

DRAFT
SUPPLEMENTAL ENVIRONMENTAL
ASSESSMENT
CHECKLIST

HABITAT CONSERVATION LEASE AGREEMENTS

April 10, 2023



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I. Compliance with the Montana Environmental Policy Act

Before a proposed *project* may be approved, environmental review must be conducted to identify and consider potential impacts of the proposed project on the human and physical environment affected by the project. The Montana Environmental Policy Act (MEPA) and its implementing rules and regulations require different levels of environmental review, depending on the proposed project, significance of potential impacts, and the review timeline. § 75-1-201, Montana Code Annotated (“MCA”), and the Administrative Rules of Montana (“ARM”) 12.2.430, General Requirements of the Environmental Review Process.

FWP must prepare an EA when:

- It is considering a “state-proposed project,” which is defined in § 75-1-220(8)(a) as:
 - (i) a project, program, or activity initiated and directly undertaken by a state agency;
 - (ii) ... a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
 - (iii) ... a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.
- It is not clear without preparation of an EA whether the proposed project is a major one significantly affecting the quality of the human environment. ARM 12.2.430(3)(a));
- FWP has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ARM 12.2.430(2) (a) and (d) through a similar planning and decision-making process (ARM 12.2.430(3)(b));
- Statutory requirements do not allow sufficient time for the FWP to prepare an EIS (ARM 12.2.430(3)(c));
- The project is not specifically excluded from MEPA review according to § 75-1-220(8)(b) or ARM 12.2.430(5); or
- As an alternative to preparing an EIS, prepare an EA whenever the project is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all the impacts of the proposed project have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance (ARM 12.2.430(4)).

Adoption or Tiering to Existing Environmental Assessment:

- On June 13, 2022, Montana Fish, Wildlife and Parks (FWP) issued a Draft Programmatic EA that analyzed FWP’s Habitat Conservation Lease Program. FWP issued a subsequent Decision Notice for the Programmatic EA on August 12, 2022. Both documents may be downloaded [here](#). The programmatic analysis and supporting Decision Notice (DN) recommended proceeding with the long-term conservation lease program and included some modifications to the Draft Programmatic EA based on public recommendations and information gathered through the Draft Programmatic EA process. FWP then proceeded with a 45-day conservation lease enrollment period, which resulted in a lower-than-expected application pool (6 viable applications totaling 10,500 acres).
- A basic goal of the program analyzed through the Programmatic EA process is to enroll up to 500,000 acres across 5 focal habitats within a 5-year timeframe. The low response indicated a need to make program adjustments which would help ensure this goal is achievable. This Supplemental EA (SEA) tiers from the original EA and specifically considers program improvements and other modifications that weren’t part of the original analysis contained in the Draft Programmatic EA. But, for those parts of the

Conservation Lease Program that remain unchanged, FWP considers the earlier analysis and decision to be sufficient. That is, those unchanged elements of the program have been sufficiently analyzed and reviewed by the public and will not be part of this SEA.

- According to the requirements of ARM 12.2.441(1), the agency shall adopt as part of a Draft EA all or any part of the information, conclusions, comments, and responses to comments contained in an existing EA that has been previously or is being concurrently prepared pursuant to MEPA or the National Environmental Policy Act or NEPA if the agency determines:
 - the existing EA covers an action paralleling or closely related to the action proposed by the agency or the applicant;
 - based on its own independent evaluation, the information contained in the existing EA has been accurately presented; and
 - the information contained in the existing EA is applicable to the action currently being considered.

FWP determined the proposed action meets all the criteria identified above for adopting or tiering to the existing Programmatic EA and associated DN; therefore, this Draft EA adopts appropriate elements of the Programmatic EA without further detailed environmental review. MEPA is procedural; its intent is to ensure that impacts to the environment associated with a proposed project are fully considered and the public is informed of potential impacts resulting from the project.

II. Background and Description of Proposed Project

Name of Project: Habitat Conservation Lease Program

Montana Fish, Wildlife and Parks (FWP) proposes to revise the conservation lease program that was developed during the Fall of 2022.

FWP is proposing program adjustments to the Habitat Conservation Lease Program, which currently provides 30- and 40-year leases for conserving priority wildlife habitats. This Supplemental Environmental Assessment (SEA) tiers from the Programmatic EA and associated DN completed by FWP during summer 2022.

The existing conservation lease program entails an incentive-based opportunity for enrolling private lands into 30- and 40-year conservation leases with a focus on five focal habitats: sagebrush grasslands, mixed grasslands, intermountain grasslands, riparian/floodplain, and wetland-grassland complexes. Among the priority habitats, FWP intends to emphasize sagebrush grasslands that are of importance to sage-grouse, mixed grasslands that are of importance to grassland bird species that have experienced population declines, and prairie wetland complex habitats that are particularly important for migrating and breeding waterfowl and shorebirds. The Programmatic EA, including maps of focus areas and other details, along with a DN can be found by clicking [here](#). As described in more detail in the Programmatic EA, the purpose of the conservation leases is to conserve wildlife habitat values while enrolled areas remain as working agricultural lands. The lease agreements also include a public recreation access requirement with the number of recreation access days determined for each agreement using a standard formula. An overarching goal of the Habitat Conservation Lease Program is to enroll up to 500,000 acres over a 5-year timeframe. These and other details were described, analyzed, and released for public review through the Programmatic EA. FWP published a DN for the Draft Programmatic EA on August 12, 2022, recommending to proceed as proposed with some additions and modifications in response to public comments. The first application period for the program closed September 30, 2022, resulting in a total of 6 viable applications totaling about 10,000 acres. The application response was considerably less than FWP staff

had anticipated and desired. Therefore, FWP determined the Habitat Conservation Lease Program, as originally proposed, is unlikely to accomplish the 500,000-acre goal.

FWP has re-evaluated details of the conservation lease program and is proposing two modifications to make the program more attractive and flexible for landowners and more effective as a conservation tool. The proposed changes analyzed in this SEA are as follows:

1) Change in payment level. For 30- and 40-year conservation leases, the program was structured to pay within a range of 5-10% of average fee title value with a 5% bonus for the longer-term lease. Average fee title values are based on appraisal work contracted by Montana Department of Natural Resources and Conservation involving State Trust Lands scattered across the state. FWP is proposing to increase the payment level as follows: 15% of average fee title value for a 30-year lease and 20% of fee title value plus a 5% bonus for a 40-year lease. As proposed, the current values are listed in Table 1. This formula would continue to be applied in the future with updated payment levels, corresponding to changes in land values, as FWP deemed appropriate.

In the initial Programmatic EA, FWP anticipated expending roughly \$25-35 million during the initial 5-year effort. Under the revised payment formula included in this SEA, the program cost would increase to \$50-70 million using a combination of Habitat Montana, Pittman Robertson Wildlife Restoration, and possibly other federal, state, or partner habitat funding sources.

Table 1. Payment rates based on FWP’s proposed payment formula. These figures are based on a percentage of average fee title values using Montana Department of Natural Resource and Conservation appraisal data involving State Trust Lands, as updated in 2022. Figure 1 shows the boundaries of the western and eastern Montana land value areas.

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

Alongside this proposed increase in payment level for conservation leases, FWP would discount the payment/acre for hay lands and croplands that are intermingled within a lease area as follows:

- **Hay land** is defined as seeded areas that are annually or more frequently mowed and baled or otherwise harvested with equipment for livestock forage. These lands generally remain in perennial cover but may periodically be tilled and re-seeded to improve productivity. The conservation lease payment level for hay land would be 70% of the per acre conservation lease value, as corresponds with surrounding native habitats (that is, rangeland or floodplain/riparian lease values).
- **Cropland** is defined as land that is annually (or more frequently) seeded or operates in a crop/fallow rotation. The conservation lease payment level for cropland would be 50% of the per acre conservation lease value, as corresponds with surrounding native habitats (that is, rangeland or floodplain/riparian lease values).

- **Discounted Payment Example:** An eastern Montana landowner wishes to enroll 1,000 acres of upland habitat for 30 years, which includes 100 acres of cropland. Under the proposed price structure, FWP would pay the standard 30-year rangeland rate/acre (\$85) for the 900 acres of rangeland and 50% of the standard rangeland rate/acre (\$42.50) for the 100 acres of cropland for a total payment of \$80,750.
- **Hay and Cropland Conversion Process:** the conservation lease would be structured to remain within these agricultural uses, but with stipulations against other forms of development. The lease would also allow landowners to shift land use to a higher wildlife habitat value during the lease term (for example, from cropland to hay land or cropland to grazing lands). Such voluntary land use adjustments would not result in additional lease payment. The landowner would also have the flexibility to go back to the land use as designated at the time of enrollment. That is, a landowner can shift to a land use that has higher habitat value and after making the shift, they would retain the flexibility to shift back to the original land use.

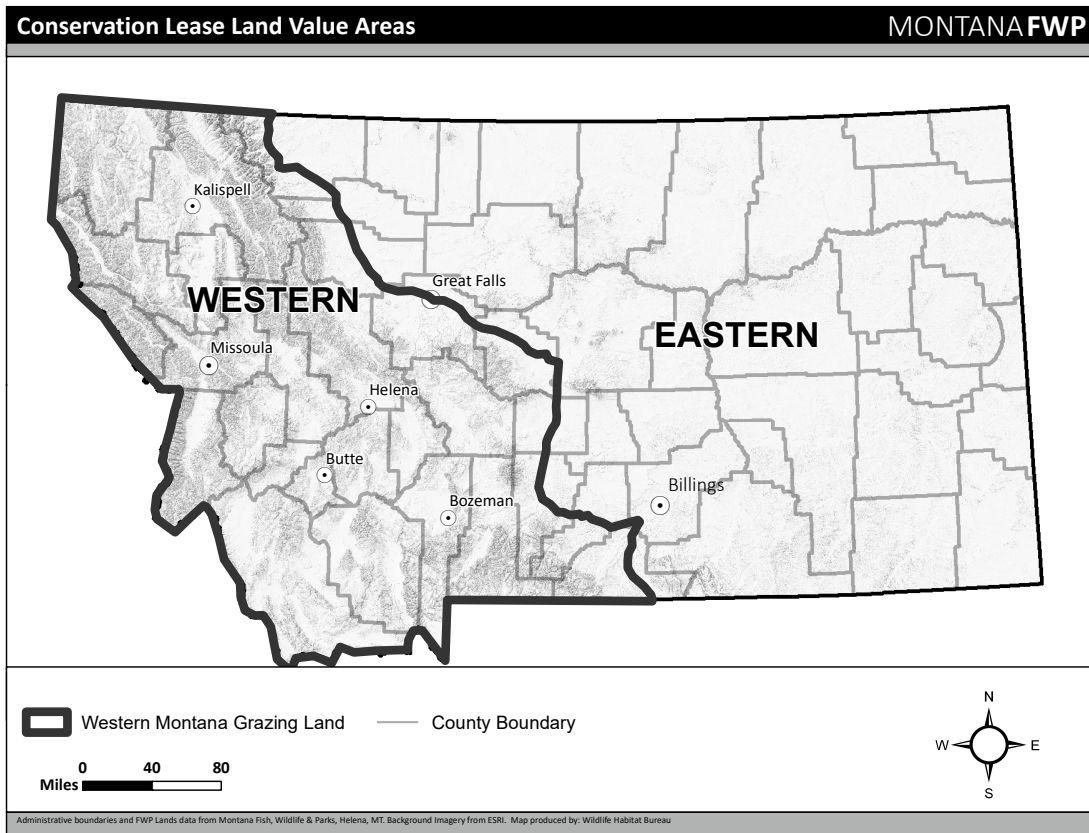


Figure 1. Delineation of western and eastern Montana units for valuing FWP Conservation Leases.¹

2) Provide a penalty-free buyout provision. This provision would apply specifically to landowners who wish to substitute the conservation lease with a permanent conservation easement that provides similar habitat protection measures. The appraised value of a conservation easement could substantially be affected by an FWP conservation lease. This proposed provision would allow the landowner to pay FWP

¹ The east-west boundary is as follows: Starting at the border with Canada, follow Highway 89 south to Vaughn and then Interstate 15 to Great Falls, then follow Highway 200 to where it intersects with Highway 191; follow Highway 191 south to Big Timber then follow Interstate 90 east to Laurel; then follow Highway 212 south to Highway 310; follow Highway 310 south to the state line.

a pro-rated amount based on the original lease payment multiplied by the percentage of lease time remaining. For instance, a landowner who received \$100,000 for an FWP conservation lease and was halfway through the lease term, but is now committed to a permanent conservation easement, could buy out of the conservation lease for \$50,000 (half of \$100,000). Unlike the general buyout option of the conservation lease, this provision would exclude the additional 25% liquidated damages. FWP is proposing this option to provide additional flexibility to landowners and to better integrate the FWP conservation lease program with other conservation programs in Montana, including the Montana Sage-Grouse Habitat Program, the USDA Agricultural Land Easement Program, local land trusts, county open space bonds, and others.

The schedule for processing of this SEA and tentative work is as follows:

- SEA Comment Period April 10-May 1, 2023
- Decision Notice by May 12, 2023
- Contingent on a decision to proceed, FWP would plan to initiate a 40-day conservation lease application period on or around May 17, 2023 with public notices and news releases and other forms of outreach. This would be followed up with subsequent application periods as fitting with funding and achievement of the 500,000-acre goal.

Affected Area / Location of Proposed Project: The affected area includes five focal habitats that occur across portions of Montana, as further described in the Programmatic EA. These are shrub grassland, mixed grass prairie, wetland-grassland complex, intermountain shrub and grassland, and associated riparian floodplain habitats along large river systems (Figure 2).

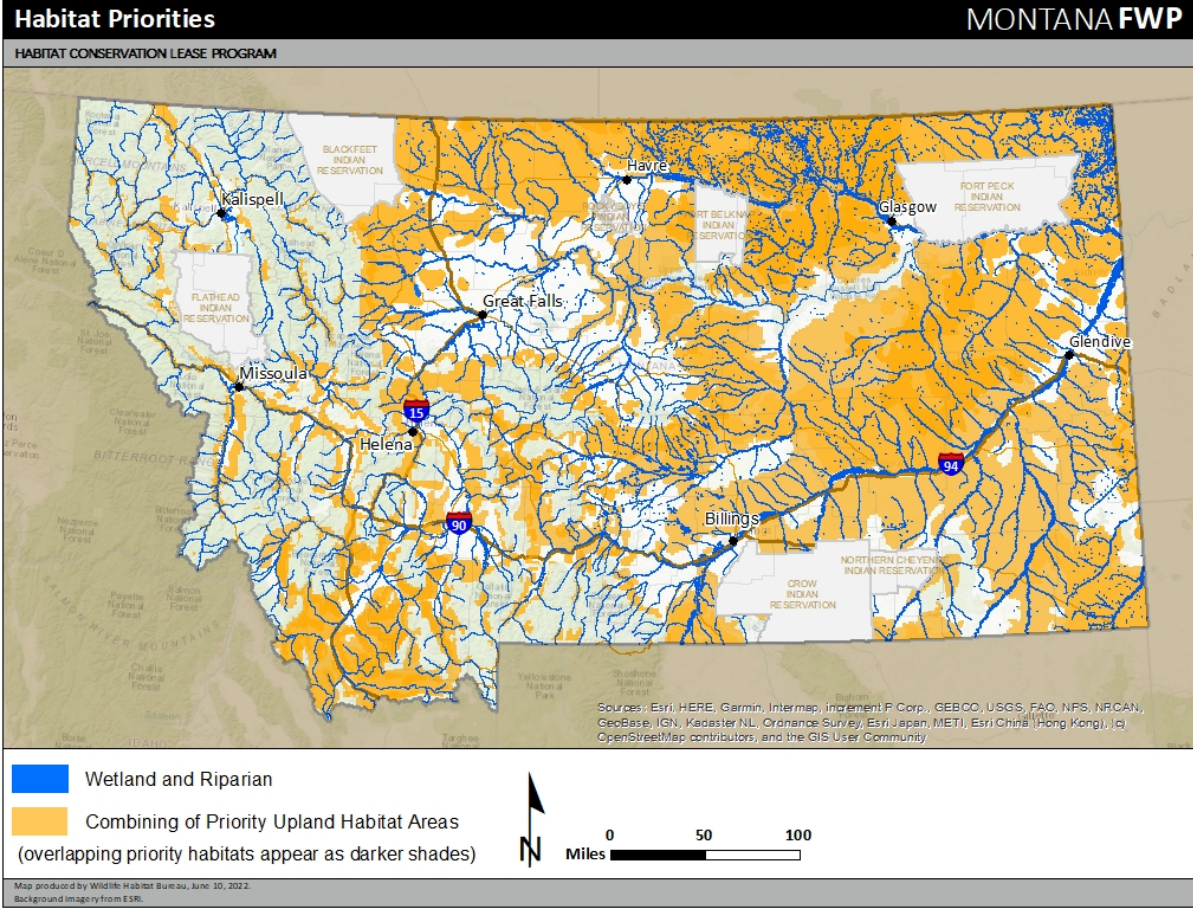


Figure 2. An overlay of five focal habitats as described and portrayed in the Programmatic EA.

III. Purpose and Need

The SEA must include a description of the benefits and purpose of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project refer to benefits to the resource, public, department, state, and/or other.

FWP desires to enroll up to 500,000 acres over the next five years into the Conservation Lease Program, as previously analyzed in the Draft Programmatic EA and associated DN. That objective remains unchanged under the proposed action.

The proposed action is intended to increase voluntary enrollments of high priority prairie and associated riparian/floodplain habitats into the FWP Conservation Lease Program through an increase in payment level and improved flexibility for landowners seeking future conservation options.

FWP identified five habitats in the Programmatic EA as being a high conservation priority. Achieving the goals of the Habitat Conservation Lease Program would help ensure long-term conservation of these habitats by protecting them from being converted to other land uses or developments while continuing to support traditional land uses that are compatible with wildlife.

	Yes*	No
Was a cost/benefit analysis prepared for the proposed project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

* If yes, a copy of the cost/benefit analysis prepared for the proposed project is included in Attachment A to this Draft EA

IV. Other Agency Regulatory Responsibilities

FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).

There are no known federal, state, and/or local agencies that have overlapping or additional jurisdiction for the proposed project, and there are no permits, licenses, or other required authorizations.

V. List of Mitigations, Stipulations

Mitigations, stipulations, and other *enforceable* controls required by FWP, or another agency, may be relied upon to limit potential impacts associated with a proposed Project. The table below lists and evaluates enforceable conditions FWP may rely on to limit potential impacts associated with the proposed Project. ARM 12.2.432(3)(g).

Table 3: Listing and Evaluation of Enforceable Mitigations Limiting Impacts

<i>Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.</i>			Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<i>If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below</i>			Yes <input type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project	
None				

VI. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzes the "No-Action" alternative in this EA. Under the "No-Action" alternative, FWP would not make the proposed changes to the Conservation Lease Program.

Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. The "No Action" alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

	Yes*	No
Were any additional alternatives considered and dismissed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

VII. Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population

The impacts analysis identifies and evaluates **direct, secondary, and cumulative impacts**.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the effect.
- **Secondary impacts** “are further impacts to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.” ARM 12.2.429(18).
- **Cumulative impacts** “means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.” ARM 12.2.429(7).

Where impacts are expected to occur, the impact analysis estimates the **extent, duration, frequency, and severity** of the impact. The duration of an impact is quantified as follows:

- **Short-Term:** impacts that would not last longer than the proposed project.
- **Long-Term:** impacts that would remain or occur following the proposed project.

The severity of an impact is measured using the following:

- **No Impact:** there would be no change from current conditions.
- **Negligible:** an adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor:** the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate:** the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major:** the effect would irretrievably alter the resource.

Some impacts may require mitigation. As defined in ARM 12.2.429, mitigation means:

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or
- Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.

A list of any mitigation strategies including, but not limited to, design, enforceable controls or stipulations, or both, as applicable to the proposed project is included in **Section VI** above.

FWP must analyze impacts to the physical and human environment for each alternative considered. The proposed project considered the following alternatives:

- **Alternative 1: No Action. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

Under the "No-Action" alternative, FWP would not make the proposed changes to the Conservation Lease Program. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur as a result of the proposed action. The No Action alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

If the No Action alternative is selected, voluntary enrollment in the Habitat Conservation Lease Program may continue to occur; however, likely at a level far below the objective of 500,000 acres over a 5-year timeframe. It is also likely that the enrollment process would be less competitive, possibly resulting in lower quality projects being accepted into the Habitat Conservation Lease Program. Under this alternative, FWP anticipates the program would be less effective in accomplishing large-scale conservation of high priority prairie and associated riparian/floodplain habitats.

- **Alternative 2: Proposed Project. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

See **Table 4** (Impacts on Physical Environment) and **Table 5** (Impacts on Human Population) below.

Table 4 - Potential Impacts of Alternative 2: Proposed Project on the Physical Environment

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Terrestrial, avian, and aquatic life and habitats	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to terrestrial, avian, and aquatic life and habitats would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to terrestrial, avian, and aquatic life and habitats would be expected because of the proposed action.
Water quality, quantity, and distribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to water quality, quantity, and distribution would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to water quality, quantity, and distribution would be expected because of the proposed action.
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to geology would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and

									operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to geology would be expected because of the proposed action.
Soil quality, stability, and moisture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to soil would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to soil quality, stability, and moisture would be expected because of the proposed action.
Vegetation cover, quantity, and quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to vegetation cover, quantity, and quality would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to vegetation cover, quantity, and quality would be expected because of the proposed action.
Aesthetics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to aesthetics would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action

									would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to aesthetics would be expected because of the proposed action.
Air quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to air quality would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to air quality would be expected because of the proposed action.
Unique, endangered, fragile, or limited environmental resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to unique, endangered, fragile, or limited environmental resources would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to unique, endangered, fragile, or limited environmental resources would be expected because of the proposed action.
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to historical and archaeological sites would be expected because of the proposed action. Conservation Lease Program impacts

									<p>were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to historical and archaeological sites would be expected because of the proposed action.</p>
Demands on environmental resources of land, water, air, and energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No significant adverse impacts to demands on environmental resources of land, water, air, and energy would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to demands on environmental resources of land, water, air, and energy would be expected because of the proposed action.</p>

Table 5 - Potential Impacts of Alternative 2: Proposed Project on the Human Population

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No significant adverse impacts to social structures and mores would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of</p>

									the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to social structures and mores would be expected because of the proposed action.
Cultural uniqueness and diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to cultural uniqueness and diversity would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to cultural uniqueness and diversity would be expected because of the proposed action.
Access to and quality of recreational and wilderness activities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to access to and quality of recreational and wilderness activities would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to access to and quality of recreational and wilderness activities would be expected because of the proposed action.
Local and state tax base and tax revenues	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to local and state tax base and tax revenues would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and

										associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to the local and state tax base and tax revenue would be expected because of the proposed action.
Agricultural or Industrial production	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to agricultural or Industrial production would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to agricultural or industrial production would be expected because of the proposed action.
Human health and safety	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to human health and safety would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to human health and safety would be expected because of the proposed action.
Quantity and distribution of employment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to quantity and distribution of employment would be expected because of the proposed action. Conservation Lease Program impacts

									<p>were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to quantity and distribution of employment would be expected because of the proposed action.</p>
Distribution and density of population and housing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No significant adverse impacts to distribution and density of population and housing would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to distribution and density of population and housing would be expected because of the proposed action.</p>
Demands for government services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No significant adverse impacts to demands for government services would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to demands for government services would be expected because of the proposed action.</p>

Industrial, agricultural, and commercial activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to industrial, agricultural, and commercial activity would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to industrial, agricultural, and commercial activity would be expected because of the proposed action.
Locally adopted environmental plans and goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to locally adopted environmental plans and goals would be expected because of the proposed action. Conservation Lease Program impacts were analyzed in the initial Draft Programmatic EA and associated DN. The proposed action would provide increased financial incentive and operational flexibility for implementation of the Habitat Conservation Lease Program with the intent of increasing voluntary participation and the likelihood FWP would achieve program objectives. Because the Habitat Conservation Lease Program objectives remain the same, no additional impacts to locally adopted environmental plans and goals would be expected because of the proposed action.
Other appropriate social and economic circumstances	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No significant adverse impacts to other appropriate social and economic circumstances would be expected because of the proposed action. Adjusting the Habitat Conservation Lease Program valuation formula to increase payment levels for voluntary program participation would result in higher program costs/acre of enrollment. This in turn would increase costs for the affected funding sources, which may result in reduced funding for other types of conservation work or other potential uses of funding. FWP placed high priority on achieving the goals

										of the Habitat Conservation Lease Program. It is expected any impacts to other appropriate social and economic circumstances would be short term and minor or short-term and moderate, depending on future available funding resources and future enrollment goals identified after the initial 5 years of the Habitat Conservation Lease Program.
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Table 6: Determining the Significance of Impacts on the Quality of the Human Environment

<p>If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP’s decision as to whether it is necessary to prepare an environmental impact statement.</p> <p>According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.</p>	
<p>Criteria Used to Determine Significance</p>	
1	<p>The severity, duration, geographic extent, and frequency of the occurrence of the impact</p> <p>“Severity” describes the density of the potential impact, while “extent” describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent.</p> <p>“Duration” describes the time period during which an impact may occur, while “frequency” describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).</p>
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values
5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans

VIII. Private Property Impact Analysis (Takings)

The 54th Montana Legislature enacted the Private Property Assessment Act, now found at § 2-10-101. The intent was to establish an orderly and consistent process by which state agencies evaluate their proposed projects under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency projects pertaining to land or water management or to some other environmental matter that, if adopted and enforced without due process of law and just compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agencies to assess the impact of a proposed agency project on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency project has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act.

Table 7: Private Property Assessment (Takings)

	Yes	No	
<i>Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below:</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
PRIVATE PROPERTY ASSESMENT ACT (PPAA)			
Does the Proposed Action Have Takings Implications under the PPAA?	Question #	Yes	No
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 4a and 4b and continue with question 5)	4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input type="checkbox"/>

Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	<input type="checkbox"/>	<input type="checkbox"/>
Does the proposed action result in taking or damaging implications?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Taking or damaging implications exist if YES is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to question 4a or 4b.			
If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.			
Alternatives:			
The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person's use of private property to constitute a taking.			

IX. Public Participation

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. FWP is responsible for adjusting public review to match these factors (ARM 12.2.433(1)). Because FWP determines the proposed action will result in limited environmental impact, and little public interest has been expressed, FWP determines the following public notice strategy will provide an appropriate level of public review:

- An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).
- Public notice will be served on the Montana Fish, Wildlife and Parks website at: <https://fwp.mt.gov/aboutfwp/public-comment-opportunities>
- FWP maintains a mailing list of persons interested in a particular action or type of action. FWP will notify all interested persons and distribute copies of the EA to those persons for review and comment (ARM 12.2.433(3)).
- FWP will issue public notice in the following newspaper periodical(s) on the date(s) indicated.

Newspaper / Periodical	Date(s) Public Notice Issued
Helena Independent Record	Approximately April 11, 2023

- Public notice will announce the availability of the EA, summarize its content, and solicit public comment.
 - **Duration of Public Comment Period:** The public comment period begins on the date of publication of legal notice in area newspapers (see above). Written or e-mailed comments will be accepted through the last day of the public comment period, as listed below:

Length of Public Comment Period: 21 days

Public Comment Period Begins: April 10, 2023

Public Comment Period Ends: May 1, 2023

Comments must be addressed to the FWP contact, as listed below.

○ **Where to submit Comments on the Draft SEA:**

Name: RICK NORTHRUP

FWP Web Submission: <https://fwp.mt.gov/public-notices/news/2023/apr/0410-habitat-conservation-lease-program-supplemental-ea>

Mailing Address:
Wildlife Division
c/o Habitat Bureau
1420 E Sixth Ave
P.O. Box 200701
Helena, MT 59620

X. Recommendation for Further Environmental Analysis

NO further analysis is needed for the proposed action	<input checked="" type="checkbox"/>
FWP must conduct EIS level review for the proposed action	<input type="checkbox"/>

XI. EA Preparation and Review

	Name	Title
EA prepared by:	Rick Northrup	Wildlife Habitat Bureau Chief
EA reviewed by:	Eric Merchant	FWP MEPA Coordinator