

DECISION NOTICE

Sage Grouse Stewardship Account 2020 Grant Project

The Nature Conservancy's Mussard-Barrett Ranch Conservation Easement

Montana Sage Grouse Oversight Team

February 17, 2021

PROPOSAL

The Montana Sage Grouse Oversight Team (MSGOT) is proposing to dedicate Sage Grouse Habitat Stewardship Account funds (Account) for The Nature Conservancy to purchase a perpetual Conservation Easement on 2,436 acres owned by the Mussard and Barrett families, in Montana's Beaverhead County. The Nature Conservancy (TNC), an IRS 501(c)(3) nonprofit organization, submitted the Stewardship Account grant application and will hold the Easement. The authority and direction under which this project is being proposed is provided by the Montana Greater Sage Grouse Stewardship Act (Act), Administrative Rules of Montana 14.6.101-106, and MSGOT Grant Procedures 01-2016.

The Nature Conservancy requested a total of \$527,800 from the Account for the project. State funds would be matched with \$1,675,000 from the Natural Resources Conservation Service's (NRCS) Agricultural Lands Easement Program and private funding sources. Of the total award, TNC is expected to allocate \$27,800 towards project-related costs. The estimated value of the Easement is \$2,165,000.

In its October 19, 2020 grant application, TNC included one letter of support for the project. This letter highlights the importance of the property in protecting habitat for sage grouse and other wildlife species in the Horse Prairie and Medicine Lodge area. It mentions that this property is likely to support sage grouse during spring nesting through late-season brood rearing. Additionally, it would support other sagebrush dependent species alongside pronghorn, elk, mule deer, and moose. It states that acquisition of this easement would help to secure high quality sage grouse habitat that adjoins both state and federally managed lands.

The proposed easement area has a minimum of 24 sage grouse leks within 12 miles of the easement location, 19 of which are located within eight miles.

The Mussard-Barrett Ranch Conservation Easement is located entirely within the Beaverhead 3 Core Area. The easement property consists of four separate parcels located in the upper Horse Prairie watershed. Three smaller parcels totaling approximately 890 acres are situated along the Horse Prairie Creek floodplain and consist largely of flood irrigated or hayed pasture and riparian shrubland with lesser amounts of sagebrush steppe along upland benches. The southern parcel consists of 1,550 acres of high-quality mountain big sagebrush steppe interspersed with wet meadows, seeps and springs, and two small perennial creeks.

The property is set within a remote and relatively undisturbed high elevation intermountain landscape.

The property adjoins both other private ranchland and public lands managed by the BLM and State Trust Lands. Private ranchlands west, east and north of the Mussard property are already protected with conservation easements. The Mussard's hold grazing leases on approximately 15,500 acres of BLM land adjacent to the proposed Conservation Easement property.

The easement would allow the property to continue to support seasonal grazing, haying, irrigation and recreation and associated practices (fences, stock water, irrigation ditches, etc.). This project will help maintain sage grouse habitat.

The U.S. Fish and Wildlife Service identified the following threats of habitat loss and fragmentation in this part of Montana: conversion of sagebrush grassland to cropland, exurban development, mechanical or chemical sagebrush control, improper livestock management, and energy development. The primary threats in this area are land subdivision, exurban/recreational residential development, and conversion to cropland. It has been shown that lek density may be reduced by more than 50% in the face of a 10% increase in cropland within 12.4 miles. Important to note, converting one parcel of land could "strongly" reduce lek persistence in a "landscape ten times the size" of the converted parcel, itself. Therefore, efforts that conserve intact sagebrush landscapes already having little or no existing cropland contribute favorably to sage grouse persistence, particularly where the risk of conversion exists.

Consistent with addressing specific threats of habitat loss and fragmentation in southwest Montana, the terms of the Conservation Easement are expected to prohibit the following: subdivision, industrial and commercial surface uses for wind or solar development, surface mining other than small-scale use to maintain existing roads on the ranch, new road construction other than one new road so long as it does not exceed two percent of the property, and land conversion to cultivated crops. Construction of new buildings would be limited to a one quarter building envelope established around the existing cabin site.

The terms of the Conservation Easement are expected to permit the following activities, consistent with the conservation values the Easement protects: seasonal grazing, haying, irrigation, recreation, and associated practices (fences, stock water, irrigation ditches, etc.). These activities are consistent with conserving sage grouse habitat and populations.

The underlying purpose for the Stewardship Account's funding of TNC's Conservation Easement purchase is to create mitigation credits that will be used to offset development elsewhere, consistent with direction outlined in the Stewardship Act and Administrative Rules 14.6.101-106. Mitigation addresses direct, indirect, and residual impacts of development. In Montana, implementation of the mitigation hierarchy is called for in Executive Order 12-2015,

the Greater Sage Grouse Stewardship Act, and implemented with the mitigation framework and related documents outlined in Administrative Rules 14.6.101-106.

MSGOT will own the credits, but TNC will hold the Easement. The requirements for mitigation credit sites will be fulfilled through the combined actions of the landowner, TNC, and MSGOT. TNC will monitor the property independently and will work with the landowner to monitor the Easement annually into perpetuity. TNC will provide annual monitoring reports to the Program. TNC's own stewardship account will provide the financial assurances necessary for the credit site. These funds will be available to restore impaired habitat in the event the Easement terms are breached. Mitigation credits from MSGOT's Reserve Account will be used to replace credits lost due to unforeseen events. Additionality will be met by protecting habitat in perpetuity and avoiding loss of habitat that might not otherwise be protected. Duration and durability will be met because the proposed project will protect habitat in perpetuity through the terms of the Conservation Easement.

MSGOT and the Program are required to apply the current designated Habitat Quantification Tool (HQT) to any project that is selected for funding from the Stewardship Account. MCA § 76-6-109(4). The HQT is the scientific method used to evaluate vegetation and environmental conditions related to quality and quantity of sage grouse habitat and to quantify and calculate the number of credits created by a conservation project. MCA § 76-6-103(9). MSGOT approved the current version of the HQT and accompanying Policy Guidance Document in October 2018.

The HQT considers the many biophysical attributes of Greater Sage-grouse seasonal habitats to estimate habitat functionality across multiple spatial and temporal scales. The HQT also accounts for existing human disturbances (e.g. roads, cropland, energy development, etc.). These measures of habitat, expressed as functional acres, are used for calculating conservation benefits (i.e., credits) from mitigation projects. Using habitat quality, expressed as functional acres, provides a common "habitat currency" that can be used for both credit and debit projects, ensuring accurate accounting of habitat gains and losses, and allows comparisons across projects using a common metric that is calculated in the exact same way.

To establish the number of credits each conservation project might create with the aid of Stewardship Account funding, the Program ran the HQT using the spatial data provided by TNC (the grant applicant) for the proposed Conservation Easement on the Mussard-Barrett Ranch. Results do not include non-deeded lands within the perimeter of the proposed Easement (i.e. federal, state, and private land inholdings owned by entities other than the Mussard or Barrett families are excluded from results and from the Easement, itself).

The HQT results for all parcels combined total 100,320.55 functional acres gained, or 40,128.22 credits.

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) REVIEW

The Montana Environmental Policy Act (MEPA) directs State agencies to assess the impacts of their proposed actions on the human and natural environment. Consistent with this MEPA requirement, the public was asked to submit initial scoping comments on January 18, 2021. TNC's Mussard-Barrett Ranch Conservation Easement grant proposal and potential impacts were analyzed in a Draft Environmental Assessment (EA). The Draft EA was released for public comment on January 25, 2021. The Draft EA was open to public comment through February 8, 2021. Additionally, the public was also invited to comment on the project during MSGOT's November 30, 2020 meeting prior to taking executive action to award funding to TNC. During their meeting on December 14, 2020, MSGOT confirmed the funding decisions made on November 30.

SUMMARY OF PUBLIC COMMENTS AND RESPONSE

One public comment was received during the dedicated scoping comment period in January 2021 and was generally opposed. This comment letter expressed concerns about the efficacy of conservation easements on ranch properties to conserve habitat, livestock grazing and management, the presence of flood irrigated or hayed pastures within the boundary of the Mussard-Barrett easement, and the efficacy of the mitigation credit system to conserve habitat.

In response, the Program notes that the Greater Sage-grouse Stewardship Act expressly provides for conservation easements and recognizes them as a voluntary, incentive-based tool through Stewardship Account grants to maintain sage grouse habitat and populations. Conservation easements provide the highest degree of protection for privately owned sage grouse habitat and ameliorate USFWS-identified threats of subdivision, cultivation, and other anthropogenic sources of habitat loss or fragmentation. Irrigated hay areas adjacent to sagebrush grasslands can provide brood-rearing habitat and forage for sage grouse and other wildlife in late summer and in dry years. Livestock grazing is explicitly addressed through terms of the Conservation Easement disclosed in the Draft EA and is seasonal in nature. In addition to the easement terms, livestock grazing and other management activities will also be guided by the NRCS Agricultural Lands Easement (ALE) Plan that is required since NRCS funding is being used to match state funds. The ALE Plan sets out that all management activities must be consistent with the Conservation Values of the easement.

Nine public comments were received on the Draft EA. All comments were in support of this project and conservation easements generally. Commenters appreciated that the project will protect wildlife habitat, will benefit sage grouse, and support continuation of working agricultural families and the landscapes they steward. One comment letter supported, specifically, the market-based mechanisms as an incentive for well-designed conservation efforts with voluntary private landowners.

DECISION

The authority and direction for this proposed expenditure from the Stewardship Account is provided by the Montana Greater Sage Grouse Stewardship Act (Act), Administrative Rules of Montana 14.6.101-106, and MSGOT Grant Procedures 01-2016. The 2015 Montana Legislature created the grant program when it passed the Greater Sage Grouse Stewardship Act and created a special revenue account. The purpose of the Act is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands that lie within Core Areas, General Habitat, or Connectivity Areas. Implementation of Montana's Conservation Strategy through expenditures from the Account is an important step in demonstrating Montana's commitment to ameliorate threats and take affirmative actions to conserve important habitats, thereby meeting the ultimate goal of avoiding the loss of state management authority of Greater Sage-grouse and their habitats due to future federal listing under the Endangered Species Act.

Another important aspect of Greater Sage-grouse habitat conservation entails mitigating for impacts of disturbance due to development in habitats designated for conservation as Core Areas, General Habitat, or Connectivity Areas. Montana's Conservation Strategy recognizes the mitigation hierarchy of avoidance, minimization, restoration or reclamation, and replacement through compensatory mitigation. Funds in the Account are to be awarded to projects that generate credits made available for compensatory mitigation. All compensatory mitigation credits created based on the ecosystem services provided to Greater Sage-grouse on the Mussard-Barrett Conservation Easement will be used to offset the impacts of development projects.

The resource values associated with these land parcels for sage grouse are very significant. Based on the quality of the habitat protected, the range of threats avoided by prohibiting future activities, and the comprehensive approach to range management set forth in the Easement and accompanying ALE plan, the Program has determined that this Conservation Easement will provide benefit for Greater Sage-grouse through perpetual legal habitat protection and maintenance of high standards for land stewardship.

The Draft EA is being adopted as the Final EA. This decision is supported by three factors. First is the overall support received in favor of the project throughout all public comment opportunities. One public comment was received during the scoping period and was generally not supportive. However, the nature of the concerns expressed do not warrant more detailed analysis beyond that conducted to prepare the Draft EA. The issues raised also did not rise to the level of triggering an environmental impact analysis. One letter of support was submitted with the grant application, and all oral public comments received during the November 30, 2020 MSGOT meeting were in support of the project. Nine supportive comments were

received on the Draft EA. Second, no existing or new substantive controversial or technical issues emerged through public comment or the Program's analysis in the Draft EA.

Third, and more importantly, there were no substantive changes to the grant project or stepped-down details between what was originally proposed by the applicant, what was awarded funding by MSGOT, and what was disclosed and analyzed in the Draft EA. The project parameters remained consistent throughout the granting process from the initial submission through the Draft EA public comment phase, and through to the final proposed Conservation Easement document and credit calculations. Therefore, no changes emerged that would trigger new or additional analysis or further public comment.

After reviewing the merits of this grant application, including its creation of 40,128.22 credits, and affording several opportunities for public comment, the Mussard-Barrett project will move to completion, enabling TNC to purchase the Mussard-Barrett Conservation Easement. The final TNC Mussard-Barrett Conservation Easement Project has not changed since it was initially considered by MSGOT and made available for public comment. The final decision is to transfer \$500,000 from the Stewardship Account to an independent closing agent on a date mutually agreed upon by all parties so TNC can complete the purchase of the Mussard-Barrett Conservation Easement. Closing is expected in the first quarter of 2021. Separately, TNC can seek reimbursement for eligible project expenses up to \$27,800, consistent with MSGOT's grant award decision and the executed grant agreement, by providing proper supporting documentation to the Program.

A handwritten signature in cursive script that reads "Amanda Kaster". The signature is written in dark ink and is positioned above a horizontal line.

Amanda Kaster

Director, Montana Department of Natural Resources and Conservation

Member of the Montana Sage Grouse Oversight Team