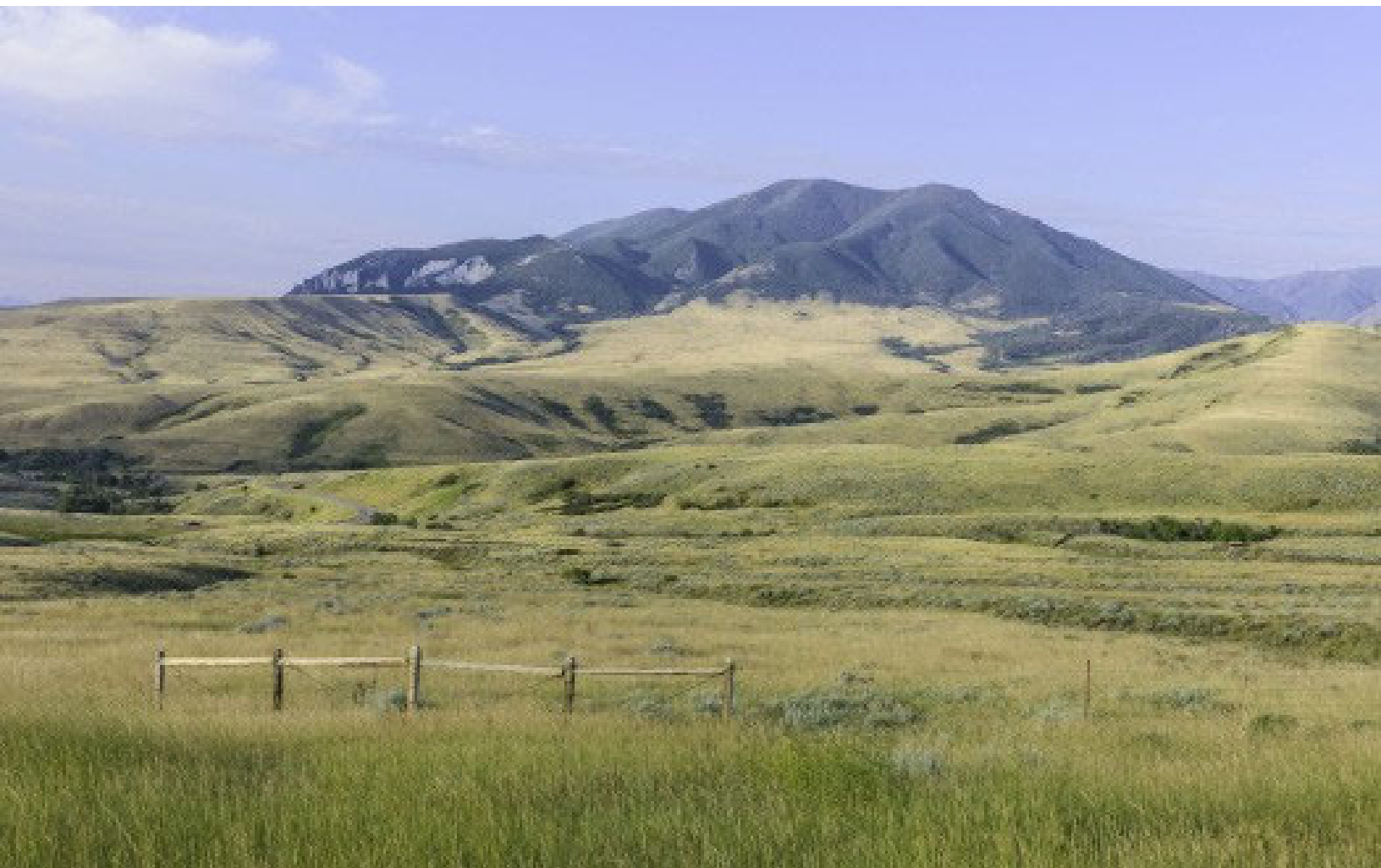




HABITAT CONSERVATION LEASE

FREQUENTLY ASKED QUESTIONS





Preface

FWP is offering a Habitat Conservation Lease Program with the primary goal of ensuring expansive, long-term habitat conservation that effectively addresses habitat conversion and fragmentation threats for high priority wildlife habitats at a landscape scale. The program offers voluntary, incentive-based lease opportunities for private landowners to maintain priority habitats on up to 500,000 acres for a 30-year or 40-year period. The basic intent of the conservation lease program is to retain substantial blocks of high priority native or restored wildlife habitats while keeping working agricultural lands as working lands.

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QUESTIONS AND ANSWERS

What is a Habitat Conservation Lease?

Habitat Conservation Leases are incentive-based, voluntary agreements that are offered by FWP to help conserve priority wildlife habitats on private lands while also supporting working lands and public hunting and recreation opportunity. The program offers two options, 30 and 40 years in length.

What types of property are eligible for a Habitat Conservation Lease?

Habitat Conservation Leases will be focused on five priority habitats that have been identified as being the highest conservation priority for maintaining Montana’s diverse wildlife, including game species and Species of Concern.

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These are: shrub grasslands, mixed grass prairie, pothole-wetland grasslands, intermountain shrub and grasslands, and riparian floodplain habitats. See maps at end of these FAQs. Initially, leases will be focused on prairie habitats in eastern and southwestern Montana.

What if my property contains a mix of priority and other habitats?

The land included in a Habitat Conservation Lease must comprise half or more of priority habitats. At least 75 percent must be intact native habitat.

Will FWP consider leasing of other habitat types?

There are other priority wildlife habitats in the state that are not included in this program such as forest-dominated habitat. 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 program. FWP recommends landowners work with their local biologist to see if other habitats may be considered.

Do I have to lease all of my land, or can I lease only a portion?

It will be up to the landowner to determine how much of their property they want to include in a conservation lease. Through the enrollment process, the landowner

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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. Landowners should consider long-term plans and consider not including acres they may not want to be subject to the lease terms. When evaluating and prioritizing leases, FWP will take into consideration the habitat values, configuration, etc.

What would I be allowed to do on my property while it is leased?

Normal agricultural and land management activities will be allowed as they currently occur, including livestock grazing, noxious weed management, etc.

What would I not be allowed to do on my property while it is leased?

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 of enrolled rangeland, building or other types of development, wetland draining, herbicide treatments that target native vegetation, or other forms of habitat fragmentation or conversion.

Can I develop mineral rights on my property?

No. This would not restrict against petroleum development or other mineral estate developments not held by the landowner. The 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.

Can I sell or lease the mineral rights on my property?

The landowner may not develop, lease, or sell oil, natural gas, or any other mineral substance owned by the landowner under the land.

How much will I get paid to lease my property?

The dollar amount of the leases is a fixed rate per acre, based on a percentage of fee simple value, averaged over portions of eastern and western Montana (see map below).

- **30-year lease** = 15% of average fee simple value
- **40-year lease** = 20% of average fee simple value + 5% bonus (as an incentive for the longer-term)

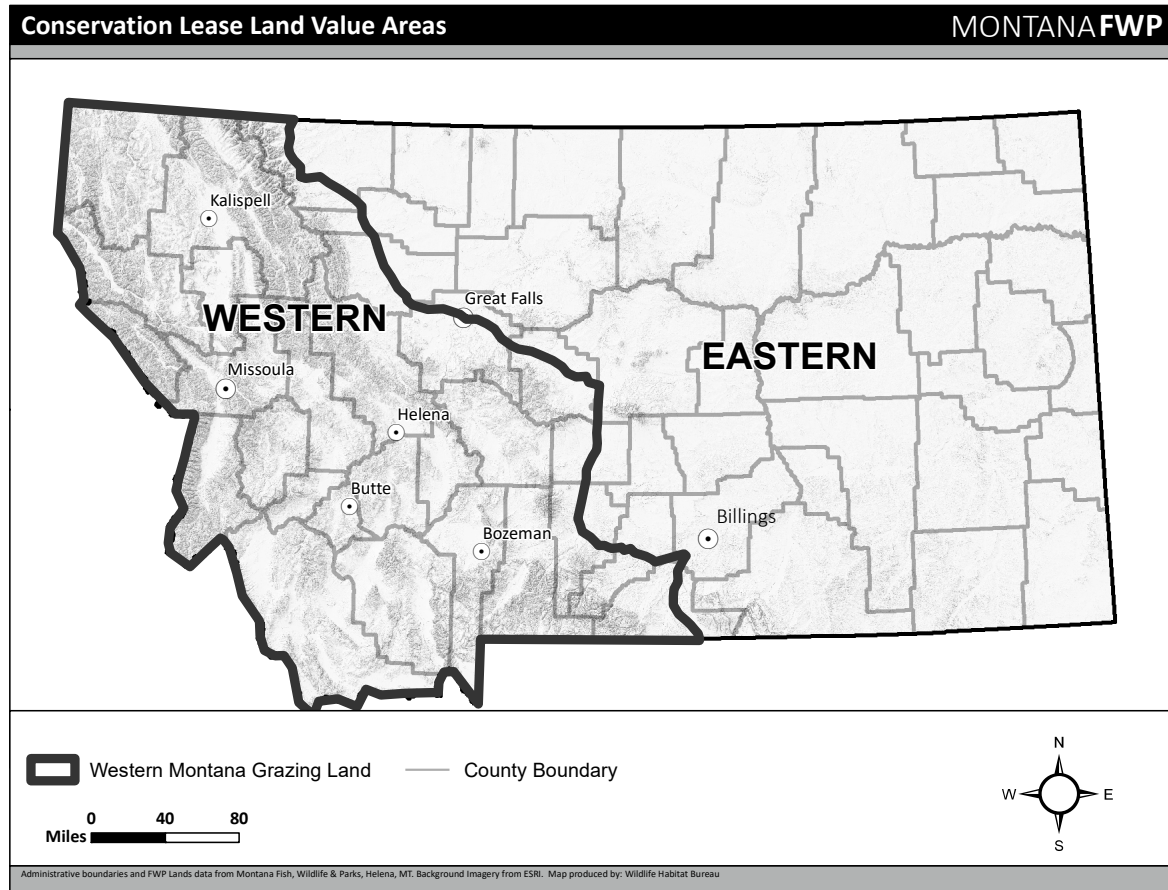


Figure 1. Delineation of western and eastern Montana for the purposes of assigning habitat conservation lease values.

Properties are further categorized into two general types - rangeland and floodplain/riparian, with corresponding payment amounts. In general, floodplain/riparian enrollments would be part of a larger lease that includes priority rangeland habitat. Figures 2-7 provide a general depiction of priority habitats across Montana.

- **Rangeland** refers to a variety of prairie habitats including sagebrush grasslands, mixed grasslands, prairie pothole wetland-grasslands, and intermountain grasslands.

- **Floodplain/riparian** specifically refers to large river system bottomlands with substantial riparian habitats, such as the Missouri, Milk, Bitterroot, Yellowstone, Jefferson and other major rivers.

Table 1. 2023 habitat conservation lease values based on 15% of fee value for 30-year lease and 20% of fee value plus a 5% bonus for the 40-year lease.

Area and Habitat	30 Year Lease Payment/Acre	40 Year Lease Payment/Acre
Eastern Montana Rangeland	\$85	\$119
Eastern Montana Floodplain/Riparian	\$349	\$489
Western Montana Rangeland	\$218	\$305
Western Montana Floodplain/Riparian	\$729	\$1,021

Can I enroll hay or cropland acres?

Although FWP is not specifically targeting these land use types, there will be circumstances where farmed fields are intermingled with priority native habitats. Where this occurs, FWP would pay 50% and 70% of the per acre value for cropland or hay land, respectively. By enrolling these farmed areas, the landowner would commit to either retaining them in hay or cropland production during the lease period or restoring them back to grassland habitat. If the landowner wished to restore farm ground back to native rangeland, those acreages may qualify for the full lease payment. In addition, there may be funds to assist with restoration costs.

Enrolled lands that remain in crop or hay land production, would be subject to all of the remaining lease restrictions, such as prohibition from building or other developments. Please see a copy of the lease agreement for more details.

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How about an example?

A landowner in eastern Montana wishes to enroll a portion of their ranch into a 40-year lease, involving 2,000 acres of rangeland and 300 acres of floodplain/riparian, of which 100 acres is hay ground.

2,000 acres rangeland X \$119/acre = \$238,000

200 acres of native floodplain/riparian habitat X \$489/acre = \$97,800

100 acres of hay ground within the floodplain X \$489/acre X 70% = \$34,230

Total Payment = \$370,030

How is the acreage amount determined?

FWP will map and calculate acres. FWP will work with the landowner to determine what lands should be included or excluded from the lease.

Do I have to allow public access?

Yes, a requirement of the lease will be to allow a minimum number of wildlife-related recreation-days (hunting, fishing, wildlife viewing) based on the size of the property. The following formula is the minimum requirement for recreation access associated with habitat conservation leases:

- **For enrollments up to 3,000 acres,** a minimum of 1 recreation-day/month for every 300 acres. Public recreation access would be in the form of hunting during the Fish and Wildlife Commission-approved seasons, between Sept. 1 and Dec. 31.

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- **Example:** For a 2,400-acre ranch, the amount of access required is $2,400/300 = 8$ wildlife related recreation days/month or 96 recreation days/year.
- **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 Sept. 1 and Dec. 31.
 - **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 or 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.
- 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 (96 recreation days/year), but the landowner only wanted to allow access July through December (6 months), then 16 days/month x 6

months would be required = 96 days.

Can I still participate in Block Management or PALA?

Habitat conservation leases would not preclude landowners from enrolling in FWP public access programs.

Can I participate in other habitat or conservation programs? Or, if I am already enrolled in some kind of conservation program, can I participate in this new program?

If the property is already enrolled in another type of conservation program, such as in a perpetual easement, it may not be eligible for enrollment in this Habitat Conservation Lease Program – although that would depend on the requirements of the conservation easement. For example, if lands are enrolled in a program that prohibits subdivision, but not tillage, the land may be eligible for the Habitat Conservation Lease Program. Whether leased lands can participate in other conservation programs will be dependent upon the requirements of the other programs.

Are the lease agreements recorded with my deed?

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

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land changes ownership during the lease period.

What if I need to get out of the lease at some point in the future?

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 equal to 25 percent of the original payment, as follows:

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

Liquidated Damages due to
Department

Example: If a landowner received a payment of \$100,000 for a 30-year lease and needed to extinguish the lease after 15 years, they would have to repay the department \$50,000 for the remaining 50 percent of the lease term + \$25,000 for liquidated damages = \$75,000 total.

What if I wish to establish a conservation easement on land enrolled in a conservation lease?

If a landowner intends to extinguish the lease because they are transitioning the property to a permanent conservation easement, which retains the same habitat conservation values as the lease, the landowner will only need to pay the pro-rated value. That is, in this circumstance they would not have to pay the 25% penalty.

What is the process for enrolling?

FWP will be soliciting lease proposals up to two times annually from landowners for priority sagebrush, grassland and wetland habitats (that is, "prairie habitat") in FWP Regions 4, 5, 6, 7 and the southwest portion of Region 3. A standard application will be provided that landowners will fill out and submit. All applications that meet the eligibility criteria will then move forward for evaluation and ranking.

Will all lease applications be funded?

Not necessarily – FWP will evaluate individual lease applications against all other applications received during the application period to ensure those with the highest conservation value are prioritized. FWP would apply ranking criteria to all applications that meet basic eligibility criteria. The following is a sample of the types of criteria that would receive higher ranking:

1. Areas mapped as priorities (for instance, sage-grouse core habitat designations, core grassland bird breeding areas, core big game winter range)
2. Habitats adjacent to other protected lands
3. Large habitats that are in a continuous block rather than small spread-out parcels
4. Habitats where the landowner is willing to support substantially higher than the minimum levels of public access
5. Habitats that have a higher proportion of wetland habitats or broad intact riparian habitats
6. Habitats that would include public access to adjacent public lands
7. 40-year over 30-year commitments
8. Unique habitat features (for instance, documented grouse leks, perennial streams, prairie dog towns, aspen woodlands or other unique plant communities)

What if I already have a conservation easement or conservation lease on my land?

FWP will generally avoid enrolling lands that already have similar protective agreements in place. However, if a Landowner proposes a lease on property that has such a circumstance, FWP will review the existing protective agreement and its habitat conservation terms to decide if the land would qualify for enrollment into the Habitat Conservation Lease Program.

How long after I apply will it take to complete the lease agreement?

Once the application period closes, it will take 3 to 6 months to complete all steps to finalize a lease agreement. Steps that must be included are:

1. Conduct field reviews of the highest-priority applications and map lands that are eligible for enrollment. Adjust enrollment maps as needed with landowner input.
2. Determine acres of each priority habitats and associated acres.
3. Conduct title reviews of each property to confirm ownership and authorizations needed for signing a lease agreement (such as partners or a mortgage holder).
4. Complete a checklist environmental assessment (EA) for each proposed lease and associated public outreach.
5. Render a Decision Notice for the EA, signed by the FWP regional supervisor.
6. 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.

What happens after the lease agreement is signed?

After it is signed, FWP will work with the landowner to establish the public access provisions and will provide

signage to help manage the access as requested. FWP will evaluate the lease property at least every other year to document that lease terms are being met. The monitoring evaluation may be on the ground, with landowner notification, or may be done aerially comparing baseline photos from the beginning of the lease with current conditions.

What happens if I am not complying with my lease agreement?

FWP intends that these leases would provide consistent conservation measures for the full span of the agreements. If the landowner violates any term of the lease, FWP 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, FWP may pursue any remedy available to it including recovery of damages, a court order to cure the violation, and/or termination of the lease. If the landowner does not cure the violation, FWP may require the landowner to repay an amount calculated under the following formula:

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

MAPS OF PRIORITY HABITATS

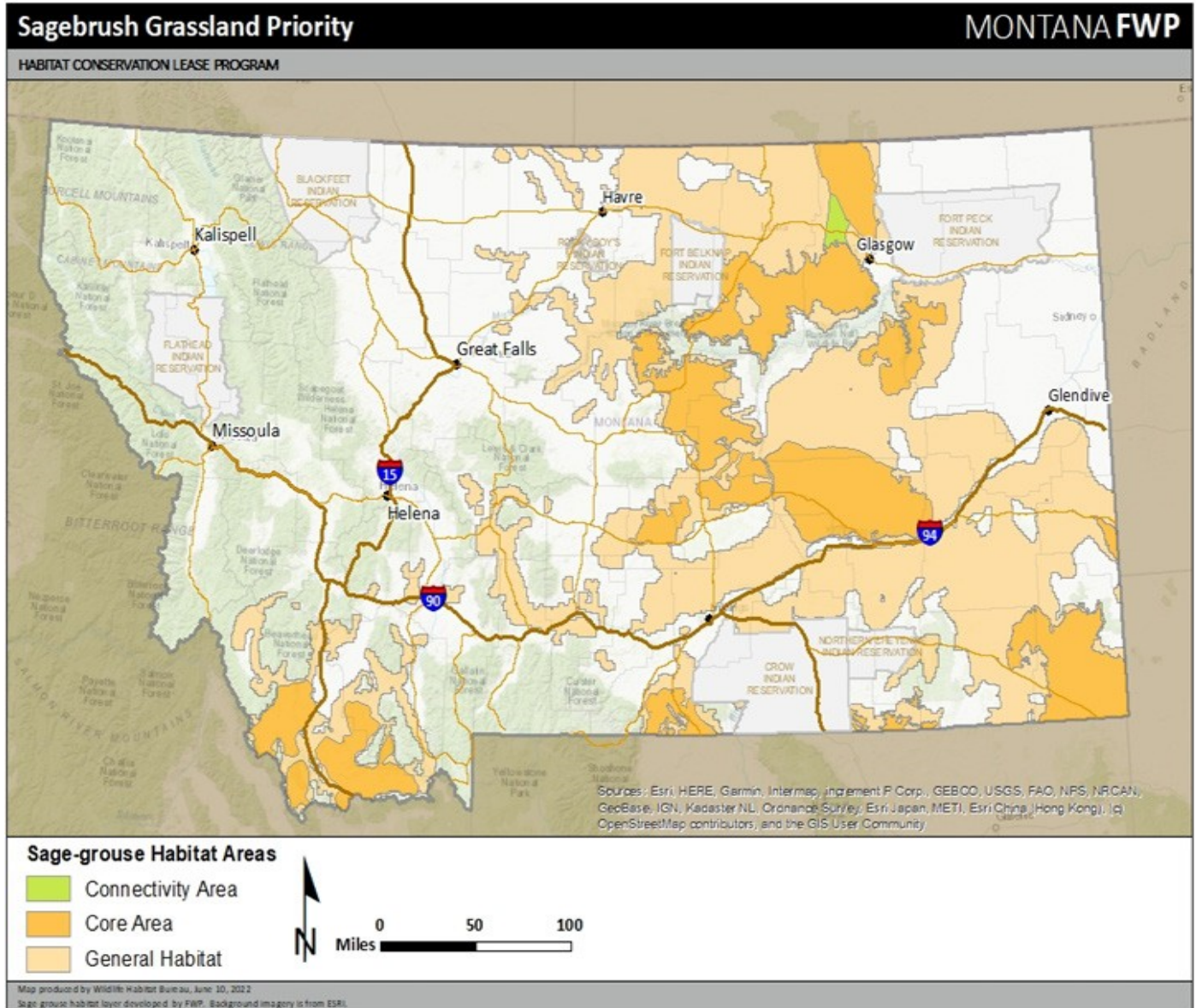


Figure 2. Priority sagebrush grassland areas of Montana. Core sage-grouse areas are considered the highest conservation priority within this habitat type.

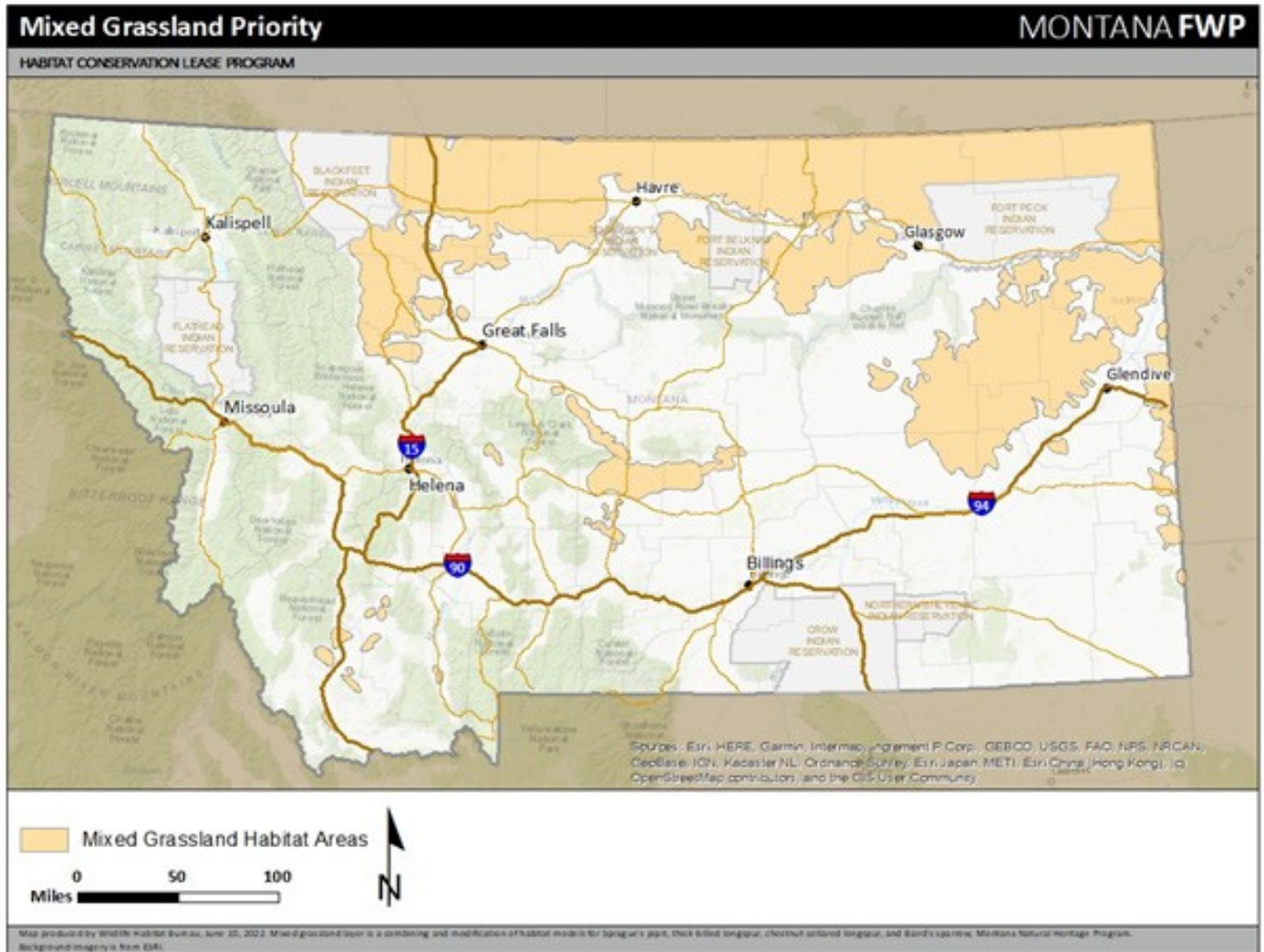


Figure 3. General priority areas for conserving mixed grass prairie habitats, based primarily on breeding habitats of four grassland bird species that have experienced long term population declines – Sprague’s pipit, thick-billed longspur, chestnut-collared longspur, and Baird’s sparrow.

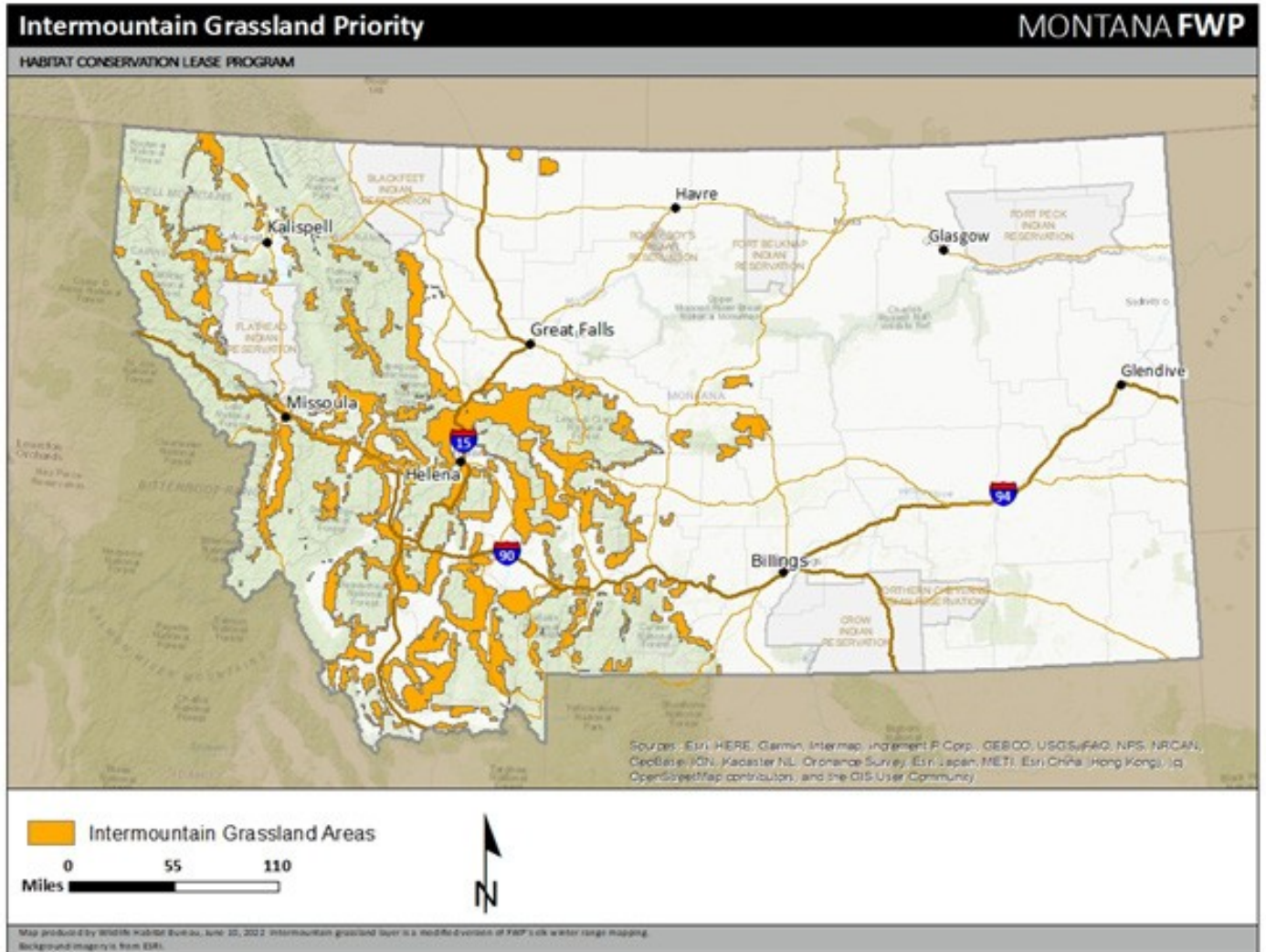


Figure 5. Grassland and shrubland habitats associated with mountain foothills provide critical big game wintering habitat and support many other wildlife species. These areas are also susceptible to building developments.

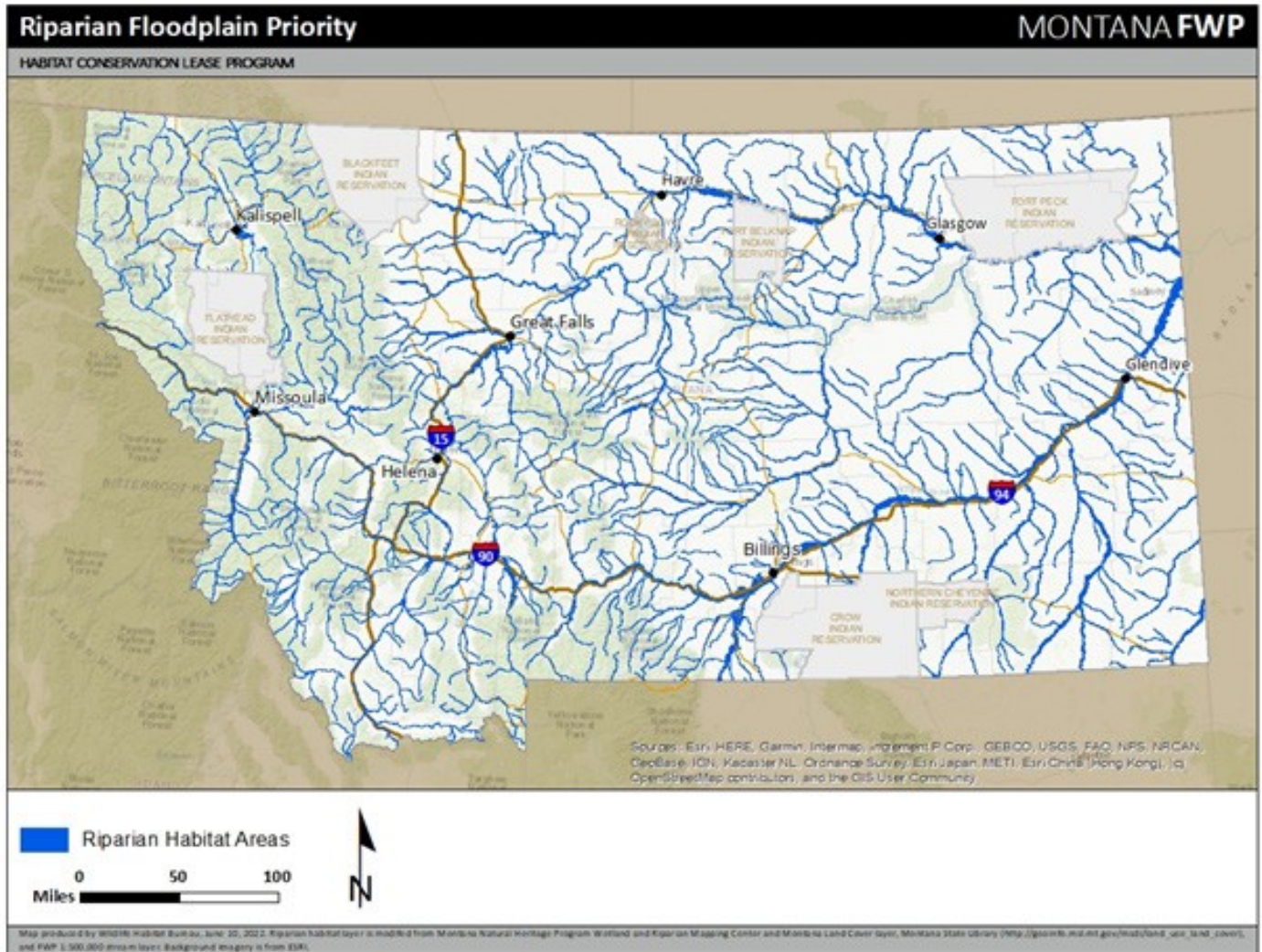


Figure 6. Riparian and associated floodplain habitats make up a small part of Montana’s landscape but are among the most productive for wildlife habitat. This map depicts major river systems and tributaries, many of which support extensive riparian features.

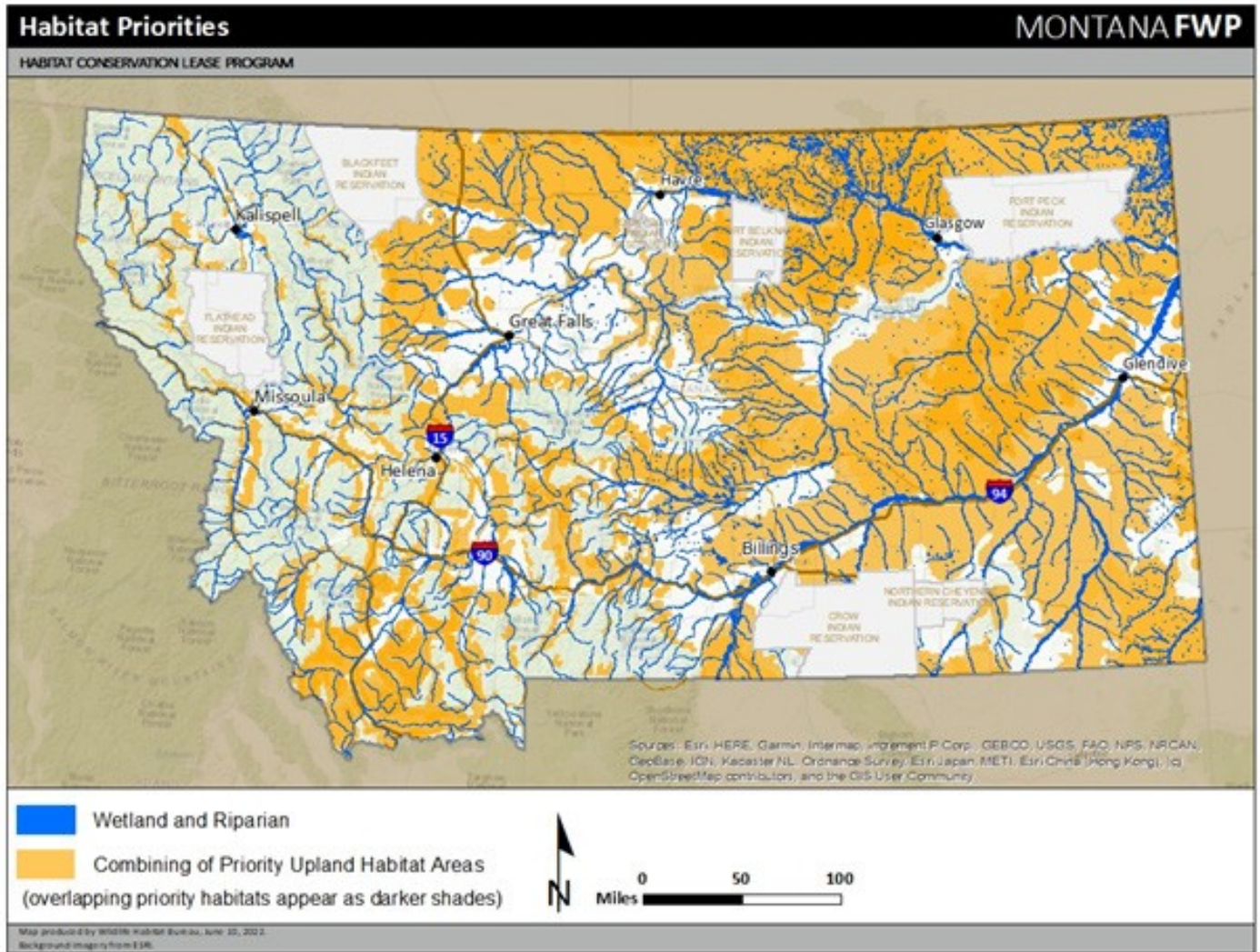


Figure 7. A combining of the five focal habitats targeted in the for the Habitat Conservation Lease Program. This and earlier maps are coarse scale depictions, intended to provide general reference of where the five priority habitats primarily occur. Worth noting, there are extensive non-habitat areas within these priority polygons, and there are likely valuable focal habitats that would qualify for Habitat Conservation Leasing outside of these priority polygons.