



# **HABITAT CONSERVATION LEASE**

## **FREQUENTLY ASKED QUESTIONS**





# Preface

FWP is proposing to implement a Habitat Conservation Lease Program with the primary goal of implementing 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 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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## **What is a Habitat Conservation Lease?**

Habitat 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 working lands and public hunting and recreation opportunity. The program would offer 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. These are: shrub grasslands, mixed grass (lowland) prairie, wetland-grassland, intermountain shrub and grasslands, and riparian floodplain habitats.

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

The land included in a conservation lease must be comprised of half or more of priority habitats.

## **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 habitat types will 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 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 property 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 agriculture, building development, wetland draining, targeted herbicide treatments on native vegetation, or other forms of habitat fragmentation or conversion.



## How much will I get paid to lease my property?

The dollar amount of the leases would be a fixed rate per acre, ranging from 5 to 10 percent of the fee simple value. Fee simple valuations would be based on averaged fee simple values for the different priority habitats within specific regions of the state. The acreage payment for a habitat type will be for all of the acres in the lease, even if only a majority are of the priority type. For example, a proposal may include 750 acres of sage brush/grassland habitat, and 250 acres of breaks and woody draws. The payment would be the 1,000 acres at the fixed rate per acre for sage-grassland habitat. Because of differences in fee values of property, the payment for sage brush grasslands in southwestern Montana may be higher than for similar habitat in northeastern Montana.

## How is the amount determined?

FWP will evaluate the types of priority habitat in the proposed lease, and then delineate acres based on habitat types. For properties that contain more than one priority habitat, the values of each type will be determined separately. For instance, a property with river bottom riparian habitat and mixed grass prairie could involve a mix of lease values for those respective acreages. The actual dollar amount will be determined based on a fixed rate/acre for those habitat types in that part of the state.

## 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 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**, 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.
  - **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. 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 = 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, but the landowner only wanted to allow access July through December (6 months), then  $16 \text{ days/month} \times 6 \text{ months}$  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 program. 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 program will be dependent upon the requirements of that other program.

## **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 land changes ownership within 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

## What is the process for enrolling?

Starting on Aug. 1, FWP will be soliciting lease proposals from landowners for priority sagebrush, grassland and wetland habitats (i.e., “prairie habitat”) in FWP Regions 4, 6, 7 and the SW portion of Region 3. On April 1, 2023, FWP will be soliciting proposals for all priority habitats across the state. Requests for proposals will continue twice per year thereafter. 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 lease applications against other applications 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 smaller 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)

## 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 habitat type and payment rate for those habitat types.
3. Conduct title reviews of each property to confirm ownership and authorizations needed for signing a lease agreement.
4. Complete a brief checklist environmental assessment (CEA) for each proposed lease and associated public outreach.
5. Render a Decision Notice for the CEA, 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 periodically, at least once every five years, evaluate the lease property 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:

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

Liquidated Damages due to  
Department