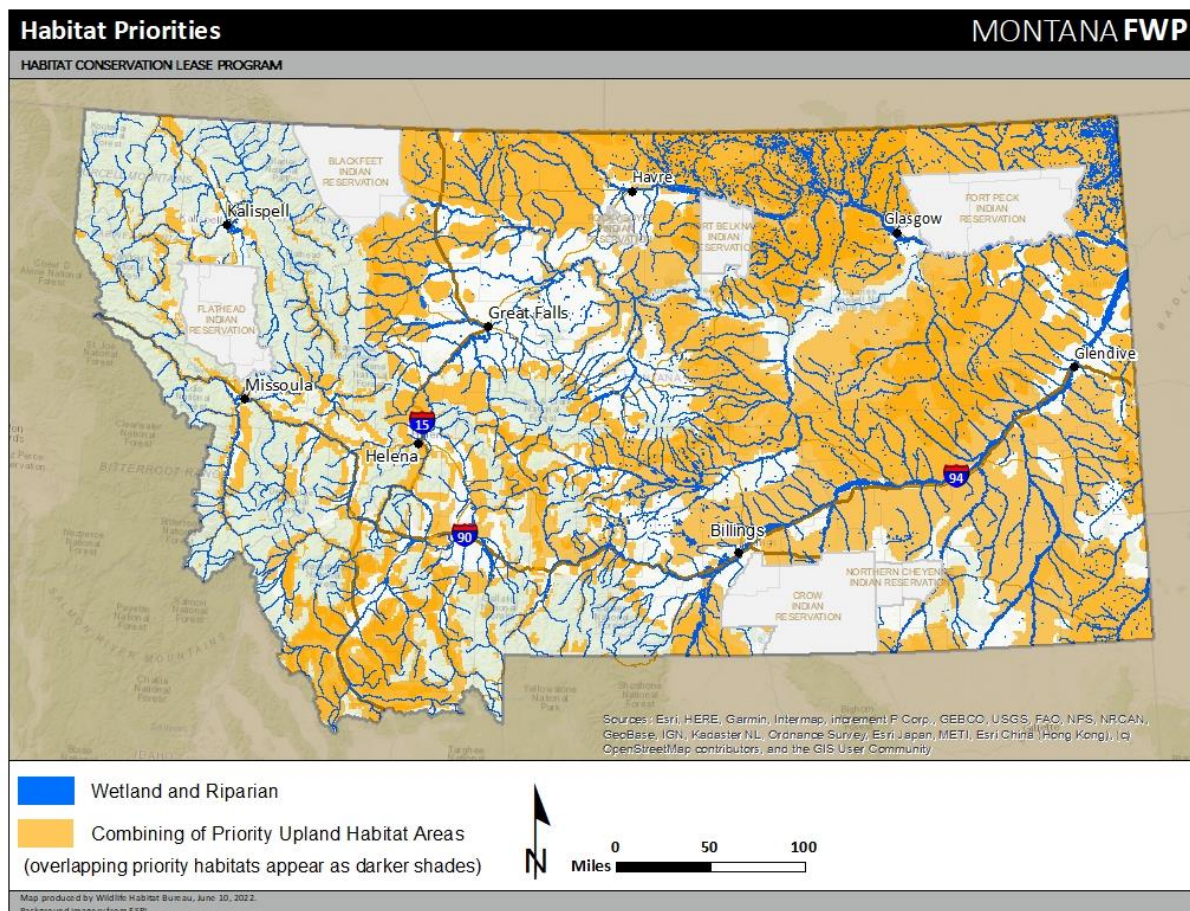
The riparian floodplain habitats recognized in this EA refer primarily to rivers with extensive floodplain and intact riparian habitats such as portions of the Missouri, Yellowstone, Milk, Jefferson, Madison, Clark Fork, Bitterroot, and other rivers and tributaries (**Figure 5**). These habitats are strongly influenced by shallow water tables resulting in a green zone of diverse plant communities (Hansen et al. 1988). The overstories commonly comprise black, eastern, or narrowleaf cottonwoods (*Populus* species), green ash (*Fraxinus pennsylvanica*), quaking aspen (*Populus tremuloides*), box-elder (*Acer negundo*), peach-leaf willow (*Salix amygdaloides*), and Rocky Mountain juniper (*Juniperus scopulorum*). Understory shrubs commonly include common chokecherry (*Prunus virginiana*), willow species (*Salix* species), silver buffaloberry (*Shepherdia argentea*), silver sagebrush, common snowberry (*Symphoricarpos albus*), red-osier dogwood (*Cornus sericea*), and many others.



**Figure 5.** Riparian and associated floodplain habitats make up a small part of Montana's landscape but are among the most productive for wildlife habitat. This map depicts major river systems and tributaries, many of which support extensive riparian features.



Green vegetation, commonly with an overstory woodland and adjacent open water, makes these habitats very productive for a wide variety of wildlife. Game species commonly using these habitats include white-tailed deer, wild turkey (*Meleagris gallopavo*), ruffed grouse (*Bonasa umbellus*), black bear, and pheasant (*Phasianus colchicus*). An extensive list of non-game wildlife uses these habitats year-round or seasonally, often as breeding or wintering habitats, including perching and wading birds, woodpeckers, bats (including the federally threatened northern myotis - *Myotis septentrionalis*), large carnivores, small mammals, amphibians, and reptiles.



**Figure 6.** A combining of the five focal habitats targeted in the Proposed Action. This and earlier maps are coarse scale depictions, intended to provide *general reference* of where the five priority habitats primarily occur. Worth noting, there are extensive non-habitat areas within these priority polygons, and there are likely valuable focal habitats that would qualify for habitat conservation leasing outside of these priority polygons.

### Initial Enrollment

During the first 6 months of this program, FWP would conduct enrollments targeting mixed grass prairie, sagebrush grasslands important to sage-grouse, and wetland-grassland complexes. After this initial enrollment, FWP would intend to expand the

conservation opportunity to include enrollments for all of the five focal habitats. Conservation lease enrollments dominated by one or a combination these five focal habitats would fit as part of the Proposed Action. Dominating habitat(s) is defined here as comprising half or more of an enrollment.

There are other priority wildlife habitats in the state that are not included in this EA. Conservation lease projects dominated by habitats other than the five focal habitats could still occur but would require a separate environmental analysis and approval process as they are not addressed in this analysis.

## 6. Project size

Depending on funding and landowner interest, FWP offers the following rough estimates, based on 500,000 acres of enrollment during the first 5 years of this program. Although woodlands are not a targeted habitat, it is likely that some enrollment would take place as a habitat incidental to adjacent targeted habitats.

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u>4,500</u>
Residential	<u>0</u>		
Industrial	<u>0</u>	(e) Productive:	
(existing shop area)		Irrigated cropland	<u>0</u>
(b) Woodlands	<u>10,000</u>	Dry cropland	<u>0</u>
		Forestry	<u>0</u>
(c) Wetlands/Riparian	<u>1,000</u>	Rangeland	<u>484,500</u>
Areas		Other	<u>0</u>

## 7. Permits, Funding & Overlapping Jurisdiction.

Depending on landowner interest, FWP anticipates expending roughly \$25-35 million for enrollment costs of up to 500,000 acres in the upcoming 5 years. Additional expenditures would be incurred as funding, landowner interest, and Commission authorizations dictate.

(a) **Permits:** FWP does not anticipate needing any permits for completing Habitat Conservation Lease Agreements.

(b) **Funding:**

<u>Agency Name</u>	<u>Funding Amount Estimate</u>
Montana Fish, Wildlife and Parks	Initial 5-year effort: approx. \$25-35 million from Habitat Montana, Pittman Robertson Restoration, and possibly other federal, state or partner habitat funding sources. This funding would cover lease

payment, due diligence, staffing, and operations costs.

If successful, the Proposed Action would entail additional enrollments and associated expenditures beyond this initial estimate.

**(c) Other Overlapping or Additional Jurisdictional Responsibilities:**

<u>Agency Name</u>	<u>Type of Responsibility</u>
U.S. Fish and Wildlife Service	Pittman-Robertson Wildlife Restoration funding grant administration.

**8. Narrative summary of the Proposed Action:**

**Background and Need**

*The mission of Montana Fish, Wildlife and Parks, through its employees and citizen commission and board, provides for the stewardship of the fish, wildlife, parks, and recreational resources of Montana, while contributing to the quality of life for present and future generations.* Montana is home to an extensive array of fish and wildlife species. As part of its mission, FWP is responsible for providing effective conservation measures for all wildlife for a variety of values, including those that are important for hunting recreation, ecological contributions, wildlife viewing, and general enjoyment by the public, as well as rarer Species of Concern that face uncertainty as to their long-term viability. Some of these rarer species are federally listed or face the potential for listing under the Endangered Species Act. Collectively, for the purposes of this EA, we refer to this mix of game species, ecologically important wildlife, and Species of Concern as *priority wildlife species*.

The extent of native habitats distributed across Montana is integral to supporting the state's diverse wildlife populations. But, similar to other areas of North America, Montana is realizing many changes across its wide-ranging landscapes. Under this proposal, FWP recognizes five native habitats that are conservation priorities, particularly among privately held lands (FWP 1995, 2015). They are shrub grasslands (particularly emphasizing sagebrush grasslands), mixed grass (lowland) prairie, wetland-grassland complexes, intermountain grasslands, and riparian floodplain. These habitats support many priority wildlife species, including over 130 species in Montana recognized by the State as [Species of Concern](#).

These particular habitats are also subject to various forms of habitat fragmentation or conversion that reduces or eliminates wildlife habitat function. FWP respects, as a core American value, the right of private landowners to manage their properties as they see fit. FWP descriptions here are not intended to suggest a "good" or "bad" value judgement, but rather that land use options directly affect wildlife and their habitats. For instance, priority mixed grass prairies provide critical nesting habitat for grassland bird species that have experienced



long term population declines; as these habitats are converted to tillage agriculture, those breeding habitat functions are eliminated. Some mountain foothill and shrubland habitats provide critical big game wintering areas; but as these habitats are divided and developed for housing, they become inhospitable for elk and deer and can also be a source for wildlife-human conflicts, such as with bears or mountain lions. Sagebrush grasslands provide habitats for a host of wildlife, including several species that are “sagebrush obligates”- meaning they specifically require sagebrush habitats for their survival; but as these habitats experience development or conversion to other uses, wildlife are displaced and experience higher mortality or lower overall productivity.

Over the past 35 years, FWP has worked in cooperation with private landowners on numerous conservation projects, guided by the Habitat Montana policy, which directs FWP to seek the following benefits and values (ARM 12.9.510):

- (a) conserve and enhance land, water and wildlife;
- (b) contribute to hunting and fishing opportunities;
- (c) provide incentives for habitat conservation on private land;
- (d) contribute to non-hunting recreation;
- (e) protect open space and scenic areas;
- (f) promote habitat-friendly agriculture; and
- (g) maintain the local tax base, through payments in lieu of taxes for real estate, while demonstrating that productive wildlife habitat is compatible with agriculture and other land uses.

FWP intends, through the Proposed Action described herein, to continue an incentive-based, habitat-friendly-agriculture approach to conservation.

### **Proposed Action**

FWP is proposing development and implementation of a Habitat Conservation Lease Program. The primary goal of the habitat conservation lease program is to implement an expansive, long term habitat conservation tool that effectively addresses habitat conversion and fragmentation threats for high priority wildlife habitats at a landscape scale. The program would offer voluntary, incentive-based lease opportunities for private landowners. Lease agreements and associated payments are also expected to help support sustainable ranching operations. Under the lease arrangements, a participating landowner would commit to retaining habitats and avoiding land use changes that reduce or eliminate habitat values, such as tillage agriculture, building development, wetland draining, targeted herbicide treatments on native vegetation, or other forms of habitat fragmentation or conversion. The agreements would also include a provision for public hunting and/or recreation. FWP would offer both 30 and 40-year agreement options with a consistent per-acre payment formula. The following summarizes various details of the Proposed Action.

**Lease Stipulations.** The basic intent of the conservation lease program is to retain substantial blocks of high priority native or restored wildlife habitats. Through the enrollment process, the landowner would have the opportunity to identify areas to enroll and areas to exclude from enrollment, which would be depicted on a map as part of the lease agreement.

Converted habitats that the landowner intends to restore would also be eligible. FWP anticipates leases to include some or all of the following stipulations, which may be adjusted or added to over time:

- Prairie habitats (shrub grasslands, mixed grasslands, wetland grassland complexes) – prohibit plowing or herbicide treatments that target native plants; no prescribed fire or mechanical treatment of sagebrush habitats; no filling or draining of wetlands.
- Floodplain/riparian habitats – no tillage or clearing of woody vegetation; no prescribed fire.
- Intermountain shrub and grasslands – no herbicide treatments that target native plants; there may be an allowance for treatments to reduce conifer expansion on a case-by-case basis; avoidance of prescribed fire except by prior approval by FWP as fitting for the specific habitat type.
- Conservation requirements for all enrolled habitats –
  - No building construction.
  - No surface energy developments such as wind, solar, or other surface energy developments. This would not restrict against petroleum development or other mineral estate developments not held by the landowner.
  - No gravel extraction. Existing sites would be mapped and excluded from enrollment.
  - Property splits would only be allowed for agricultural purposes, no smaller than 320 acres.
  - No concentrated animal feeding operations.
  - If there were prospective transmission projects planned for crossing a portion of enrolled lands, FWP would work with the landowner and project proponent to minimize impacts to the land's wildlife habitat values.
- Public access requirements would involve a *minimum* number of wildlife-related recreation-days consistent across all leases, such as hunting, fishing, wildlife viewing. Landowners could offer a greater amount of public access to enhance the ranking of their application, which would be reflected in the lease agreement. Actual public access provided by the landowner may be less than what is required in the lease if there is a lack of interest by hunters or other recreationists. Landowners would be requested to keep track of access allowed to ensure compliance.
  - The following formula is the minimum requirement for recreation access associated with habitat conservation leases:
    - **For enrollments up to 3,000 acres**, minimum of 1 Recreation-Day/month for every 300 acres.
      - **Example:** For a 2,400-acre ranch, the amount of access required is  $2,400/300 = 8$  wildlife related recreation days/month = 96 days/year.
    - **For enrollments of 3,001 acres and over**, minimum of 1 Recreation-Day/week for every 1,500 acres.

- **Example:** For a 4,500-acre ranch, the amount of access required is  $4,500/1,500 = 3$  recreation days/week x 52 weeks/year = 156 wildlife related recreation days/year.
  - For applying this formula, FWP will round to the nearest 300 acres for enrollments of up to 3,000 acres or to the nearest 1,500 for enrollments of 3,001 acres and over.
- Public recreation access would be in the form of hunting during the Fish and Wildlife Commission approved seasons, between September 1-December 31.
- If a participating landowner wanted to consolidate the access days to a shorter portion of the year, they could allocate the total annual number of wildlife related recreation days proportionally to a smaller amount of the year, but must always include access during the Commission approved hunting season between Sept. 1 and Dec. 31.
  - **Example** – from the example above, if the agreement called for 8 recreation days/month, but the landowner only wanted to allow access July through December (6 months), then  $16 \text{ days/month} \times 6 \text{ months} = 96 \text{ days}$ .
- Participating landowners would provide contact information to FWP for how the public would request access to enrolled lands. This could include email, phone, text, or other means that is generally available to the public. Access opportunities would be published for the public's awareness through FWP web resources or other means as new media outlets become available.
- Habitat conservation leases would not preclude landowners from enrolling in FWP public access programs.
- Conservation leases would prohibit charging fees for public access required by this agreement (hunting or other forms of recreation).
- Outfitting would be allowed on enrolled lands, but only if public access opportunities are not restricted by the outfitting operation and the landowner provides written consent, including copies to FWP after the end of the hunting season.

**Payments.** Habitat conservation lease agreements would consist of an upfront payment to the landowner or their designated recipient. The payment could be split across two calendar years if requested by the landowner. The dollar amount of the leases would be a fixed rate per acre, ranging 5-10% of the fee simple value. Fee simple valuations would be based on averaged fee simple values for different habitats within specific regions of the state. For instance, a property with river bottom riparian habitat and mixed grass prairie could involve a mix of lease values for those respective acreages. FWP intends to use land valuation data from DNRC Trust Lands and other sources to derive land valuations reflective of specific geographic parts of the state, which would be updated periodically with a corresponding adjustment in lease payment rates. Payment rates for mixed grass prairie, sagebrush grasslands important to sage-grouse, and wetland-grassland complexes will be made available by August 1 when FWP intends to initially solicit projects for consideration. Rates for additional habitats and other parts of the



state will be made available by April 1, 2023 when the subsequent solicitation for projects will occur.

**Additional Lease Agreement Details.** Conservation lease agreements would be recorded with the deed at the county courthouse and the leases would run with the land. That is, the property would be bound to the lease terms for the length of the agreement, even if the land changes ownership within the lease period. FWP intends that these leases would provide consistent conservation measures for the full span of the agreements. If there were need to extinguish the lease, the landowner would be subject to paying FWP a pro-rated value of the original lease payment and additional cost for liquidated damages.

For further details pertaining to the lease agreement and associated stipulations, a draft template is attached to this EA (Appendix A).

**Enrollment Process, Eligibility, and Priority Ranking.** FWP proposes the following enrollment process, with up to two application cycles each year:

1. Identify areas of the state, that support the five priority habitats. The State Wildlife Action Plan (2015) has these areas mapped and in a geographic information system layer format. Mapped priority areas would continue to be refined over time with improvements in wildlife survey and remote sensing data, as well as through an updated State Wildlife Action Plan.
2. Seek programmatic approval from the Fish and Wildlife Commission for enrolling a specific number of acres into habitat conservation leases, up to 500,000 acres. The Commission may choose to provide approval of habitat conservation leases using a different process and FWP would proceed accordingly.
3. During the first enrollment, FWP intends to focus solely on prairie habitats that include **mixed grass prairie, sagebrush grasslands important to sage-grouse, and wetland-grassland complexes.** Subsequent enrollments would be broadened to cover all five priority habitats described herein.
4. Establish open application periods, which may include advertising and targeted mailings to inform landowners of the opportunity to submit an application.
5. Upon closing the application period, FWP would sort applications, first checking on eligibility, as follows:
  - a. Lands already under a similarly protective agreement would be ineligible.
  - b. Active cropland, building sites, gravel pits, feed lots, or other developed or substantially modified lands that lack native habitat characteristics would be ineligible.
  - c. Lands that are not dominated by one or more of the five priority habitats would be ineligible.
6. FWP would apply ranking criteria to the remaining applications. Some habitats may involve specific ranking criteria. The following is a *sample* of the types of criteria that would receive higher ranking:
  - a. Areas mapped as priorities (for instance, sage-grouse core habitat designations, core grassland bird breeding areas, core big game winter range).

- b. Habitats adjacent to other protected lands.
  - c. Large habitats that are in a continuous block rather than smaller, dispersed parcels.
  - d. Areas where the landowner is willing to support substantially higher than the minimum levels of public access.
  - e. Habitats that have a higher proportion of wetland habitats or broad intact riparian habitats.
  - f. Habitats that would include public access to adjacent public lands.
  - g. 40-year over 30-year commitments.
  - h. Unique habitat features (for instance, documented grouse leks, perennial streams, prairie dog towns, aspen woodlands or other unique plant communities)
7. Conduct field reviews of the highest priority applications and map areas that are eligible for enrollment, adjusting enrollment maps as needed with the landowner.
  8. Determine amount of acreage in each priority habitat category and determine value based on acres and fixed payment rates.
  9. Conduct title reviews of each property to confirm ownership and authorizations needed for signing a lease agreement.
  10. Complete a brief checklist environmental assessment (CEA) for each proposed lease and associated public outreach (see **Checklist EA**, below).
  11. Render a Decision Notice for the CEA, signed by the FWP Regional Supervisor.
  12. For those applications that are deemed appropriate to proceed, execute the habitat conservation lease agreement, with signatures by the authorized landowner and the FWP Wildlife Division Administrator.
  13. Make payment to the appropriate recipient and add property information to FWP's Land Information System database and public recreation information systems (for instance, the FWP Hunt Planner).

**Checklist EA.** A brief checklist environmental assessment (CEA) would tier from this programmatic environmental assessment (EA). That is, the CEA would confirm that the analysis conducted here is sufficient for the contemplated lease agreement.

Requirements of MCA 87-1-241 would also be fulfilled as part of the CEA, which would include the following steps and confirmations:

1. Distribution of the CEA to adjacent landowners, while also making it available to the public for review and comment.
2. Conducting a public hearing in the local area during the CEA comment period. If there are multiple habitat conservation lease enrollments proposed in the same general vicinity, there may be opportunity to conduct one hearing for multiple conservation lease applications.
3. Confirmation that the analysis conducted in this EA sufficiently fulfills both Montana Environmental Policy Act and MCA 87-1-241 requirements. If there are deficiencies,

additional analysis in the CEA would be necessary, which may include one or more of the following requirements of MCA 87-1-241:

- a. the wildlife populations and use currently associated with the property;
- b. the potential value of the land for protection, preservation, and propagation of wildlife;
- c. management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest;
- d. any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts;
- e. any significant potential social and economic impacts to affected local governments and the state, including but not limited to impacts on:
  - i. tax revenue available for the operation of taxing jurisdictions within the county;
  - ii. services required to be provided by local governments;
  - iii. employment opportunities within the county;
  - iv. local schools; and
  - v. private businesses supplying goods and services to the community;

**Conservation Lease Monitoring.** Establishing habitat conservation lease agreements would require subsequent monitoring to confirm lease stipulations are being adhered to. The stipulations anticipated for the lease agreements mostly involve concerns about habitat conversion, development, or fragmentation. Such changes to the landscape would be readily detectable from low elevation flights or aerial and satellite imagery, in addition to on-site visits. Some form of monitoring would be required a minimum of once every five years. One or more aerial image maps would be included in the conservation lease agreement to document the condition of enrolled lands at the time of enrollment, which would serve as a baseline for future comparisons.

Periodic landowner mailings or surveys may also be sent by FWP to: 1) keep records up to date, such as contact information for making available through public recreation resources; 2) inquire about adherence to lease terms; and 3) remind enrolled landowners of their ongoing lease obligations or other related information.

## **9. Description and analysis of reasonable alternatives:**

**Alternative A: No Action.** Under this alternative, FWP would not proceed further with a programmatic habitat conservation lease program. FWP would continue to administer Habitat Montana through fee title acquisitions, conservation easements, and habitat conservation leases on a case-by-case basis, subject to required analysis and approval processes.

**Alternative B: Proposed Action.** This alternative would set into motion further development and implementation of a programmatic habitat conservation



leasing program as described in Section 8: **Narrative summary of the Proposed Action.**

**10. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:**

The Proposed Action would establish and implement a habitat conservation leasing program. The program itself would entail multi-step enrollments, analyses, public outreach, due diligence, and approval processes. FWP anticipates that substantial issues associated with an individual conservation lease application are likely to be revealed through the various steps required of each application. FWP would retain authority to substantially adjust or desist from processing a lease application that had issues that couldn't be mitigated. FWP would also be authorized to enforce active contracts enrolled into the leasing program.

**PART II. ENVIRONMENTAL REVIEW CHECKLIST**

**Table 2.** The following is a summary of possible impacts associated with the Proposed Action on the Physical and Human Environments and corresponding mitigation measures.

Possible Impacts	Impact Explanation and Mitigation Measures
<b>Physical Environment</b>	
<b>1. Land resources - soil compaction, erosion, modification of geologic features</b>	Land use activities underway at the time of establishing a conservation lease would typically continue under a conservation lease arrangement. Habitat conversion, such as through tillage or construction projects, could be impactful to soils and vegetation. However, under a habitat conservation lease arrangement, such activities would be prohibited for enrolled lands; the vegetation characteristics and related soil surface protections of enrolled lands would be retained.
<b>2. Air – objectional odors, air movement, emissions affecting air quality standards</b>	Land use activities underway at the time of establishing a habitat conservation lease would typically continue under the proposed lease program. Any changes in land management resulting from enrolling land are not expected to have an impact on air quality. Tillage or other forms of substantial ground disturbance or targeted reduction of native vegetation would be prohibited for lands enrolled in a habitat conservation lease agreement. Retaining native vegetation would correspond with wind erosion protection and maintaining air quality.
<b>3. Water – discharge affecting water quality standards, flow patterns, flood or floodplain hazards, turbidity, runoff, water quality or quantity, contamination</b>	Land use activities underway at the time of establishing a habitat conservation lease would typically continue under the lease arrangement. New tillage or other substantial forms of ground disturbance would be prohibited on enrolled lands, retaining vegetation and corresponding water erosion protection. No water contamination is expected to result from the proposed habitat conservation lease agreements.

<p><b>4. Vegetation - diversity, productivity, abundance of plant species, plant community alteration, reduction or impact to agricultural land or prime or unique farmland, noxious weed spread, wetland impacts</b></p>	<p>The Proposed Action is intended to result in extensive conservation of native plant communities across Montana, specifically focusing on shrub grasslands, mixed grass prairie, intermountain shrub/grasslands, riparian/floodplain, and wetland-grassland complexes. Individual leases would help assure enrolled lands would retain their native character, including native vegetation and wetland and riparian habitats, while continuing to allow for other agricultural uses such as livestock grazing.</p> <p>In the absence of a 30 or 40-year habitat conservation lease, prospective enrolled lands could face a variety of possibilities for conversion including tillage agriculture, subdivision development, herbicide treatments targeting native plants, renovation of plant communities to domestic pastures, removal of riparian vegetation for other uses, concentrated feedlot operations, among other possibilities. The proposed habitat conservation lease program would not affect the landowner's ability to control noxious weeds but instead, by retaining intact plant communities, the program could indirectly help protect against or reduce the spread of noxious weeds.</p> <p>FWP expects that conserved native plant communities resulting from the Proposed Action would help perpetuate plant species that are recognized by the Montana Natural Heritage Program as Species of Concern.</p>
<p><b>5. Fish/Wildlife - habitat impacts, including movement barriers. Changes to fish/wildlife abundance or diversity. Impacts to federally listed species or introduction of new species.</b></p>	<p>The Proposed Action intends to help conserve high priority wildlife habitats from land use changes that would fragment or convert them, reducing or eliminating habitat functions. Under the Proposed Action, lands would be enrolled into 30- and 40-year habitat conservation leases with a focus on five focal habitats: shrub grasslands, mixed grass prairie, intermountain grasslands, riparian/floodplain, and wetland-grassland complexes.</p> <p>Across Montana and the western U.S., these five habitats have experienced a variety of land use changes which has resulted in reduced or lost habitat function. In some areas, shrub grasslands, mixed grass prairie, and wetland complexes have experienced extensive conversion to tillage agriculture and renewable energy development. Wetland habitats have been drained or leveled to expand areas of development and in some cases expand farming operations. Shrub grasslands, and particularly sagebrush grasslands, have been reduced and fragmented by tillage agriculture, herbicide or mechanical treatments targeting sagebrush, and pasture renovation that reduces or eliminates native plant communities, which is particularly impactful to species that rely on sagebrush for part or all of their life history. Riparian floodplain habitats are highly productive, supporting a broad mix of resident and migratory priority wildlife as seasonal and yearlong habitats as well as travel corridors. Over time these habitats have been reduced as farm fields or irrigated hay or pastures have expanded. In some areas riparian habitats have experienced housing or other forms of development because of their aesthetic appeal. Intermountain grasslands are common areas for housing development but many are also critical wintering habitat for big game animals and breeding habitat for many game and migratory bird species.</p> <p>These five habitats are recognized as conservation priorities within the State Wildlife Action Plan (FWP 2015). That Plan includes complete lists of "species of greatest conservation need" (SGCN) that are associated with each of these focal habitats. SGCN mostly comprise fish and wildlife species that have experienced long term population declines due to functional habitat losses. Appendix B includes a</p>

	<p>summary of fish and wildlife SGCN associated with each of the five focal habitats. The SGCN designation is essentially the same as “Species of Concern” (SOC) as published by the Montana Natural Heritage Program, however the SOC list also includes invertebrate and plant species that are also priorities for conservation. In total (plants and animals), FWP estimates a minimum of 130 SOC that could benefit from the proposed habitat conservation lease program. This includes five grassland bird species that have declined significantly.</p> <p>Federally recognized threatened, endangered, and candidate species under the Endangered Species Act (ESA) that are associated with one or more of the five focal habitats include black-footed ferrets, grizzly bear, piping plover, northern myotis bat, and monarch butterfly. Additionally, species like sage grouse and Sprague’s pipit have recently been considered for ESA listing, and other declining grassland birds are also being watched. Retaining large blocks of intact native habitat would be a direct benefit to these federally recognized species where conservation leasing would overlap with their distribution. The 30- and 40-year lease commitments would also provide assurance to the US Fish and Wildlife Service that important enrolled habitats would be retained for long periods of time, which is an important factor for the US Fish and Wildlife Service when making listing and de-listing determinations. FWP does not anticipate any negative consequences for ESA species resulting from the Proposed Action.</p> <p>The five focal habitats would also continue to support more common resident and migratory wildlife that are also priorities for conservation including deer, pronghorn antelope, sharp-tailed grouse, wild turkey, pheasant, waterfowl, many species of perching and ground nesting birds, wading birds, shorebirds, beaver, mink, weasel, prairie stream fisheries, and many other native mammals, reptiles, amphibians, pollinators, and other invertebrates. Lists included in Appendix B provide a summary of game species common to each of the five focal habitats.</p>
<b>Human Environment</b>	
<b>6. Noise levels or electrical effects</b>	The Proposed Action would not generate noise or establish new electrical sources or related interference, nor would it expose people to potential noise or electrical health risks.
<b>7. Land use, interference with productivity or profitability, conflicts with natural areas or areas of scientific or educational importance, or adverse effects that would relocate residences</b>	<p>The predominant land use of the five priority habitats described in the Proposed Action is livestock grazing. In many cases, the use of private lands for livestock grazing continues to be the primary reason these habitats remain intact and functional for wildlife. Alternatively, intact rangelands could be converted to other uses that would have negative consequences, particularly for native wildlife. The Proposed Action provides a voluntary, incentive-based approach to conserve priority wildlife habitats, which would likely also help perpetuate sustainable livestock ranching operations.</p> <p>The Proposed Action would not result in relocating residences or otherwise removing existing buildings or other such developments. It is possible that a habitat conservation lease agreement could inhibit one or more developments in the future. The intent of the Proposed Action is to provide an incentive for conserving existing priority wildlife habitat while allowing the landowner to continue to pursue economic uses of the land that are compatible with functional wildlife habitat. Excluded lands or adjacent properties would not be subject to conservation lease stipulations and could be developed or changed as deemed suitable by the landowner.</p>



	<p>FWP expects that neighboring properties would not be directly impacted by the Proposed Action. The condition of enrolled lands would remain unchanged or improve, in general continuing to support wildlife habitat and agricultural operations that had occurred prior to enrollment. Public recreation access required by the leases could result in an increase of activity, which may lead to more frequent trespass issues with neighboring properties. If this proposal were to proceed, FWP would provide boundary information of enrolled lands through the FWP Hunt Planner and other recreation access information outlets, which would help ensure recreationists remain within the boundaries of enrolled properties. FWP can help landowners with signs or improved mapping information to rectify chronic trespass issues that might result from expanded public recreation access.</p> <p>All prospective enrollments would require a checklist environmental assessment process prior to completion, including alerting neighboring property owners of a possible conservation lease enrollment. Neighboring landowners would have the opportunity to offer comments and concerns during the public comment period. Substantial concerns about public access or other possible issues would be identified through that public outreach process and addressed by modifying the lease agreement terms or by other means specific to the circumstance, including the possibility of not proceeding with a proposed conservation lease.</p>
<b>8. Risk/Health Hazards such as explosion, hazardous substances, impacts to emergency response, potential health hazard</b>	<p>The Proposed Action involves developing 30- or 40-year term habitat conservation agreements with private landowners. FWP does not anticipate any resulting effects that would cause new risks or health hazards to the public or result in a need for changing emergency response plans or processes. In localized areas, the agreements could result in additional public recreation opportunities, but FWP does not expect this type of increased activity to cause hazards or impacts to emergency response.</p>
<b>9. Community impact affecting location or growth of human population, social structure, employment or community or personal income, industrial or commercial activity, traffic hazard or transportation facility impacts</b>	<p>The Proposed Action would result in an upfront lease payment from FWP to private landowners in return for their 30- or 40-year commitment to not fragment, convert, or develop enrolled lands, for the purpose of conserving priority wildlife habitats. Payments to private landowners could result in economic benefits to landowners and their associated local communities and private businesses that provide goods and services. FWP does not expect the Proposed Action to have any impact on local schools.</p> <p>The five priority habitats identified in the Proposed Action are entirely (or nearly-so) managed as livestock grazing lands, which also function as wildlife habitat. Enrolled lands would be prohibited from home or other building construction or other forms of development or conversion, effectively retaining these areas as working ranch lands. Large contiguous blocks of leased lands would preclude development that may be substantial at a local scale for the duration of the leases. The opportunity to enroll private lands is intended to advance conservation of five priority habitats, which would also help support ranching operations. Enrolled lands would remain rural and undeveloped.</p> <p>FWP does not expect the Proposed Action to substantially impact employment opportunities. Excluded lands or adjacent properties would not be subject to conservation lease stipulations and could be developed or changed as deemed suitable by the landowner.</p>

	<p>Lands enrolled in habitat conservation leases would restrict the surface owner from initiating the lease or sale of oil, natural gas, or any other mineral substance owned by the owner. This restriction would not apply to third party mineral owners. Through the lease agreement, FWP would require the opportunity to work alongside the landowner and the energy developer to minimize impacts to wildlife habitat features.</p> <p>FWP does not expect the proposed conservation leases to substantially affect traffic or transportation facilities. Enrolled lands would serve as destinations for hunters and other recreationists from the public, but the minimum access requirements do not represent a substantial additional usage to public roadways, which commonly receive additional use during general hunting or other recreation seasons.</p>
<b>10. Public service demands, tax base or revenue changes, utilities impacts with new facilities or change in utility demands, maintenance costs</b>	<p>FWP does not expect the proposed habitat conservation lease program to affect public service demands. Lands enrolled in conservation leases would be retained, mostly as operating ranches, continuing public service demands at levels consistent with recent history. FWP also does not expect the Proposed Action to have any impact on the current tax base. Enrolled lands would continue to operate mostly as working ranches with their respective tax contributions. Lands enrolled in a habitat conservation lease would be restricted from development. In lieu of leasing, housing or subdivision developments could be a source of increased public service demands and also increased tax revenue. FWP's focus on five priority wildlife habitats would not enroll already developed or predominantly converted areas, which would remain open for potential development.</p> <p>The Proposed Action would not result in new facilities or change demand for utilities nor result in expanded maintenance needs.</p> <p>FWP would need to expand work resources to implement the conservation lease program, including mailings and other forms of outreach, conducting field reviews, mapping and development of agreements, conducting standard due diligence and checklist environmental assessments with associated public comment, hearings, and outreach to neighbors. Also, FWP would be responsible for ongoing monitoring of enrolled lands which FWP expects would mostly be handled through aerial imagery or other remote sensing techniques. Questions or issues would require ongoing effort by FWP staff working with individual landowners, as needed. These additional resource needs would be covered by existing agency resources, including Habitat Montana, general license, Pittman Robertson Wildlife Restoration, and other possible funding sources.</p> <p>With prior approval by FWP, the draft habitat conservation lease agreement (Appendix A) would allow for certain developments that may be important for public necessity, including pipelines, distribution or transmission lines, public roadways or communication towers. FWP could provide approval of such a development with required modifications or conditions intended to minimize impacts to priority wildlife habitat values.</p> <p>The proposed action would affect development potential for enrolled lands during the term of the agreements (30 or 40 years). As proposed, leasing would be focused on properties predominantly comprising one or more of the five focal habitats,</p>

	<p>which would leave considerable other areas open for development if there were interest to do so.</p> <p>Maintenance costs associated with owning private land would continue to be the responsibility of the private landowner. The Proposed Action would not assume any maintenance responsibilities by FWP.</p>
<b>11. Alteration of quality or quantity of recreation</b>	<p>Like other habitat conservation and enhancement agreements administered by FWP, the proposed conservation lease program would guarantee at least a minimum amount of public recreation access that is compatible with their operation and with the purposes of the habitat conservation lease, such as hunting, wildlife watching, hiking, nature photography.</p> <p>Public access requirements in the lease terms, measured as wildlife related recreation-days, would be minimum required numbers. Landowners could allow more recreation, beyond these minimums. Also, if there is less interest by the recreating public than the required minimums, that would also be acceptable.</p> <p>A minimum access formula is described under the Proposed Action. This formula would be applied consistently across all habitat conservation leases. The public access formula may seem modest compared with some other FWP landowner agreements. FWP's primary goal of the habitat conservation lease program is to provide an expansive, long term habitat conservation tool that effectively addresses habitat conversion and fragmentation threats. Keying enrollments in on the most strategic habitat locations would be a considerable measure of success for this program. However, as FWP's requirements, such as for public access, become more substantial, FWP expects landowner interest to decrease, thus giving up strategic conservation opportunity. Through this modest public access formula, it is FWP's intent to strike a balance, while seeking broad landowner interest among the five focal habitats.</p> <p>Overall, the proposed habitat conservation leases would guarantee some forms of public recreation access, to be managed by the landowner or their agent, which may be more substantial than the levels of recreation provided in the past. The landowners would also retain the option to offer their lands for enrollment into FWP access programs.</p>
<b>12. Aesthetics – alteration of scenery or aesthetic character, impacts to scenic rivers, trails, or wilderness areas</b>	<p>The Proposed Action would result in maintaining the natural characteristics of high priority wildlife habitats. It is unlikely any leases would be part of federally designated or proposed areas, such as scenic rivers, trails, or wilderness areas. If such an instance were to occur, conservation leases may serve as a benefit in keeping natural scenic or aesthetic resources intact. Habitats already protected by other forms of agreement, would not qualify for enrollment in the habitat conservation lease program.</p>
<b>13. Cultural and Historic Resources – destruction or alteration of any site or object of historical</b>	<p>The Proposed Action would not result in any ground or historical resource disturbing activities. The conservation lease program would keep enrolled lands from tillage or other ground-disturbing developments that could otherwise impact such resources.</p>

or paleontological importance	
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### **PART III. NARRATIVE EVALUATION AND COMMENT**

The Proposed Action would establish a program for enrolling privately-owned priority wildlife habitats into habitat conservation leases. The lease terms would prohibit conversion or development of enrolled lands. In consideration of potential impacts to both the physical and human environments, FWP does not find any substantial or significant negative impacts that might result from the proposed leasing program. There would likely be positive effects for highly valued wildlife habitats, working lands, and private landowners. Wildlife populations associated with enrolled habitats would continue to benefit from these priority habitats. Hunters and other recreationists are also expected to benefit with expanded opportunity for public access to enrolled lands. This environmental assessment evaluates the overall impact of implementing a habitat conservation lease program. Habitat conservation lease projects that would result from the Proposed Action would require individual checklist analyses, notification of neighbors, and a public review period, including a local hearing. If there are issues that have not been identified through this program-level environmental assessment, FWP believes it is likely that such issues would be discovered through these project-level steps of analysis and outreach.

### **PART IV. PUBLIC PARTICIPATION**

#### **1. Public involvement:**

The public will be notified in the following manners to comment on this Environmental Assessment, the Proposed Action and No Action alternatives:

- One statewide press release;
- Email press release to statewide distribution list
- Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>
- Public notice in major newspapers
- Meeting(s) with organized landowner, agriculture, and conservation groups to explain and answer questions about the habitat conservation lease program.

This level of public notice and participation is appropriate for a project of this scope having limited impacts, most if not all of which can be mitigated.

#### **2. Duration of comment period:**

The public comment period will extend for (30) thirty days. Written comments will be accepted until 5:00 p.m., July 13, 2022 and can be submitted via electronic and physical addresses below:

SurveyMonkey: <https://www.surveymonkey.com/r/82RVY6Q>

Email: [fwpwld@mt.gov](mailto:fwpwld@mt.gov)

Montana Fish, Wildlife and Parks  
c/o Ken McDonald  
P.O. Box 200701  
Helena, MT 59620

## **PART V. EA PREPARATION**

### **1. Based on the significance criteria evaluated in this EA, is an EIS required? NO**

**If an EIS is not required, explain why the EA is the appropriate level of analysis for this Proposed Action.**

Based on the significance criteria evaluated in this EA, no EIS is required. Although the Proposed Action could result in extensive enrollments of priority wildlife habitats across the state, all such opportunities would be voluntary for private landowners and no substantial impacts to the physical or human environments were identified by FWP. Each proposed lease would result in a separate checklist EA and public review process to determine if there are any issues unique to individual properties that would require addressing, mitigation, or reason for not proceeding.

### **2. Person(s) responsible for preparing the EA:**

Ken McDonald, FWP Wildlife Division Administrator, Helena, MT  
Rick Northrup, FWP Wildlife Habitat Bureau Chief, Helena, MT

### **3. List of agencies or offices consulted during preparation of the EA:**

FWP Wildlife Biologists, Regional Wildlife Managers, FWP Water and Lands Unit and FWP Legal Unit Staff

## **PART VI. Literature Cited**

Carpenedo, S.M. and Saul, L.A. 2012. Common Native and Invasive Wetlands Plants in Montana, Version 2. Montana Department of Environmental Quality, Wetland Program. Helena, Mt.

FWP. 1995. Statewide Habitat Plan, Implementation of Fish, Wildlife & Parks Commission Habitat Montana Policy. Helena, Mt.



Montana's State Wildlife Action Plan. 2015. Montana Fish, Wildlife & Parks, 1420 East Sixth Avenue, Helena, MT 59620

Hansen, P.L., S.W. Chadde, and R.D. Pfister. 1988. Riparian Dominance Types of Montana. Miscellaneous Publication NO. 49. Montana Forest and Conservation Experiment Station, School of Forestry, University of Montana. Missoula.

Hansen, P.L., W.H. Thompson, J.G. Massey, and M. Thompson. 2008. Classification and Management of Upland, Riparian, and Wetland Sites of USDI Bureau of Land Management's Miles City Field Office, eastern Montana USA.

Lesica, P. and P. Husby. 2015. Field Guide to Montana's Wetland Vascular Plants, Second Edition. Montana Department of Environmental Quality Wetland Program. Helena.

Mueggler, W.F. and W.L. Stewart. 1980. Grassland and shrubland habitat types of Western Montana. Intermountain Forest and Range Experiment Station, US Forest Service, Ogden, Utah.

Wambolt C.L. and M.R. Frisina. 2002. Montana Sagebrush Guide. Montana Department of Fish, Wildlife and Parks. Helena.

## **APPENDIX A**

### ***DRAFT* Habitat Conservation Lease Agreement**

**After recording, please return to:**

Land Unit  
Montana Fish, Wildlife & Parks  
P O Box 200701  
Helena, Montana 59620-0701

**30-YEAR (40-YEAR) CONSERVATION LEASE AGREEMENT**

THIS AGREEMENT, is made by and between \_\_\_\_\_, whose address is \_\_\_\_\_, and his/her/its heirs, successors, assigns and persons claiming possessory rights ("Landowner") and the Montana Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701 ("Department").

**I. RECITALS**

A. Whereas the Department recognizes that landscapes of predominantly native grass, shrub-lands, and wetland complexes provide important wildlife habitat for a number of priority wildlife species, especially sage-grouse, migratory grassland birds, big game, and other Montana Species of Concern,

B. Whereas the Department and Landowner recognize that retaining large tracts of priority wildlife habitat through sustainable grazing is a direct benefit to native wildlife,

C. Whereas the Department and Landowner recognize that loss of native habitat is one of the greatest threats facing declining grassland birds, sage-grouse, waterfowl, and other wildlife species in Montana,

D. Whereas the Department has pursued this Conservation Lease Agreement ("Lease") by voluntary, cooperative means to conserve this important wildlife habitat as specifically defined in Part II, paragraph 2,

E. Whereas the Landowner is the owner of certain real property containing native habitat in \_\_\_\_\_ County, Montana, ("Land") described in Exhibit A attached hereto and incorporated by this reference,

G. Whereas the purpose of this 30-Year Agreement is to conserve, protect, and enhance native wildlife habitat on approximately \_\_\_\_\_ acres.

H. Whereas the Department and Landowner recognize that hunting and recreational activities are effective tools for engaging the public in habitat conservation.

**II. AGREEMENT**

**NOW, THEREFORE, the Landowner, for and in consideration of the sum of \$ \_\_\_\_\_ and other good and valuable consideration, the receipt of which is hereby**

acknowledged, does hereby voluntarily grant and convey to the Department, its successors and assigns, a Lease for a term of 30 years, upon the following terms:

1. **WILDLIFE HABITAT DEFINED:** FWP recognizes five focal wildlife habitats as among the highest importance for conservation. **Sagebrush grasslands** comprise sagebrush (*Artemisia* species) dominated steppe that includes an understory of perennial grasses and forbs. **Wetland habitats** include depressional wetlands, wet meadows, and backwaters of stream and river systems. **Riparian/floodplains** are plant communities influenced by shallow water tables and include adjacent lands that seasonally flood. They are dominated by deciduous woodlands and shrubs with an understory of herbaceous vegetation. **Mixed grasslands** are dominated by perennial grasses and forbs that in some areas are interspersed by coulees with woody vegetation. **Intermountain grasslands** include foothills and valley habitats dominated by perennial grasses or a mix of grasses and shrubs intermingled with timbered draws. Collectively, the focal habitats are valuable to resident and migratory priority wildlife species for seasonal and year-round life cycles.
2. **PURPOSE:** The purpose of this Lease is to conserve, protect, and enhance wildlife habitat on the Land and grants the Department the right to prevent certain activities on the Land and uses of the Land that have detrimental impacts to the habitat accompanied with the right of the Department or its assigned agent to enter upon the Land to monitor and enforce the terms of the Lease. An additional purpose of this Lease is to provide the public with recreational opportunities.
3. **TERM:** The term of this Lease shall be for 30/40 years, beginning on the first day of \_\_\_\_\_, 202X, and terminating on the last day of \_\_\_\_\_, 20XX.
4. **BINDING EFFECT:** This grant of Lease, and the covenants and agreements contained herein, shall run with the Land and shall be binding upon and inure to the benefit of the parties to this Lease, their respective heirs, successors, assigns, any person claiming any possessory rights through the Landowner, and any person or entity that shall come into ownership or possession of the Land, until its expiration or termination.
5. **LANDOWNER OBLIGATIONS:** The Landowner covenants and agrees that he/she/it will maintain the wildlife habitat existing on the Land in conjunction with Landowner's agricultural use. To accomplish the purpose of this Lease, the Landowner covenants and agrees as follows:
  - a. Not to remove, destroy, control, or manipulate grassland, sagebrush, woody plants, and other native vegetation by any means, including but not limited to burning, plowing, chemically treating, or flooding the areas depicted on the map attached as Exhibit B, except as provided in Paragraph 7. [OPTIONAL include following only if property includes sagebrush habitat: If however, future research reveals that sagebrush management is found to be beneficial to sage-grouse and other sagebrush obligate species, Landowner may, with the prior written approval of the Department, manage sagebrush through methods approved in writing by the Department.] [OPTIONAL at landowner's request: Limited haying of enrolled acres may be permitted on a case-by-case basis after July 15 with prior written approval of the Department. Haying will not be permitted prior to July 15. ] [OPTIONAL

at landowner's request: With prior written approval of the Department, limited mowing, haying, or clearing of vegetation may be permitted on a case-by-case basis to serve as fire breaks to help minimize the spread of wildfire. Mowing, haying, or clearing of vegetation as an emergency response to an emerging wildfire that is threatening the Landowner's or neighboring properties is permitted under this Lease. However, the Landowner shall notify the Department of the actions taken as soon as practical.]

- b. To minimize damage to native plants, sagebrush, and wildlife, by limiting the use and type of pesticides and agrichemicals for noxious weed and insect control on the areas depicted on Exhibit B. Landowner will limit use of such chemicals to the minimum amounts and frequency necessary to control noxious weeds and insects. Chemicals that lessen impacts to shrub and woody vegetation would be acceptable for this type of limited use.
- c. Not to drain, fill, dredge, or dike wetland or riparian areas.
- d. Not to develop the Land, including construction of buildings, solar or wind energy, or other surface developments.
- e. If a third party proposed development of oil, natural gas, or any other mineral substance, Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the wildlife habitat values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing in this section dealing with third-party mitigation measures shall be deemed to obligate Landowner to bear the costs of mitigation measures. Landowner's only responsibilities for mitigation on the Land are those already imposed on Landowner by Applicable Law, if any.

This Lease does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

- f. Not to development, lease or sell oil, natural gas, or any other mineral substance owned by the Landowner under the Land.
- g. Gravel extraction is prohibited.  
*[Existing or anticipated gravel sites can be excluded from conservation lease enrollment]*
- h. Concentrated animal feeding operations are prohibited.



- i. Subject to prior approval by the Department, Landowner retains the right to install or allow installation of utilities or rights of way such as pipeline, distribution or transmission line, communications tower, or roadways. FWP may choose to allow, allow with modifications, or not allow the proposed development with associated justifications. For Prior approval, Landowner must notify the Department in writing not less than sixty (60) days prior to the date the Landowner intends to undertake the activity. Notice must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity to permit the Department to make an informed judgement as to its consistency with this Lease and its purposes.
- j. To allow free hunting and recreational wildlife or nature viewing to the Land and adjacent public lands for the term of this Lease.
  - 1) When demand exists and upon request by members of the public the minimum number of recreation-days that the Landowner will allow is \_\_\_\_\_ recreation-days per week throughout the year. For Fish and Wildlife Commission-approved hunting seasons during September 1-January 1, public recreation access would specifically be for hunting.
  - 2) A “recreation-day” is defined as one person who recreates on the Land during a calendar day.
  - 3) Public access must be managed on a non-preferential and nondiscriminatory basis.
  - 4) Landowners, Landowners’ immediate family, shareholders, partners, and employees and their immediate families are not defined as members of the general public for the purpose of calculating “hunter-days.” The term “immediate family” means a parent, grandparent, child, or grandchild of the Landowner related by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew, and “employee” is defined as a person who works full time and year-round for the Landowner as part of an active farm or ranch operation.
  - 5) Landowner has the right to manage the distribution of recreationists on the Land to address reasonable concerns for the safety of persons and property, including livestock. Landowner may deny access to anyone who is not conducting or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.
  - 6) Charging fees for providing hunting or recreation access to the Land is prohibited. Outfitting may take place on the Land only if public recreation and hunting opportunities are not restricted and the Landowner gives written consent and annually provides a copy to the Department in January of each year of the Lease.
  - 7) Landowner will provide FWP with current information during the term of the Lease for how the public can secure access permission. Location of the Land and current

Landowner permission details will be made known by the Department to the public through published guides, web-based information, or other means.

- 8) The Department may periodically request the Landowner to keep a record of recreation use or report on number of public access activities.

*[Internal formula to calculate minimum recreation days:*

- 1) **For enrollments up to 3,000 acres, minimum of 1 Recreation-Day/month for every 300 acres***
- 2) **For enrollments of 3,001 acres and over, minimum of 1 Recreation-Day/week for every 1,500 acres. Public recreation access would be in the form of hunting during the Fish and Wildlife Commission approved seasons, between September 1-January 1.***
- 3) **For applying this formula, round to the nearest 300 acres for enrollments of up to 3,000 acres or to the nearest 1,500 for enrollments of 3,001 acres and over.]***

- k. Not to subdivide the Land except for ranching functions, no smaller than 320 acres. For the purposes of this Lease, subdivision is defined as transferring a portion of the Land to another landowner and ranching functions is defined as traditional livestock grazing that is part of a ranching operation. This definition does not include pasture space designated for hobby, recreation, or work animals including horses, mules, lamas, or similar stock.
- l. To provide the Department with prior notice in writing no later than 30 days after any sale, transfer, or lease of the Land or a portion thereof, and to provide the buyer, transferee or lessee with a copy of this Lease no later than 15 days after entering into a contract to sell, transfer or lease the Land.
- m. To notify and furnish a copy of this Lease to any other person claiming any possessory rights through the Landowner at any time during the Lease term.

**6. LIMIT TO LANDOWNER OBLIGATIONS:** It is understood that this Lease imposes no other obligations or restrictions upon the Landowner and that neither the Landowner nor Landowner's heirs, successors, assigns, lessees, nor any other person or party claiming under them shall be restricted from using all of the Land in the customary manner for agricultural practices except as provided herein. Examples of customary agricultural practices include livestock grazing and land maintenance activities such as fencing, stockwater, noxious weed control, and road maintenance.

The Landowner shall not be liable or responsible for violations resulting from fire, flood, acts of God, or other elements beyond the Landowner's control. However, after such event, if damage occurs to the wildlife habitat protected by this Lease, the Landowner shall notify the Department of the damage as soon as practical.

**7. NOTICES:** For general questions, the regional wildlife manager for FWP Administrative Region \_\_\_\_ at phone number \_\_\_\_\_, will serve as the Department's primary contact. For

submitting a notice, Landowner shall send all written notices to Land Unit, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620. The Landowner shall respond to any requests from the Department to self-certify compliance with this Lease within 30 days of the request or a reasonable time thereafter. All notices from the Department to the Landowner shall be made in writing to the Landowner at the address specified on page one of this Lease. The Department may change its designated representative, and the Landowner may change his/her/its address, by either party notifying the other in writing via mail or email of such change. The Department shall contact the Landowner via mail, email, or phone to schedule a mutually acceptable time for the Department or its assigned agent to access the Land for the purpose of monitoring compliance with this Lease.

8. **DEFAULT:** If the Landowner violates any term of this Lease, the Department may give the Landowner written notice of such violation. If the violation is not cured within 60 days of the notice or a reasonable time thereafter, the Department, in its sole discretion, may pursue any remedy available to it including recovery of damages, a court order to cure the violation, and/or termination of this Lease. If the Department chooses not to enforce a violation of this Lease, it does not waive enforcement of the same or any other violation. Department and Landowner agree that the actual damages for a violation of this Lease may be extremely difficult to fix; therefore, if the Landowner does not cure the violation, the Department may require the Landowner to repay an amount calculated under the following formula:

$$\text{Department payment} \times \frac{\text{Number of years remaining in the agreement}}{\text{Total \# of years in the original term}} + (\text{Department payment} \times 0.25) = \text{Liquidated Damages due to Department}$$

9. **SUBORDINATION:** This Lease is subject to all statutory rights of way and other valid existing rights of way for, including but not limited to, highways, roads, railroads, pipelines, canals, laterals, electric transmission lines, telegraph and telephone lines, cable lines, and mineral rights.

10. **JURISDICTION AND VENUE:** This Lease shall be governed by and construed in accordance with the laws of the State of Montana. Venue for any court action arising under this Lease will be in the First Judicial District for the County of Lewis and Clark.

11. **ENTIRE AGREEMENT:** This Lease constitutes the entire agreement between the parties hereto and may be amended only in a writing signed by the parties. No verbal agreements or representations made by either party shall be binding upon the other.

IN WITNESS WHEREOF, the Landowner executes and conveys this Lease on the date set out in the acknowledgement.

**Landowners:**

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**ACKNOWLEDGMENT**

State of Montana )

County of \_\_\_\_\_ )

This instrument was signed before me on \_\_\_\_\_ by \_\_\_\_\_ and  
\_\_\_\_\_.

(STAMP)

\_\_\_\_\_  
Notary Public

Printed Name \_\_\_\_\_

**Montana Department of Fish, Wildlife & Parks**

By: \_\_\_\_\_

Ken McDonald

Wildlife Division Administrator

## **APPENDIX B**

### **Wildlife Associated with Each of the Five Focal Habitats** (State Wildlife Action Plan 2015)



## **Riparian Floodplain – Priority Wildlife Species**

### **Game Species and Furbearers**

Beaver	Moose	Sharp-tailed Grouse
Black bear	Mountain Lion	White-tailed Deer
Bobcat	Mule Deer	Wild Turkey
Fisher	Muskrat	Wolverine
Mallard	Otter	Wood Duck
Mink	Ruffed Grouse	

### **Species of Greatest Conservation Need**

#### **Amphibians**

Coeur d'Alene Salamander  
Great Plains Toad  
Idaho Giant Salamander  
Northern Leopard Frog  
Plains Spadefoot  
Western Toad

#### **Birds**

Alder Flycatcher  
American Bittern  
Baird's Sparrow  
Bald Eagle  
Black-backed Woodpecker  
Black-billed Cuckoo  
Black-crowned Night-  
Heron  
Black-necked Stilt  
Bobolink  
Boreal Chickadee  
Brown Creeper  
Burrowing Owl  
Cassin's Finch  
Clark's Nutcracker  
Common Tern  
Evening Grosbeak  
Ferruginous Hawk  
Flammulated Owl  
Franklin's Gull

Golden Eagle  
Great Blue Heron  
Great Gray Owl  
Greater Sage-Grouse  
Green-tailed Towhee  
Harlequin Duck  
Le Conte's Sparrow  
Least Tern  
Lewis's Woodpecker  
Loggerhead Shrike  
Mountain Plover  
Nelson's Sharp-tailed  
Sparrow  
Northern Goshawk  
Northern Hawk Owl  
Peregrine Falcon  
Pileated Woodpecker  
Pinyon Jay  
Piping Plover  
Red-headed Woodpecker  
Sharp-tailed Grouse  
Varied Thrush  
Veery  
White-faced Ibis  
Yellow-billed Cuckoo

#### **Mammals**

Arctic Shrew  
Canada Lynx

Dwarf Shrew  
Eastern Red Bat  
Fringed Myotis  
Grizzly Bear  
Hoary Bat  
Little Brown Myotis  
Long-eared Myotis  
Merriam's Shrew  
Northern Bog Lemming  
Northern Myotis  
Northern Short-tailed  
Shrew  
Pallid Bat  
Preble's Shrew  
Pygmy Shrew  
Spotted Bat  
Townsend's Big-eared Bat  
Wolverine

#### **Reptiles**

Greater Short-horned  
Lizard  
Milksnake  
Northern Alligator Lizard  
Smooth Greensnake  
Snapping Turtle  
Spiny Softshell  
Western Hog-nosed Snake  
Western Skink

## **Wetlands – Priority Wildlife Species**

### **Game Species and Furbearers**

American Wigeon	Common Merganser	Mink
Barrow's Goldeneye	Fisher	Northern Pintail
Beaver	Gadwall	Northern Shoveler
Blue-winged Teal	Greater Scaup	Redhead
Bufflehead	Green-winged Teal	Ring-necked Duck
Canada Goose	Hooded Merganser	Ruddy Duck
Canvasback	Lesser Scaup	Snow Goose
Cinnamon Teal	Mallard	Tundra Swan
Common Goldeneye	Muskrat	Wood Duck

### **Species of Greatest Conservation Need (Depressional Wetland and Herbaceous Marsh)**

#### **Amphibians**

Great Plains Toad  
Northern Leopard Frog  
Plains Spadefoot  
Western Toad

#### **Birds**

Alder Flycatcher  
American Bittern  
American White Pelican  
Baird's Sparrow  
Black Tern  
Black-crowned Night-  
Heron  
Black-necked Stilt  
Bobolink  
Clark's Grebe  
Common Tern  
Evening Grosbeak

Ferruginous Hawk  
Forster's Tern  
Franklin's Gull  
Great Blue Heron  
Great Gray Owl  
Greater Sage-Grouse  
Horned Grebe  
Le Conte's Sparrow  
Loggerhead Shrike  
Nelson's Sharp-tailed  
Sparrow  
Northern Goshawk  
Northern Hawk Owl  
Peregrine Falcon  
Piping Plover  
Sedge Wren  
Trumpeter Swan  
Varied Thrush  
White-faced Ibis

#### **Mammals**

Arctic Shrew  
Fringed Myotis  
Grizzly Bear  
Hoary Bat  
Little Brown Myotis  
Northern Bog Lemming  
Northern Short-tailed  
Shrew  
Preble's Shrew  
Pygmy Shrew  
Spotted Bat  
Townsend's Big-eared Bat

#### **Reptiles**

Smooth Greensnake  
Snapping Turtle  
Western Hog-nosed Snake

## Shrub Grasslands and Sagebrush Grasslands – Priority Wildlife Species

### Game Species and Furbearers

Pronghorn  
Mule Deer

Bobcat  
Sharp-tailed grouse

Gray Partridge  
Elk

### Species of Greatest Conservation Need

#### **Amphibians**

Great Plains Toad  
Plains Spadefoot  
Western Toad

#### **Birds**

Baird's Sparrow  
Brewer's Sparrow  
Burrowing Owl  
Clark's Nutcracker  
Evening Grosbeak  
Ferruginous Hawk  
Golden Eagle  
Gray-crowned Rosy-finch  
Greater Sage-grouse  
Green-tailed Towhee  
Loggerhead Shrike

Mountain Plover  
Northern Hawk Owl  
Sagebrush Sparrow  
Sage Thrasher  
Varied Thrush

#### **Mammals**

Black-tailed Prairie Dog  
Dwarf Shrew  
Fringed Myotis  
Grizzly Bear  
Great Basin Pocket Mouse  
Hoary Bat  
Little Brown Myotis  
Long-eared Myotis  
Merriam's Shrew  
Pallid Bat

Preble's Shrew  
Pygmy Rabbit  
Pygmy Shrew  
Spotted Bat  
Townsend's Big-eared Bat  
White-tailed Prairie Dog  
Wolverine

#### **Reptiles**

Greater Short-horned  
Lizard  
Northern Alligator Lizard  
Milksnake  
Western Hog-nosed Snake  
Western Skink

## Mixed Grassland (Lowland) Prairie

### Game Species and Furbearers

Sharp-tailed grouse  
Swift Fox  
Pheasant

Gray partridge  
White-tailed Deer  
Mule Deer

Bobcat

### Species of Greatest Conservation Need

#### Amphibians

Great Plains Toad  
Plains Spadefoot

Long-billed Curlew  
Thick-billed Longspur  
Mountain Plover  
Sprague's Pipit

Merriam's Shrew  
Pallid Bat  
Preble's Shrew  
Spotted Bat  
Townsend's Big-eared Bat

#### Birds

Baird's Sparrow  
Bobolink  
Burrowing Owl  
Chestnut-collared  
Longspur  
Ferruginous Hawk  
Golden Eagle  
Loggerhead Shrike

Mammals  
Black-tailed Prairie Dog  
Dwarf Shrew  
Eastern Red Bat  
Fringed Myotis  
Hoary Bat  
Little Brown Myotis  
Long-eared Myotis

#### Reptiles

Greater Short-horned  
Lizard  
Milksnake  
Smooth Greensnake  
Western Hog-nosed Snake

## Intermountain (Montane) Grasslands

### Game Species and Furbearers

Sharp-tailed grouse  
Mule Deer  
Bighorn Sheep  
Elk  
Dusky Grouse

Gray Partridge  
Moose  
Bobcat  
Black Bear  
Mountain Lion

Wolf  
Wolverine

### Species of Greatest Conservation Need

#### Amphibians

Plains Spadefoot  
Western Toad

Loggerhead Shrike  
Long-billed Curlew  
Northern Hawk Owl  
Peregrine Falcon

Preble's Shrew  
Pygmy Shrew  
Townsend's Big-eared Bat

#### Birds

Baird's Sparrow  
Bobolink  
Clark's Nutcracker  
Ferruginous Hawk  
Golden Eagle  
Great Gray Owl  
Green-tailed Towhee

#### Mammals

Dwarf Shrew  
Fringed Myotis  
Grizzly Bear  
Hoary Bat  
Little Brown Myotis  
Merriam's Shrew

#### Reptiles

Greater Short-horned  
Lizard  
Milksnake  
Northern Alligator Lizard  
Western Skink