

**MONTANA SAGE GROUSE OVERSIGHT TEAM AGENDA ITEM BRIEF SHEET  
JUNE 2, 2017**

**AGENDA ITEM: SAGE GROUSE MITIGATION: GUIDANCE AND HABITAT QUANTIFICATION TOOL DRAFT DOCUMENTS**

**ACTION NEEDED: DIRECT THE PROGRAM TO FINALIZE THE DRAFT MITIGATION GUIDANCE AND TECHNICAL HABITAT QUANTIFICATION TOOL DOCUMENTS AND DRAFT PROPOSED ADMINISTRATIVE RULES FOR MSGOT CONSIDERATION DURING THE JULY 24, 2017 MEETING**

**SUMMARY:**

The 2015 Montana Legislature passed the Montana Greater Sage Grouse Stewardship Act (Act). Executive Order 12-2015 complements the Act. Taken together, they establish that Montana will observe the mitigation hierarchy or sequence (avoidance, minimization, reclamation, and compensation) with respect to activities subject to agency review, approval, or authorization in habitats designated as core areas, general habitat, and connectivity areas for sage grouse conservation. Mitigation is intended to offset direct, indirect, and residual impacts both spatially and temporally.

The Act specifically sets forth that: (1) project developers can offset the loss of resource functions of values at an impact or project site through compensatory mitigation to incentivize voluntary conservation measures for sage grouse habitat and populations; (2) a habitat quantification tool will be designated to evaluate vegetation and environmental conditions related to the quality and quantity of sage grouse habitat and to calculate the value of credits and debits when compensatory mitigation is required; (3) there shall be a method to track and maintain the number of credits and debits available and used; and (4) there shall be a method to administer the review and monitoring of MSGOT funded projects using the Stewardship Fund. Rulemaking authority was also provided to MSGOT to adopt administrative rules to implement these statutory provisions. Additional guidance is set forth in Executive Order 12-2015.

The Program has been working with a diverse group of at least 40 stakeholders (which includes state/federal agency partners) to begin developing the compensatory mitigation policy framework and habitat quantification tool (HQT) in anticipation of formal rulemaking. Our work has been greatly advanced by the participation and expertise of two professional collaborators: Willamette Partnership for the policy guidance based on universal principles of mitigation and SWCA Environmental Consultants for the technical habitat quantification tool (a GIS model). On behalf of the state, the professional collaborators have shouldered the burden of leading stakeholder discussions, researching the scientific literature, consulting with their peers, doing the technical work to develop the HQT GIS model, and drafting documents.

The first stakeholder meeting took place September 16, 2016. Up to, and including, a meeting on June 1-2, 2017, the group will have met a total of 11 times. Several webinars and at least five conference calls have also taken place. The professional collaborators have graciously made themselves available to the Program and stakeholders between formal meetings, as well.

On December 6, 2016, MSGOT approved proposed rules for publication in the Montana Administrative Register on December 23, 2016. The proposed administrative rules reflected the work of the stakeholders as of December, with clear acknowledgement by all participants that areas of disagreement remained and that participants were free to submit public comments during the rulemaking process as individuals.

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Three public hearings were held in January, 2017. Public comments were accepted via postal mail and online through the Program's website. The comment period closed on January 23, 2017. A copy of the published proposed rules and all comments received are included in your meeting materials. Comments were published to the web in early February, and are presently still available on the Program's website (*see* MSGOT page, under heading Administrative Rules). The substantive nature and diversity of comments was also generally discussed during the Jan. 31-Feb. 1, 2017 stakeholder meeting.

Ultimately, the proposed rules were not brought to MSGOT for final adoption for a variety of reasons. The subject matter has a high degree of complexity, in addition to novelty. Montana has never had mitigation programs which offset impacts specifically for fish or wildlife species and their habitats, as required for sage grouse. Presently, mitigation efforts in Montana only address impacts to streams and wetlands, as required under federal law and regulations. Not surprisingly, substantive public comments were received. Comments on some fundamental issues were sufficiently divergent, if not contradictory, to warrant additional consideration. The stakeholder process offered a venue for ongoing discussion and potential resolution of the key issues raised in public comment. Moreover, some facets of the proposed rule had already been superseded by the ongoing work of the stakeholder group. Stakeholders also recognized the complexity of the subject matter and that work was still ongoing.

During the April 4-5, 2017, stakeholder meeting, participants discussed the merits of finalizing the proposed rules, given where we were in the process of developing draft documents. The consensus was finalizing the proposed rules was not worth the resources to do so. The proposed rules would have to be replaced when the guidance and HQT documents are eventually finalized and acted upon by MSGOT anyway.

Also during the April 4-5 meeting, stakeholders agreed that additional small group focused conversations were needed on several key outstanding issues. These took place in the last week of April, 2017. Stakeholders and our professional collaborators acknowledged that MSGOT was unlikely to be able to designate the framework and HQT by our self-imposed deadline of June 1 because there was work yet to be done. Lastly, stakeholders agreed that the process would benefit from one additional face to face meeting, ideally held in conjunction with an MSGOT meeting, after they have had an opportunity to review and comment on complete draft documents.

Our professional collaborators completed two draft documents on May 5, 2017, respectively: Draft Habitat Mitigation Guidance Document and Draft Habitat Quantification Tool Technical. These drafts were immediately forwarded to stakeholders for review and comment, with a comment deadline of May 24.

The stakeholders will meet on June 1-2. By then, Program and BLM staff will have compiled and organized the stakeholder comments according to topic area. A summary will also be prepared. These comment materials will be provided to all meeting attendees, and will be used to inform the agenda and set priorities for the time available. Next steps will also be discussed and are likely to depend on the spectrum of comment and levels of agreement.

Our professional collaborators are on MSGOT's agenda to present the documents during the June 2, 2017 meeting. Many stakeholders are also attending this meeting and are eager to engage with you directly, as desired. Additionally, MSGOT will have the opportunity to solicit comments from the general public after the presentations.

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Revisions to the May 5, 2017, drafts are expected, based on written comments, discussion during the June 1-2 stakeholder meeting, and MSGOT's inquiries and discussion. Our professional collaborators, by their own preference, will undertake those revisions after June 2 and provide final draft documents as soon as possible thereafter (likely mid-to late June). The Program may need to undertake some final edits and revisions to the final draft documents for issues where stakeholder agreement could not be reached.

General public comment on the final draft documents is warranted to solicit input from a broader cross-section of interested parties who did not directly participate in the stakeholder process or whose views may not have been fully represented during that process. As importantly, stakeholder participants may desire to comment on the final drafts released for general public comment as individuals, especially because the state may have to make policy-level decisions on matters on which agreement was not reached.

Scientific peer review on the final draft documents is also warranted. The Program would solicit scientific peer review from qualified individuals who were not engaged or consulted during the development of either the guidance or the HQT documents, respectively. Peer reviewers could be asked to review one or both final draft documents, depending on their expertise. Upon review by MSGOT during the July 24th meeting, final draft documents would be sent to peer reviewers. They would have approximately 30 days to provide comments back to the state.

Additionally, MSGOT should reinitiate administrative rulemaking on the mitigation documents to officially adopt and designate Montana's sage grouse mitigation guidance and HQT. The Program is proposing that general public comment on final draft documents be solicited concurrently with the administrative rulemaking process. The Program anticipates having final draft documents and proposed administrative rules prepared for MSGOT's consideration during the July 24<sup>th</sup> meeting.

Lastly, it has been the stakeholders' vision that Montana adopt a sage grouse mitigation framework and HQT that could be simultaneously implemented by federal land management agency partners. Advantages include: 1. a seamless and consistent approach regardless of surface ownership, in keeping with Montana's "all lands, all hands, all threats" approach; 2. convenience, transparency, and predictability for project proponents needing state permits and/or federal authorizations; 3. convenience, transparency, and predictability for credit developers; and 4. eliminating duplicative mitigation processes. A multi-party memorandum of understanding could also be drafted, similar to the State of Wyoming.

This is an aggressive timeline, given the subject matter complexity and other demands on the Program. Nonetheless, it would place MSGOT on track to consider final rules in October or November of 2017.

Additional formal stakeholder meetings are not anticipated, but could be scheduled depending on need and desire. The Program will informally collaborate with stakeholders and state/federal agency partners on an ongoing basis throughout this process.

**PROGRAM RECOMMENDATION:**

The Program Manager recommends MSGOT direct the Program to finalize the Draft Mitigation Guidance and Technical Habitat Quantification Tool documents and draft proposed administrative rules for MSGOT consideration during the July 24, 2017 meeting.